UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95, et al.,

Plaintiffs,

v.

HERITAGE UNION LIFE INSURANCE CO.,

Defendant.

Case No. 1:13-cv-3643
Judge John Robert Blakey
Magistrate Mary M. Rowlan

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HERITAGE UNION LIFE INSURANCE COMPANY,

Counter-Plaintiff,

v.

SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95,

Counter-Defendant,

and

FIRST ARLINGTON NATIONAL BANK, et al.,

Third-Party Defendants.

CROSS PLAINTIFF ELIOT IVAN BERNSTEIN MOTION FOR RELIEF FROM SUMMARY JUDGMENT ORDER PURSUANT TO FED. R. CIV. P. 60(b)(3)

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ELIOT IVAN BERNSTEIN,

Cross-Plaintiff,

v.

TED BERNSTEIN, et al.,

Cross-Defendants,

and

PAMELA B. SIMON, et al.,

Third-Party Defendants,

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BRIAN M. O'CONNELL, as Personal Representative of the Estate of Simon L. Bernstein,

Intervenor.

_____/

**MOTION FOR RELIEF FROM SUMMARY JUDGMENT ORDER PURSUANT TO FED. R. CIV. P. 60(b), 60(b)(3) and FED R. CIV. P. 60(a)**

Cross Plaintiff Eliot Ivan Bernstein ("ELIOT"), Pro Se, respectfully moves, pursuant to Fed. R. Civ. P. 60(b) and Fed. R. Civ. P. 60(a) for relief from this Court's Order of January 30, 2017, in SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95, et al., v. HERITAGE UNION LIFE INSURANCE CO., Civ No. 1:13-cv-3643, (Dkt. #273), "MEMORANDUM OPINION AND ORDER" issued by the most Honorable Judge John Robert Blakey. There was a prior Round 1 Summary Judgment Order issued in this case by Judge Blakey for the Court's reference, (Dkt. #220).

**Cases**

Barlow v. Colgate Palmolive Co. 772 F.3d 1001, 1010 (4th Cir. 2014).

**Statutes**

18 U.S.C. §1341

18 U.S.C. §1983

18 U.S.C. §195 l (b)

18 U.S.C. §2

18 U.S.C. §251 1

28 U.S.C. §1447(d)

**Rules**

Federal Rule of Civil Procedure Rule 60(b)

Federal Rule of Civil Procedure 52(a)

## STANDARD OF REVIEW

1. Federal Rule of Civil Procedure 60(b) allows a party to seek relief from a final judgment for (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void;..or..(6) any other reason that justifies relief. F.R.C.P. 60(b). Rule 60 motions should be granted where there is a showing that justice demands it, as in this case. F.R.C.P. 60(b).

2. Eliot Bernstein is entitled to relief from the Court's Order issued against him on January 30, 2017 ("ORDER"), (Dkt #273), denying him standing and removing him from the proceedings based upon Intervenor Brian M. O'Connell and his counsel and Ted Bernstein and his counsel, Adam Simon and Co-Counsel Alan B. Rose, knowingly making fraudulent representations to this Court and the Florida probate court--that Eliot was not a beneficiary of the estate of Simon Bernstein and as such did not have standing to participate in proceedings.

3. O'Connell and Ted alleged to have secured a knowingly inaccurate order in the Florida probate court and misrepresented such order to this Court stating to this Court that it was ruled that Eliot Bernstein was not a beneficiary of his father's estate and an alleged "testamentary" trust in order to then use such claims to deceive this Honorable Judge into granting their Motions for Summary Judgment using Collateral Estoppel against Eliot Bernstein on the same basis, knowing this Honorable Judge would defer to claims made by counsel about the Florida probate judge's wholly erroneous and misrepresented findings on the issue.

4. The ORDER made several notable claims relying on the false and misleading "Statement of Undisputed Facts" put forth by Plaintiffs in their Motion for Summary Judgment, including but not limited to the following statements,

> "Judge John L. Phillips presided over a joint trial of the Probate Actions in December of 2015. A full recitation of Judge Phillips' findings is unnecessary here, but relevant portions of his finals orders include:…
>
> • The beneficiaries of the testamentary trust identified in the Will of Simon Bernstein are "Simon Bernstein's then living grandchildren," while "Simon's children – including Eliot Bernstein – are not beneficiaries."
>
> (ORDER Page 5 of 21 PageID #:13274)

and,

> "First, Eliot cannot sustain cognizable damages related to the disposition of the Estate or the testamentary trust in light of the Probate Court's rulings. The Probate Court found, *inter alia*, that Simon Bernstein's "children – including Eliot – are not beneficiaries" of the Will of Simon Bernstein or the related testamentary trust. [240] at 11. Instead, Simon Bernstein's grandchildren (including Eliot's children) are the testamentary trust's beneficiaries."

and,

> "These findings [of the FL probate court] have preclusive effect in this case,[4] such that Eliot cannot demonstrate cognizable damages relative to the disposition of the Estate or the testamentary trust."

## FACTS AND PROCEDURAL BACKGROUND

5. O'Connell and Ted's Motions for Summary Judgment were filed May 25, 2016 (Dkt. #'s 245-249) and May 21, 2016 respectively (Dkt. #'s 239-243). Plaintiffs Memorandum of Law submitted with their Summary Judgment Motion falsely stated (Dkt. #241 Page 3 of 17 PageID #:4255):

> "To the contrary, **Eliot has lost standing to participate in the Probate Actions on his own behalf after it was determined that the testamentary documents at issue in the Probate Actions are in fact valid, genuine and enforceable.** Judge John L. Philips also determined that Simon Bernstein's grandchildren are the beneficiaries of his Estate, and none of his children are beneficiaries, including Eliot." [emphasis added][1]

6. Based upon Plaintiffs' misconduct and fraud, this court issued its Memorandum Opinion and Order ("ORDER") on January 30, 2017 (Dkt #273), granting summary judgment against Eliot on the basis primarily that he was not a beneficiary of his father's estate and an alleged "testamentary" trust in the Estate of Simon and therefore did not have standing to participate. At no time have Plaintiffs legitimately believed this knowingly false statement of fact, but instead propagated fraud in at least two courts of law in order to tortiously interfere with Eliot's inheritance and the rights of Eliot's three children, as well by removing his due process rights by removing his standing.

7. Page 10 of 17 of the same document (Dkt. #241, PageID #:4262) falsely states the following:

> "Eliot's Claims make reference to the fact that the Estate of Simon Bernstein may be entitled to the Policy Proceeds. But as determined by the Probate Court, Eliot is not a beneficiary and has no standing to act on behalf of the Estate or participate at all in the Probate litigation in Florida. (SoF, ¶33-¶34). The Estate is already adequately represented in the instant litigation by its personal representative and local counsel. (SoF, ¶25). Also, the interests of

[1] This Court should note that the Simon Trust at Issue in the Florida Courts exhibited further herein is not a "testamentary trust" as the Court states in its ORDER as illustrated above but in fact it is an "Inter-vivos" living trust funded prior to death. This Court's ORDER reflects this wrong language and this is factually incorrect as it relied upon statements made by opposing counsel in their Summary Judgment pleading. The Court should note that the Florida Probate Court also wrongly claims this Simon Trust as "testamentary" as it has no subject matter jurisdiction over inter-vivos trusts, which are civil court cases and thus the Probate Court in FL acted outside its jurisdiction in hearing this Simon Trust case in the Probate court.

> Eliot's children in the Estate are now being represented solely by the guardian ad litem. (SoF, ¶33-¶34)."

8. Page 11 of 17 of the same document (Dkt. #241, PageID #:4263) restates the same fraudulent facts to ensure that Eliot's claims were dismissed and he was denied standing in the Florida probate court and this Court.

> "Despite Eliot's pending appeals, the doctrine of collateral estoppel applies, and acts to settle material issues in the instant litigation. The Probate Orders entered after trial include findings that (i) Eliot is not beneficiary of the Estate of Simon Bernstein; (ii) appoint a guardian ad litem for Eliot's children; and (iii) Eliot has no standing in the Probate Actions on behalf of himself, the Estate or his children."

9. In Movant's Statement of Undisputed Material Facts In Support of their Motion for Summary Judgment, Plaintiffs state that Judge Phillips in the Florida Probate Court, ruled that Eliot was not an heir after a December 15, 2015 validity hearing, but failed to attach a copy of an Order stating such and instead attached an Order issued December 16, 2015 determining only that the documents were valid and enforceable by their terms, (Dkt. #240-11, Exhibit #10, PageID #:4191-PageID #:4196.)

10. Plaintiffs knew that the Order they attached from the validity hearing did not address any beneficiary or standing related issues in the construction of the Wills or Trusts of Simon and Shirley Bernstein, nor could it have done so as the hearing was limited to "validity" only and no "construction" was done of any of the documents to determine the terms of the dispositive documents being validated.

11. Further, it was alleged to this Court that Eliot was determined after the "validity" hearing to not be a beneficiary with standing of his parents Trusts as well as their Wills and where the trusts were misrepresented to this Court and the Florida probate court further misrepresented

them to be "testamentary" trusts, however given that they were executed and funded prior to death as illustrated further herein they are factually Inter-vivos trusts and are not within the Probate court's jurisdiction under Florida law, as only testamentary trusts are. Section 736.0203 of the Florida Trust Code defines subject matter jurisdiction as follows: "[t]he circuit court has original jurisdiction in this state of all proceedings arising under this code." Section 736.0201 defines more specifically the role of the courts in trust proceedings. It provides that judicial proceedings concerning trusts be governed by the Florida Rules of Civil Procedure, clarifying that "[a] proceeding for the construction of a **testamentary trust** may be filed in the probate proceeding for the testator's estate" [emphasis added] subjecting it to the Florida Probate Rules should the case be filed there. Fla. Stat. 736.0201 (1)(5).

12. Ted Bernstein and his counsel Adam Simon and co-counsel Alan Rose's misconduct is outrageous and merits severe sanctions given the two years of chaotic court proceedings and hundreds of thousands in attorneys' fees spent to deny Eliot the right to participate in hearings in the Florida courts through abuse of process with the goal of violating 42 U.S.C. 1983 through the deprivation of the right to due process and equal protection guaranteed by the 14th Amendment as they illegally and tortiously interfered with Eliot and his children's inheritance rights through this scheme and artifice to defraud.

13. This intentional deception upon the Florida Probate court was not rectified until Judge Phillips retired and Judge Rosemarie Scher took the bench, leading to Judge Scher's finding that Eliot was in fact a named beneficiary of the estate of Simon Bernstein and had standing to participate, after evidentiary hearings which occurred February 16, 2017, March 02, 2017 and March 16, 2017, in 15th Judicial Circuit Probate Court Case #502012CP004391XXXXNB and subsequent Orders issued confirming such.

14. Intervenor Brian O'Connell inexplicably stated on the record under oath, as personal representative of the estate, that Eliot was, in fact, a beneficiary with standing in the estate of Simon Bernstein and Alan Rose similarly recanted his prior claims to the Probate court that were then mimicked in this Court by Ted and Adam Simon. See, (Exhibit 1 - Transcript of Feb 16, 2017 Hearing), (Exhibit 2 – Transcript of March 02 2017 Hearing) and [Exhibit 3 - Transcript of March 16, 2017 Hearing.)

15. Four documents were consistently relied upon in Alan Rose, Adam Simon, Ted and O'Connell's efforts to defraud Eliot Bernstein and the courts, including: The four documents[2] that were part of the Final Order of Count II (Dkt. #240-11, Exhibit #10, PageID #:4191-PageID #:4196) issued by Judge Phillips on December 16, 2015 after the sham "validity" hearing on December 15, 2105 that Plaintiffs and their counsel relied on in their Summary Judgment to make claims that Eliot was not a beneficiary with standing of his father's estate and are as follows:

a. The Will of Shirley Bernstein dated May 20, 2008. See (Exhibit 4 – "Will of Shirley Bernstein" dated May 20, 2008) that expressly states that ELIOT and his siblings are beneficiaries,

b. The Inter-Vivos Trust of Shirley Bernstein funded prior to her death, See, (Exhibit 5 - "Shirley Bernstein Trust Agreement dated May 20, 2008) that has ELIOT as one of three of five children as a beneficiary. When Shirley passed away on December 08, 2010 this Inter-vivos trust became IRREVOCABLE with Eliot and two of his three sisters, Plaintiffs Lisa Friedstein and Jill Iantoni, as the ONLY PERMISSIBLE CLASS OF BENEFICIARIES FOREVER SET IN STONE. Ted and Plaintiff Pamela Simon and

[2] That it was determined at the hearing that none of the parties, fiduciaries or their counsel knew where the Original Simon and Shirley Trust and Will documents are and they were not present for examination at the hearing, only alleged copies, see Exhibit 24 - December 15, 2015 Hearing.

their lineal descendants were considered predeceased for all purposes of disposition of Shirley's trust at the time it became IRREVOCABLE.

Each beneficiary of Shirley's trust had a separate trust created and funded on May 20, 2008, namely the "Eliot Bernstein Family Trust," the "Jill Iantoni Family Trust" and the "Lisa Friedstein Family Trust" all of which were suppressed at the "validity hearing" despite being a part of the Simon and Shirley Inter-vivos trusts being validated and in violation of Fl. trust code. The Eliot Bernstein Family Trust is exhibited herein as (Exhibit 6 – "Eliot Bernstein Family Trust" dated May 20, 2008).

c. The 2012 Will of Simon Bernstein (Exhibit 7 – "Will of Simon L. Bernstein" dated July 25, 2012), which allegedly replaced the 2008 Will of Simon Bernstein done with Shirley Bernstein that was not part of the "validity" hearing. The 2012 Will allegedly was signed weeks before Simon's passing on September 13, 2012. Both Wills have the five children of Simon as Beneficiaries despite Ted and his counsels claims to this Court in their Summary Judgment papers, already exhibited herein, that the 10 grandchildren of Simon are the beneficiaries of Simon and Shirley's Estates, which this Court then relied upon in making its ORDER and dismissing Eliot from this lawsuit on claims he was not a beneficiary and did not have standing in his father's estate.

d. The Inter-vivos trust of Simon Bernstein funded prior to his death, see (Exhibit 8 - "Simon L. Bernstein Trust Agreement" dated May 20, 2008) that has Eliot as one of three of five children listed as a beneficiary. This Inter-vivos trust was not made part of the "validity hearing" and instead only the below alleged Amendment and Restatement was submitted, again in violation of statutes to have all parts of the trusts present at any validity hearing.

Similar to Shirley's trust, each beneficiary of this Simon Inter-vivos trust had a separate trust created held thereunder and funded on May 20, 2008, again the "Eliot Bernstein Family Trust," the "Jill Iantoni Family Trust" and the "Lisa Friedstein Family Trust" all of which were suppressed at the sham "validity hearing" despite being a part of the 2008 Simon Bernstein Trust Agreement and in violation of Fl. trust code. The Eliot Bernstein Family Trust is already exhibited herein as (Exhibit 6), and,

i. The 2012 Amendment and Restatement of the "Simon L. Bernstein Trust Agreement" dated May 20, 2008 was the only part of the trust made available at the "validity" hearing and not the controlling 2008 Simon L. Bernstein Trust Agreement. See, (Exhibit 9 - "Simon L. Bernstein Amended and Restated Trust Agreement" dated July 25, 2012") which amended the 2008 trust agreement and was allegedly executed several weeks prior to Simon's passing on September 13, 2012. The amended trust excludes Eliot and ALL of his siblings as beneficiaries leaving only the then living grandchildren who have trusts held thereunder as beneficiaries, namely the grandchildren who are part of the Eliot Family Trust, Jill Iantoni Family Trust and Lisa Friedstein Family Trust established and held thereunder as part of the controlling 2008 Simon trust.

   There has been no construction hearing of this Amendment to the 2008 Simon Bernstein Trust Agreement dated May 20, 2008 but it appears that only 6 of the 10 grandchildren (Eliot's three children and his two siblings Jill and Lisa's children) will ultimately be found to be beneficiaries of the Amended 2008 Simon Trust document if it is upheld after a proper and legal validity and construction hearing in the proper venue to determine the terms of the trust and who the beneficiaries are

and if it was induced under great duress placed upon by Ted and sister Pamela when they were informed they were wholly disinherited with their lineal descendants in the 2008 Simon Trust and the 2008 Shirley Trust. Again the Probate court had no jurisdiction to hear the validity or any alleged construction of this and the other Inter-vivos trusts rendering any/all judgments void.

16. After two years of this fraud on the court, fraud on certain of the beneficiaries and interested parties that removed Eliot from the proceedings, derailed the entire proceedings in the Florida probate court and ultimately led to the issuance by this Court of an ORDER granting summary judgment against Eliot Bernstein on the mistaken belief that he was not a beneficiary and had no standing in his father's estate, this Court appropriately deferring to the FL state probate court's alleged determination of the issues, Intervenor Brian O'Connell and Alan Rose inexplicably had a sudden about face and admitted in hearings before the new Judge Scher that Eliot is a beneficiary and has standing--a fact they clearly knew all along. Ted, Intervenor O'Connell and their counsel however have all failed to notify this Court of their change of story.

17. The February 16, 2017 hearing transcript before Judge Scher already exhibited herein (Exhibit 1) includes O'Connell's change of heart as Attorney Peter Feaman ("Feaman") representing the creditor William Stansbury in the Simon Estate case cross examined him concerning the issue,

Q. Correct? And Mr. Bernstein is not a monetary beneficiary of the estate, is he?
A. As a trustee he is a beneficiary, residuary beneficiary of the estate. And then he would be a beneficiary as to tangible personal property.

(Exhibit 1 - Feb 16, 2107 Hearing, Page 17 of the Transcript)

18. Cornered, O'Connell confirmed what Eliot fought for two years to establish that was wasting judicial resources and deceiving the Probate court that Eliot was in fact a beneficiary with standing and Eliot further had O'Connell confirm this during his cross examination:

> 18 BY MR. ELIOT BERNSTEIN OF BRIAN O'CONNELL:
> 19 Q. Okay, so beneficiary?
> 20 A. Right.
> 21 Thank you. Which will go to the
> 22 bigger point of the fraud going on here, by the
> 23 way."
>
> (Exhibit 1 - Feb 16, 2017 Hearing, Page 35 of the Transcript)

19. Attorney Alan Rose contradicted prior representations to the Florida Probate court in numerous pleadings and hearings claiming Eliot was not a beneficiary and did not have standing in his father's estate, agreeing now with O'Connell that Eliot is and was, in fact, a beneficiary with standing in Simon Bernstein's estate. Rose admits on record in the March 02, 2017 hearing that contrary to his prior statements to the Probate court over the course of two years that were then mimicked to this Court by Ted and Adam Simon, that Eliot does have standing, as a beneficiary. Rose stated in the hearing,

> 3 MR. ROSE: Just for the record, I conceded
> 4 at the last hearing that he had limited
> 13:52:35 5 standing. I did not say that he did not have
> 6 standing." [emphasis added]
>
> (Exhibit 2 - March 02, 2017 Hearing Page 139 of the Transcript)
>
> "8 MR. ROSE: That's the end of the story.
> 9 He is clearly a beneficiary. We have never
> 10 denied he is a beneficiary for a very narrow
> 11 purpose. But based on the rulings it is
> 12 exactly that which is a very narrow purpose."

(Exhibit 2 - March 02, 2017 Hearing Page 143 of the Transcript)

20. Attorney Feaman while questioning witness O'Connell in the same March 02, 2017 hearing handed him a pleading filed in September of 2015 entitled "Trustee's Omnibus Status Report and Request for Case Management Conference" filed by Ted and authored by Rose and Rose stated on the record the following in response:

7 BY MR. FEAMAN:
8 Q. You were here when Mr. O'Connell said that
9 Mr. Eliot is a beneficiary of the Simon Bernstein
10 estate, correct?
11 A. I was here when he said it. I have said
12 it. I don't dispute it. I have told the judge
13 that. I don't understand. For tangible personal
14 property.
15 Q. Okay.
16 THE COURT: What am I being handed?
17 BY MR. FEAMAN:
18 Q. I am handing you a pleading that you filed
19 in September 2015 entitled Trustee's Omnibus Status
20 Report and Request for Case Management Conference.
21 And the very first page you said, relating to
22 Mr. Eliot, he is not a named -- he is not named as
23 a beneficiary of anything. And it's in the Estate
24 of Simon Bernstein. So my question is when did you
25 suddenly become aware that he is a beneficiary of

(Exhibit - 2 March 02, 2017 Hearing Page 212 of the Transcript)

1 the estate?
2 A. That sentence is -- I now see that
3 sentence is technically wrong. It's not -- I am
4 talking about where the money is and the money is
15:12:37 5 in the trust. He is not a beneficiary of the
6 trust. I may have made a misstatement.
7 THE COURT: Are you asking me to take this
8 into evidence?

9 MR. FEAMAN: Yes.
15:12:45 10 THE COURT: Objection?
11 MR. ROSE: No. It's in the court file.
12 THE COURT: I know. Let me just mark it.
13 MR. FEAMAN: No further questions." [emphasis added]

(Exhibit 2 - March 02, 2017 Hearing Page 213 of the Transcript)

21. Alan Rose committed fraud on the court in Filing #32030300 to the 15th Judicial Judge JOHN L. PHILLIPS, dated September 14, 2015, in the "TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE" see, (Exhibit 10 - Omnibus Status Report] accusing Eliot of the very misconduct he was engaged in when he stated,

> "Introduction - The overarching issue in these cases is Eliot Bernstein. **He is not named as a beneficiary of anything**; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel." [emphasis added]

22. On January 4, 2016, Rose repeated in a filing titled "SUCCESSOR TRUSTEE'S MOTION FOR APPOINTMENT OF A GUARDIAN AD LITEM TO REPRESENT THE INTERESTS OF ELIOT BERNSTEIN'S CHILDREN; FOR A GAG ORDER TO PROTECT GUARDIAN AND OTHERS; AND TO STRIKE ELIOT'S FILINGS" [Exhibit 11 - Motion for Appointment of GAL[3]], the affirmative statement of Ted Bernstein, his client, that

[3] The Guardian was not appointed randomly but instead a long term family friend of PR Brian O'Connell and a former judge in the Palm Beach courts (not re-elected by the People of the State of Florida) Diana Lewis. Lewis was inserted as GAL over ELIOT'S children to preclude ELIOT from protecting and representing his minor children as their natural guardian and thereby the minor children's rights and the adult child's rights were usurped illegally through this legal process abuse that has obstructed justice and denied due process. Outrageously despite two of ELIOT'S children who are both adults now notifying Diana Lewis that her predatory guardianship over them is over and to cease and desist any further actions on their behalf, she continues to kidnap their legal rights and enter into settlements, on their behalf, destroy trusts and LLC's with Oppenheimer Trust Company that were set up by their grandparents while they were alive for them and destroying companies set up to protect their home and more.

> "**Eliot Bernstein, Individually, is not a beneficiary of either Simon's or Shirley's Trusts or Estates**. Instead, his three sons are among the beneficiaries of both Simon and Shirley's Trusts, in amounts to be determined by further proceedings. **Eliot lacks standing to continue his individual involvement in this case.**" [emphasis added]

23. After two years of derailing multiple judicial proceedings O'Connell, Ted, and Rose suddenly agree that Eliot is a beneficiary with standing and after three evidentiary hearings Judge Rosemarie Scher ruled that Eliot is a beneficiary with standing to participate in his father's estate proceedings and issued findings of fact and conclusions of law to eliminate further dispute. From an Order issued by Judge Scher, See (Exhibit 12- March 03, 2017 Scher Order) Hon. Judge Rosemarie Scher states,

> "Present before the Court were Peter Feaman, Esquire on behalf of William Stansbury; Alan Rose, Esquire on behalf of Ted Bernstein, Trustee, Brian O'Connell as Personal Representative, **Eliot Bernstein as interested party.**" [emphasis added].

24. On March 2, 2017, the Hon. Judge Rosemarie Scher overruled the erroneous alleged order to reflect that for all purposes going forward, ELIOT BERNSTEIN is a beneficiary with standing to participate when she confirmed in the hearing before her that she "overruled" any prior claims by that court or its court appointed officers and fiduciaries that Eliot did in fact have standing in his father's estate in the following exchange:

> 9 forthcoming. And I think we'll be able to show
> 10 that there's been fraud on this Court. The
> 11 other date in that hearing if you look at the
> 12 transcript Mr. Rose claimed that I had no
> 13 standing, and you overruled that, or whatever
> 14 you call it, you did.
> 15 THE COURT: I did."

(Exhibit 2 - March 02, 2017 Hearing Page 127 of the Transcript)

25. Hon. Judge Rosemarie Scher issued further findings of fact, conclusions of law in an Order dated April 2017, see (Exhibit 13 - April 27, 2017 Scher Order) after hearings held on February 16, 2017, March 02, 2017 and March 16, 2017 further enforcing that Eliot Bernstein is a beneficiary of the Simon Bernstein Estate and further giving him standing, which wholly contradicts Plaintiffs unsupported claim in the Summary Judgment that Eliot is not a beneficiary and had no standing that this Court then relied upon in dismissing Eliot from this lawsuit citing Collateral Estoppel based on an alleged Florida Court ruling and statements by officers of this Court (Attorneys and Fiduciaries) stating Eliot was not a beneficiary and did not have standing. Hon. Judge Rosemarie Scher states in her April 27, 2017 Order on Page 7 Paragraph 17,

> "17. Elliot Bernstein joins Stansbury's opposition to the appointment of Mrachek Firm. Elliot is a residuary beneficiary of any tangible property of the Estate."

This Order established Eliot as a beneficiary.

26. Standing is a foundational issue that should never have taken over three years to determine as Ted, Rose and the fiduciaries in charge of the trusts and estates depleted the assets through fraud and intentional deception. In order to now rectify the injustices wrought upon Eliot and his family by the frauds of these fiduciaries, Eliot re-affirmed in a June 2, 2017 hearing that Judge Scher expressly overruled the prior finding that deprived him of standing as a beneficiary and that this fraud discovered had to be brought to the attention of this Court by those parties responsible and those parties aware of the frauds. As such, this Honorable Judge is asked to reinstate Eliot Bernstein in the case to participate in full and avoid the further deprivation of rights Rose, Ted and O'Connell conspired to accomplish. From a hearing held in the Florida

Probate Court on June 02, 2017 before Judge Scher, see (Exhibit 14 - June 02, 2017 Hearing Transcript) the following exchange was made by Eliot to the court,

> 15 MR. ELIOT BERNSTEIN: Oh, okay. So I was
> 16 thrown out of the Illinois litigation because
> 17 they told that court that I was not a
> 18 beneficiary of my father's estate and I had no
> 19 standing. And Judge Blakey relied on this
> 20 Court's statement that I was not a beneficiary
> 21 and had no standing in my father's estate to
> 22 throw me out on a summary judgment, saying I
> 23 had no standing and therefore in Florida res
> 24 judicata and yada yada yada.
> 25 The bottom line is that was all
>
> (Exhibit 14 - Page 36)
>
> 1 orchestrated. This whole Florida court is
> 2 being manipulated to create another fraud on a
> 3 federal court. And everybody who is aware that
> 4 I am a beneficiary with standing should have
> 5 already notified federal Judge Blakey that
> 6 Mr. Rose misled this Court to gain those orders
> 7 by Judge Phillips. And that's where I will
> 8 close it up.
> 9 THE COURT: And that's good.
>
> (Exhibit 14 - Page 37)

27. This entire outrageous deception upon the state and federal court did not even slow the co-conspirators down in their scheme to defraud Eliot of his inheritance rights. Instead, Ted, Adam Simon, O'Connell and Rose ignored the ruling and proceeded full steam ahead into settlement negotiations and executed settlements in both the Florida court and this Court, omitting Eliot to steal what is rightfully his inheritance by maintaining the fraudulent narrative that he was not a beneficiary with standing and therefore not a necessary party to the settlement

discussions or the executed settlements. The parties entered into a Settlement Agreement, see (Exhibit 15 - July 17, 2017 Signed Illinois Settlement Excluding Eliot from Settlement Discussions and Execution) with no notice to Eliot to settle this Federal lawsuit before this Court and regardless of his status as a beneficiary and submitted the fraudulent executed Settlement Agreement not to this Court for approval but to Judge Scher for her approval and to further defraud this court yet again into acknowledging a Settlement Agreement that was void for failing to include a necessary party, Eliot Bernstein and fraud. See (Exhibit 16 - Oct 19, 2017 Scher Order on Illinois Federal Lawsuit Settlement) and (Exhibit 17 - October 19, 2017 Hearing Transcript.)

28. If the foregoing deception failed to shock the conscience of the Judge, the fact that the Florida probate court assumed subject matter jurisdiction over INTER-VIVOS TRUSTS in violation of the Florida Trust Code should exasperate the Court. The Code is unambiguous in mandating LIVING TRUSTS be heard in civil court and merely permitting testamentary trusts to be considered in pending probate matters. The Court should take Judicial Notice of the following Inter-vivos trust case dockets and make them in whole part of this Court's record which were erroneously heard and considered and allegedly validated in the Florida Probate court in absence of subject matter jurisdiction and then further misrepresented to this Court as "testamentary" trusts, leading to a host of void orders:

a. Case # 502014CP003698XXXXNB – "Shirley Bernstein Trust Agreement" dated May 20, 2008, a living Inter-vivos trust - (Exhibit 18 - Shirley Trust Docket)
b. Case # 502015CP001162XXXXNB – "Simon L. Bernstein Amended and Restated Trust Agreement" dated July 25, 2012, a living Inter-vivos trust (Exhibit 19 - Simon Trust Docket)

29. The Estate cases that had these Inter-vivos trusts of Simon and Shirley Bernstein heard by a Probate court under the estate cases as alleged "testamentary" trusts in addition to the separate Probate actions listed above are as follows and the Court should take Judicial Notice of the following estate case dockets and make them in whole part of this Court's record:

a. Case # 502012CP004391XXXXSB – Simon Bernstein Estate (Exhibit 20 - Simon Estate Docket)

b. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate (Exhibit 21 - Shirley Estate Docket)

30. The Florida probate proceedings were so wrought with fraud as to vitiate the entire proceedings, leaving this Court broad discretion to determine the rights and liabilities of the parties--particularly with respect to the INTER-VIVOS TRUSTS settled by Simon and Shirley Bernstein for the benefit of their "children," which included Eliot Bernstein. For purposes of illustration, Simon L. Bernstein's Codicil to his Will, dated July 25, 2012 already exhibited herein specifically defines his "children" to include:

> "TED S. BERNSTEIN, PAMELA B. SIMON, **ELIOT BERNSTEIN**, JILL IANTONI and LISA S. FRIEDSTEIN. [emphasis added]

31. This Court was also intentionally misinformed by its Court appointed officers (Attorneys and Fiduciaries) in their Motion for Summary Judgment that ELIOT was not a beneficiary of his mother's Estate when her Will expressly include Eliot as a beneficiary.

WILL OF SHIRLEY BERNSTEIN
Dated May 20, 2008

> I, SHIRLEY BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. My

> spouse is SIMON L. BERNSTEIN ("SIMON"). My children are TED S. BERNSTEIN ("TED"), PAMELA B. SIMON, ELIOT BERNSTEIN [EMPHASIS ADDED], JILL IANTONI and LISA S. FRIEDSTEIN.

32. This false statement of fact to the Florida Probate court created another Order that was based upon intentional deception and fraud on the court that is not accurate either regarding Eliot not being a beneficiary and not having standing in his mother's estate. Thus, this Order was clearly erroneous too and Eliot is again having to pursue legal remedies to overturn the Order procured by the same co-conspirators' frauds. Ted had received upon his mother's death in addition to a copy of the Will, a Petition for Administration in the Shirley Estate that was filed on Feb. 10, 2011 (Exhibit 22 – Shirley Petition for Administration) filed in the Florida Probate Court, which clearly shows all five children of Shirley, including Ted as a beneficiary of the Estate of Shirley.

33. To establish to this Court that Ted and co-conspirator counselors Alan Rose and Adam Simon knew that Eliot was a beneficiary in Simon's Estate with standing prior to misleading this Court with scienter that he was not to disable his due process rights, Ted received upon his father's death in addition to a copy of the Will showing all five children as beneficiaries, a Petition for Administration (Exhibit 23 - Simon Petition for Administration) filed in the Florida Probate Court on October 02, 2012, which clearly shows all five children of Simon, including Ted as a beneficiary of the Estate of Simon. Yet, Tet and his counsel claim in their Summary Judgment that,

> "To the contrary, Eliot has lost standing to participate in the Probate Actions on his own behalf after it was determined that the testamentary documents at issue in the Probate Actions are in fact valid, genuine and enforceable. **Judge John L. Philips also determined that Simon Bernstein's grandchildren are the**

> **beneficiaries of his Estate, and none of his children are beneficiaries, including Eliot.**" [emphasis added]

34. Alan Rose, Ted Bernstein, Brian O'Connell, and their co-conspirators and agents / representatives cannot be trusted to tell the truth to this Honorable Judge, as evidenced by their repeated, undeterred fraud on federal and state courts to steal Eliot and his children's inheritance.

35. The fraud is all encompassing to the outrageous extent of Florida court appointed officers (Attorneys and Fiduciaries and Guardian,) including but not limited to, Ted Bernstein, Adam Simon, Alan Rose, Robert Spallina, Donald Tescher and their agents and representatives filing this Federal lawsuit over a non-existent trust, entitled "Simon L. Bernstein Irrevocable Insurance Trust dtd 6/95" that no executed copy has ever been produced to affirm the terms of or if Ted is in fact a Successor Trustee as he claims. The Court in its Round 1 Summary Judgment Order denying Summary Judgment to Plaintiffs eloquently pointed to the fact that the initial claim for the proceeds was made by former Co-Personal Representative in the Estate of Simon Bernstein, Robert Spallina, who claimed to be Successor Trustee of the legally non-existent trust and then when this lawsuit was filed it was filed by Ted acting as the alleged Trustee instead. These schemes and artifices to defraud Eliot of insurance benefits was the motivation to manufacture a lawsuit concerning a trust that never even existed, involving an insurance policy that has not ever been produced to this Court, despite funds being interpled to the Court based on the "Policy" terms.

36. Proof of the schemes lies in the fact that despite funds of the alleged "Policy" being interpled into this court, none of these co-conspirators have produced an actual "Policy" or an actual trust to date--revealing the entire production was a sham--to cover up fiduciary theft and using the Court to attempt to facilitate a crime. Attorneys, Tescher and Spallina, the former Co-Personal Representatives and Co-Trustees of Simon's Estate and Simon's Trusts have admitted

their law firm forged dispositive documents and deposited them in the Florida probate proceedings, acknowledging fraudulently notarized and forged documents being filed with the Florida probate court, including Post Mortem forgeries of Simon Bernstein's signature used to fraudulently close his deceased wife's estate that when the fraud was proven led to the Estate being reopened, which it remains open to this date.

37. In this Court's ORDER the Court also mistakenly defines that a "Policy" exists and "Policy Proceeds" are at stake when factually the Court is not in possession of any bona fide policy issued by the insurance carrier and is only in possession of parole evidence that a policy exists and the terms of it, such as, who the beneficiaries are, what the face amount is, who the owner is and other information that is contractually defined in the legally binding policy issued. No party to this lawsuit has produced a policy to the Court, including the carrier.

38. Spallina[4] has further admitted ironically in the December 15, 2015 "validity" hearing (Exhibit 24 – December 15, 2015 Hearing Transcript, Page 95 - Lines 12-25, Page 96 – Lines 8-19 ) that while acting as Ted's counsel for Ted as Fiduciary of the Shirley Bernstein Trust Agreement dated May 20, 2008 that Spallina forged a copy of this Shirley Bernstein trust document, which altered the beneficiaries of the Shirley trust that he had drafted years earlier while acting as Simon and Shirley's Estate planner, two years after the decedent passed in January of 2013 and sent this forged trust to Eliot Bernstein and his children's counsel, Christine C. Yates, Esq. of Tripp Scott Law Firm in Ft. Lauderdale, FL to deceive them of who the true and proper beneficiaries of Shirley's trust were.

39. This fraud was in effort to benefit Ted and Pamela Simon's families, who were omitted from the Shirley's Trust the date it became irrevocable upon her death as being considered

[4] TESCHER and SPALLINA after resigning from all Bernstein family matters after their law firm committed fraud were subsequently arrested by the SEC in a non-related Insider Trading Scheme and and subsequently surrendered their law licenses. (Exhibit 34 – TESCHER and SPALLINA SEC Consents)

predeceased for all purposes of dispositions as stated in the express terms of that trust. Ted Bernstein and his attorneys' actions have been nothing but fraud since the start and he even attempted with his close personal friends and counsel, Spallina and Tescher, to reinsert his lineal descendants post-mortem when the Shirley trust was no longer subject to revocation through this fraudulent trust Spallina created and disseminated.

40. Further, Spallina at the "validity" hearing claimed that the fraudulent trust did not alter the beneficiaries of the Shirley trust when in fact it did through a fraudulent and forged amendment, this false statement to the court also violates the terms of his consent with the SEC and is yet another example of these reprobates in the probate court willingness to lie and deceive the court and the beneficiaries and interested parties, see (Exhibit 25 - Fraudulently Altered Amendment Shirley Trust) and (Exhibit 26 - Alleged Original Amendment that was Fraudulently Altered.)

41. The forged version omits the intentional exclusion of Ted and Pamela Simon **and their lineal descendants**. Where the actual alleged language of the 2008 "Shirley Bernstein Trust Agreement" reads,

> "Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), **and their respective lineal descendants** [emphasis added] shall be deemed to have predeceased the survivor of my spouse and me…"

42. The language that was fraudulently inserted in the Forged 2008 "Shirley Bernstein Trust Agreement" removes the language excluding Ted and Pamela Simon's lineal descendants from inheritancy in the IRREVOCABLE trust of Shirley giving them a possible 40% stake in the Shirley Trust if it were determined through the frauds that the grandchildren are beneficiaries

instead of Eliot, Jill and Lisa who are the only permissible class of beneficiaries as of the date of Shirley's death on December 08, 2010 when the trust became IRREVOCABLE. From the fraudulent and forged 2008 "Shirley Bernstein Trust Agreement" it is clear that Spallina altered language to change the possible beneficiaries of her trust:

> "NOW THEREFORE, by executing this instrument, I hereby amend the Trust Agreement as follows:
> 1. I hereby delete Paragraph B. of Article II. in its entirety.
> 2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:
> Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, Ted S. BERNSTEIN ("Ted") and PAMELA B. SIMON ("PAM'), shall be deemed to have predeceased the survivor of my spouse and me…"

43. The fraud continues to completely permeate all court proceedings in which Ted Bernstein, Alan Rose, Adam Simon, Pamela Simon, and their co-conspirators discussed herein are involved. Undeterred by being caught red handed by Hon. Rosemarie Scher, Rose and Ted still continue to use a fraudulent appointment of a Guardian Ad Litem for Eliot's ADULT CHILDREN, knowing they are over the age of 18 and competent to act on their own behalf but still using her to gain consent for settlements and more, despite knowing that they are adults and all having received Cease and Desist letters from the children notifying them to cease the illegal acts being done in their names.

44. A predatory guardianship was placed on Joshua Bernstein by Judge Phillips as a minor when he in fact at the time of the initiation of the Guardian Ad Litem Joshua was factually an adult and no adult guardianship proceedings were ever held for him, thereby kidnapping his legal rights as an adult by claiming him to be a minor. For a detailed analysis of how this fraud was committed, see (Exhibit 27 - July 11, 2017 Joshua Bernstein Cease and Desist Letter to Diana

Lewis.) Despite receiving the Cease and Desist Letter from Joshua, Lewis continues to act on Joshua's behalf with no legal authority including acting to give his consent in the proposed Settlement of this lawsuit.

45. Jacob Bernstein had to issue a Cease and Desist Letter to Diana Lewis, see (Exhibit 28 - July 11, 2017 Jacob Bernstein Cease and Desist Letter to GAL Diana Lewis) after he turned 18 years old on January 01, 2017 to attempt to have her cease acting on his behalf and Lewis has refused to terminate the "minor" guardianship when he was no longer a minor as required by law and instead continues to act on his behalf including in the proposed Settlement of this lawsuit.

46. Diana Lewis, the fraudulently appointed Guardian Ad Litem appointed in an evidentiary hearing in the Probate court and not through a formal GAL hearing in that division, continues to appear in Court as a Guardian Ad Litem for Eliot's adult sons, consenting to the destruction of trusts created in their names, mismanaging the assets intended solely for them, billing ludicrous and fraudulent amounts for services rendered and entering them into sham settlement agreements without any notice to Eliot's adult sons, who are the only persons legally authorized to act on their behalf in any of these matters.

47. The fraudulent scheme and artifices to defraud of these criminal fiduciaries, attorneys and guardian have created a nightmare for Eliot Bernstein and his entire family that will not end as he is forced to endure the continual egregious deprivation of his rights to property, watching thieves steal his inheritance without recourse because these attorneys have managed to deceive the Florida probate court, civil court, appeals court and Supreme Court if that is possible--to intentionally harm Eliot and his family. After more than four years of fighting for minimal due process rights in terms of mere notice and the opportunity to be heard in a proceeding not tainted with fraud, the deception continues, prompting Eliot Bernstein to pray this Court makes the

insanity stop as more fully described in Eliot's "All Writs Injunction" (Dkts #214-216) that even predicated that this fraud to remove Eliot from the proceedings through fraudulent claims of collateral estoppel and more were in progress and that this Court can now plainly see were executed and worked.

48. Eliot's rights have been so categorically denied due to the corruption of these fiduciaries, he is now being precluded from filing appeals of adverse rulings pro se, violating the Open Courts provision of the Florida Constitution and guarantee of redress for wrongs in the United States Constitution. Eliot is indigent and cannot afford counsel but has been barred from filing in the Florida appeals court to vacate the fraudulently obtained orders and expose further the fraud on the Probate court without a Florida attorney, the perfect catch 22. See, (Exhibit 29 - August 23, 2017 4th DCA Order Prohibiting Eliot Filing Pro Se). The 4th DCA stated in its Order:

> "The Clerk of this Court is directed to no longer accept any paper filed by Eliot Ivan Bernstein unless the document has been reviewed and signed by a member in good standing of the Florida Bar who certifies that a good faith basis exists for each claim presented."

49. The 4th DCA then issued an Order dismissing an appeal filed by Eliot for failure to prosecute it when the reason for this failure was due to the fact that Eliot cannot find nor afford an attorney to prosecute the case for him and the court refuses to allow him to do so pro se. This violates the equal protection clause of the 14th Amendment to the United States Constitution and 42 U.S.C. 1983. See, (Exhibit 30 - Nov. 01 2017 4th DCA Order Dismissing Appeal Lack of Prosecution.)

50. Eliot is similarly prohibited from entering evidence or speaking for any length of time and prohibited from questioning a witness for more than four minutes in the same probate proceedings with Judge Scher who has witnessed the fraud that has kept Eliot out of proceedings

based on false claims to that court and who recently determined he is a beneficiary with standing, yet she continues to move forward despite the frauds as if nothing has happened, see (Exhibit 31 - Oct 19, 2017 Hearing Transcript Regarding Settlement of Illinois Federal Lawsuit.)

51. Judge Rosemarie Scher had no jurisdiction to approve the settlements involving Simon and Shirley Bernstein's Inter vivos Trusts, including the alleged Plaintiff in this case, the non-existent and Inter-vivos "Simon Bernstein Irrevocable Insurance Trust dtd 6/95" in the Probate court but did so anyway, rendering the ORDERS void; yet they are treated as if valid and enforceable, which excluded Eliot and his children from all right and benefit to their rightful inheritance.

52. In her Order dated April 27, 2017, see (Exhibit 13 - April 27, 2017 Order), Page 11 Paragraph #32), Judge Scher found "Mr. O'Connell to be credible." But nonetheless, stated that it "cannot ignore the fact that the Estate and Ted are adverse in the Illinois lawsuit" declining to appoint Ted Bernstein as Administrator Ad Litem while the Illinois action is still pending.

53. Remarkably, after learning of the fraud upon her court, Judge Scher accepted retaliatory pleadings by Ted and Alan Rose to hold Eliot in contempt of court and to hold it over Eliot's head as a weapon issued an Order on September 15, 2017, see (Exhibit 32 – Scher September 15, 2017 Order) and scheduled the hearing for Thursday, March 22, 2018 at 1:30 p.m. The contempt charge is centered upon the fact that Eliot sent the Cease and Desist letters of his Adult children to the Guardian Ad Litem on their behalf to keep confidential their private email addresses and ignoring the substance of the fraud disclosed in the Cease and Desist letters sent that were submitted by Ted and Rose in their pleading.

54. Dkt. #289 is hereby incorporated by reference with all exhibits and all arguments in support of this Motion and all relief sought.

55. Dkts. #214-215 are hereby incorporated by reference with all exhibits and all arguments in support of this Motion and all relief sought.

56. Eliot can hardly conceive of a case in which justice mandates that the court vacate the ORDER dismissing his claims based on findings of the Florida Court that have since been overruled and overturned, such that the ORDER granting summary judgment against Eliot Bernstein is no longer valid. The circumstances here satisfy the prerequisites for relief under Rule 60(b).

57. Fiduciaries and Counsels misrepresentations have warranted Rule 60(b)(3) relief, particularly because it "completely sabotaged the federal trial machinery" by fraudulently defeating Eliot Bernstein's right to a federal forum. See, e.g., Rozier v. Ford Motor Co., 573 F.2d 1332, 1346 (5th Cir. 1978) reversing denial of Rule 60(b)(3) motion because defendant suppressed information called for upon discovery and prevented plaintiff from fully and fairly presenting her case); see also Boddicker v. Esurance, Inc., 770 F.Supp.2d 1016 (D.S.D. 2011) (the district court vacated, under Rule 60(b)(3), its summary judgment order that relied on defendant's misrepresentation).

58. Fiduciary and Attorney fraud is hardly something unique or isolated, but widespread and the subject of almost every news publication but the metastasis of this cancer continues to spread unabated. Unless this Honorable Judge intervenes and issues appropriate rulings based upon evidence and legitimate estate planning documents and trusts, rather than forged instruments by a cottage group of fiduciaries and attorneys that might as well be deemed the Probate mafia, Eliot Bernstein and his children, the intended beneficiaries of Shirley and Simon Bernstein's generous provision for their futures, will be robbed of everything they are rightfully entitled to under

federal and state law, denied any semblance of due process and denied equal protection of the law.

59. Given fraud vitiates everything it touches, this Court can easily render judgment that the proferred orders of Ted Bernstein, Alan Rose, Adam Simon, Pamela Simon and the corrupt fiduciaries engaging in flagrant theft--are void ab initio.

60. Eliot has written this Motion under great physical duress and medical malady that is "life threatening" as is more fully explained in (Exhibit 33 – "MOTION TO POSTPONE AND RESCHEDULE NOVEMBER 15, 2017 HEARING" – EXHIBIT 1 – "AFFIDAVIT OF CANDICE BERNSTEIN IN SUPPORT OF ELIOT BERNSTEIN'S MOTION TO POSTPONE AND RESCHEDULE NOVEMBER 15, 2017 HEARING") and prays that this Court understands this has affected his ability to file in a healthy state of mind and if the Court finds any procedural errors, etc. allows Eliot to refile an amended motion.

61. That only this week on November 06, 2017 or thereabout after conversation with this Court's clerks lasting approximately 15 minutes, Eliot Bernstein was reinstated by Clerk Nadine as a filer in ECF system as no one could determine how or why he was removed as no order was issued to remove him and no reason existed. Eliot being Pro Se did not initially know that he was improperly removed and believed he was prohibited from filing with the Court when he was dismissed on Summary Judgment despite the need to file appeals and motions such as this 60(a) and 60(b). Further, even after reinstatement in the ECF filing system Eliot is not being served process by the ECF system or opposing parties as of 11/08/2017 when filings were filed by opposing parties and this is severely interfering with his rights to be noticed, respond and file necessary pleadings.

**Wherefore**, ELIOT BERNSTEIN respectfully prays for this Court to retain jurisdiction over the inter vivos trusts, given the "res" of these trusts is not within the subject matter jurisdiction of any court for a determination of the rights and liabilities of the parties. Eliot Bernstein respectfully prays for this Rule 60b Motion to be granted and for the ORDER granting summary judgment against him (primarily on the basis of him not being a beneficiary of the Simon Bernstein Estate and claim that he lacked standing--now proven herein to be a fraudulent and misleading claim to this Court that has been proven false by new orders of the Probate court) be vacated and set aside.

Eliot prays that this Court seeing the fraud that has denied Eliot due process and procedure for almost a year in this Court and almost two in the Florida probate court and other Florida courts, review and consider Eliot's "All Writs Injunction" (Dkts #214-216) and the reliefs sought therein as these fraudulent acts further support his claims therein and entitle him to the reliefs sought thereunder.

Eliot Bernstein further prays for appointment of pro bono counsel to protect his rights as he is physically incapable of protecting himself due to severe physical and stress related health problems he has experienced that have almost ended his life multiple time in the past few years. (See Exhibit 33 – EXHIBIT 1 - Affidavit of Candice Bernstein). Eliot seeks the Court to approve his In Forma Pauperis Indigent Application submitted to this Court already as he is indigent and qualifies for such appointment and thanks the Court for the same.

DATED: November 09, 2017

Respectfully submitted,

**/s/ Eliot Ivan Bernstein**

Third Party Defendant/Cross
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 9th of November, 2017, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

**/s/ Eliot Ivan Bernstein**
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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 502012CP004391XXXXNBIH

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

/

Proceedings before the Honorable

ROSEMARIE SCHER

Thursday, February 16, 2017

3188 PGA Boulevard

North County Courthouse

Palm Beach Gardens, Florida 33410

2:38 p.m. - 4:46 p.m.

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

APPEARANCES:

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P R O C E E D I N G S

- - -

BE IT REMEMBERED that the following proceedings were had in the above-styled and numbered cause in the Palm Beach County Courthouse north branch, City of Palm Beach Gardens, County of Palm Beach, in the State of Florida, by Lisa Mudrick, RPR, FPR, before the Honorable ROSEMARIE SCHER, Judge in the above-named Court, on February 16, 2017, to wit:

- - -

THE COURT: The first thing we are going to do, and this is more for the Court, starting to the left in the first pew behind, we are going to make our appearances and go around, and ending with Judge Lewis.

MR. FEAMAN: Thank you, Your Honor. Peter Feaman on behalf of the movant William Stansbury. With me today is Jeff Royer from my office and also Nancy Guffey.

THE COURT: Okay.

MR. ROSE: Good afternoon, Your Honor. Alan Rose. I represent Ted S. Bernstein as successor trustee of Simon's trust and Shirley's trust.

THE COURT: Okay.

MR. ROSE: I represent him as the movant seeking to be appointed as administrator ad litem to defend the estate in the independent action.

14:39:47

And Mr. O'Connell is here. And with me is Michael Kranz, my associate, at the end. And I will let Mr. O'Connell introduce himself.

MR. O'CONNELL: Good afternoon, Your Honor. Brian O'Connell, PR of the Simon Bernstein Estate.

14:39:58

JUDGE LEWIS: Diana Lewis, guardian ad litem for the Eliot Bernstein children.

THE COURT: Okay. A few ground rules. I have my order on this case management conference, and that's the order in which we will proceed, okay? Does everyone have a copy of that order? I also have an extra copy in case somebody needs it.

14:40:18

14:40:35

So we will begin with Stansbury's motion to vacate in part the Court's ruling on September 7, 2016, and/or any subsequent order permitting the Estate of Simon Bernstein to retain Alan Rose.

14:40:53

And I am just verifying the correct docket

entry. And it is noted on the case management conference as docket entry 497. That is incorrect. That's why I was double checking. It's 496. And I knew that because I just looked it up.

14:41:21

All right. In the order one of the things I had said was to get all materials to me by February 9th. Thank you. You can see I am surrounded by notebooks. I received a ton of materials. The only thing I would request is from now on when I say February 9th, I mean February 9th. I received two more -- from everybody, from both sides, just so everybody knows, I received documents Monday. From now on if you don't meet the deadline you will have to come into court with them and provide them and tell me why you didn't meet the deadline.

14:41:35

14:41:51

I am going to put some firm rules on these parties, and I don't think I will have to explain why, just going through some of this case.

14:42:02

Number two, from this point forward, and I plan to include this in any order I issue, in preparing for this it was very difficult to get a grasp as to when the pleadings to the same

14:42:16

thing ended. Because we've got the original motion or petition, then we've got the response, then we've got the reply, then we've got the supplement, then we've got the second supplement to the response. Then we have an answer to the second supplement. No more.

Petition or motion, response, reply, end. If you desperately feel that there must be something you must bring to the Court's attention prior to the hearing, come in and ask me for permission.

Because, quite frankly, the Court read as much as humanly possible given the fact that with all due respect it's not my only case. And I am very compulsive, so I read as much as I could. But some of it was -- if I thought every single new piece of paper had some gem of nuance that was different from all the other prior, I might not be putting this rule. But a lot of it was just repeating the same thing.

And I know a lot of it, which is why I completely understand, had to do with the fact that we need to get this judge up to speed, which I appreciate. Okay. From this point now I will be the original judge reading, all

sides, petition or motion, response, reply. Okay.

Last and final housekeeping. I will make no -- how do I put this? You all know that the 14:43:42 other half of my division is family and divorce, an area where people get truly bent out of shape as well and can be exceedingly nasty to each other because you are going through a horrible time.

14:44:01 You all are lawyers. I do not expect from this point forward to see any direct -- now, an appropriate motion is an appropriate motion. I am excluding in a motion something you feel justified to do. But in the pleadings, state 14:44:19 the facts. I don't want the adjectives, okay? I can figure -- you know, state the facts, tell me what happened. And I don't want the adjectives that are following back and forth, which I won't deal with. Anyone who has 14:44:35 practiced in front of me knows me. You can do anything on your position within the bounds of the law. I will not accept unprofessionalism even in pleadings, even though you are professional personally here.

14:44:45 Okay. That takes care of that. And

that's kind of a general rule I set forth in all of my box cases in family too. So don't anyone take it personally. That's something I say at the get-go because as things proceed
14:44:57 people get mad. Remember, you are the lawyers, not the clients, although I do know we have some clients here.

Okay. So since it is, let me pull up on Cap, Mr. Feaman's motion to vacate, he will
14:45:10 begin to have the floor.

MR. FEAMAN: Thank you, Your Honor.

THE COURT: Sorry, I just hit something bad on my computer. I do take notes on my computer. The reason we must end at 4:30 is
14:45:24 because I do not look at my e-mail or my emergency motions, and I am signing judge, which must be sent in before 5:00, okay? So I give you my full attention, but we end prompt at 4:30 because I am signing judge. Yesterday
14:45:37 I think I had four by the time I got back there.

So let me -- here it is. Perfect. Thank you again for the notebooks with the tab indexes. Truly a time saver for the Court.
14:45:48 You may proceed, Mr. Feaman, thank you.

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

14:45:59

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

14:46:13

The story and premise, Your Honor, for this is that the personal representative of the Simon Bernstein estate, Brian O'Connell, has a fiduciary duty to all interested persons of the estate. And that's found in Florida Statute 733.602(1) where it states a personal representative is a fiduciary, and in the last sentence, a personal representative shall use the authority conferred by this code, the authority in the will, if any, and the authority of any order of the Court, quote, for the best interests of interested persons, including creditors, close quote.

14:46:37

14:46:56

Mr. Stansbury is an interesting --

14:47:13

interested person to the Estate of Simon Bernstein as well as a claimant in this case.

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

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

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

And thirdly, that the conflict of interest, the evidence will show, is not waivable.

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

THE COURT: I believe it is --

MR. FEAMAN: For the Court's convenience.

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

MR. FEAMAN: Thank you.

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

And more significantly, Your Honor, because it really wouldn't matter what the other litigation is that Mr. Rose is being asked to defend, because more significantly is the orange box on the right, which I will call for the purposes of this litigation the Chicago litigation. And in that action there are a number of plaintiffs, one of whom is Ted

Bernstein individually. And the evidence will show in this case that Alan Rose represents Ted Bernstein individually, not only in other matters, but he actually appeared in a
14:50:27 deposition on behalf of Mr. Bernstein individually in that Chicago litigation, made objections to questions. And the evidence will show that he actually on a number of occasions instructed Mr. Bernstein not to answer certain
14:50:47 questions that were directed to Mr. Bernstein by counsel for the Estate of Simon Bernstein.

In that Chicago litigation we will present to Your Honor certified copies of pleadings from the Chicago litigation that shows the
14:51:04 following: That Ted Bernstein, among others, sued an insurance company to recover approximately $1.7 million dollars of life insurance proceeds. Mr. Stansbury became aware that that litigation was going on, and moved to
14:51:23 intervene in that lawsuit. Mr. Stansbury was denied.

So the evidence will show that he was able to prevail upon Ben Brown, and Ben Brown moved on behalf of the estate when he was curator to
14:51:37 intervene. And in fact the Estate of Simon

Bernstein --

MR. ROSE: May I object for a second?

THE COURT: Legal objection?

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

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

MR. FEAMAN: Thank you, Your Honor.

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

So the evidence will show that Mr. Rose represents Ted Bernstein. Ted Bernstein is adverse to the estate. And now Mr. Rose seeks to represent the estate to which his present client, Ted Bernstein, is adverse in the Stansbury litigation, which is why we are there. Now --

THE COURT: Wait. Slow down one second.

MR. FEAMAN: Sure.

THE COURT: That is something you repeated

several times in your motion, but I want you to state it one more time for me slowly.

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

14:52:54

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

14:53:09

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

14:53:27

And Mr. Rose represents Ted Bernstein, and now seeks to represent the estate in a similar -- in an action against the estate, and they are both going on at the same time. Thus, the conflict is an attorney cannot represent a plaintiff in an action, whether he is counsel of record in that action or not, that's adverse to the Estate of Simon Bernstein, and at the same time defend the Estate of Simon Bernstein when he has a client that is seeking to deprive

14:53:44

14:54:03

the estate of $1.7 million dollars.

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

14:54:21

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

14:54:33

14:54:54

And who are the beneficiaries of the trust? So we have the one beneficiary of the Simon Bernstein estate, the Simon Bernstein Trust, and who are the beneficiaries of the trust? Not the children of Simon Bernstein. Not Ted Bernstein. But the grandchildren of Simon Bernstein, some of whom are adults and some of whom are minors in this case. Such that if the estate prevails in the Chicago

14:55:06

14:55:22

litigation, even assuming Mr. Stansbury wasn't around making his claim against the estate, if all of the distributions were finally made when the estate wins that Chicago litigation, none of it will ever end up in the hands of Ted Bernstein as plaintiff. The only way Mr. Bernstein can get that money is to prevail as a plaintiff in the Chicago litigation. Mr. Rose represents Mr. Bernstein, and therefore there's a conflict, and it's a non-waivable conflict.

14:55:37 14:55:54 14:56:11 14:56:25 14:56:40

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

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

MR. FEAMAN: I filed it as soon as I became aware that there was a conflict. For example, when the order that we are seeking to set aside was entered, I was not aware that the Rose law firm represented Ted Bernstein in that Chicago action. My client then brought it to

my attention. And as soon as we did that, I moved to set aside the order because it became apparent that there was a clear conflict.

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

14:57:14 I got possession of the deposition that will be offered today. The deposition revealed to me what I have summarized here today, this afternoon, and then we moved to set aside the order. And then we thought that wasn't enough, we should do a formal motion to disqualify, which we did.

The chronology of the filings, the motion to vacate, I am not sure exactly when that was filed, but it wasn't too long after the entry of the September 7th order, and then the motion to disqualify came after that. And --

THE COURT: It was filed October 7th.

MR. FEAMAN: Pardon me?

THE COURT: It was filed October 7th.

14:57:56 MR. FEAMAN: Okay. The motion to vacate?

THE COURT: Yes.

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

14:58:10

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

Opening?

14:58:21

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

14:58:34

THE COURT: Okay.

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

THE COURT: Thank you.

14:58:42

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

THE COURT: Okay.

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

14:58:53

THE COURT: Okay.

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

14:58:59

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

MR. ROSE: Okay.

THE COURT: You can do your opening.

14:59:05

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

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

14:59:14

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

THE COURT: Okay.

MR. ROSE: So we are here today, and there are three motions that you said you would try to do today. And I don't have any doubt you will get to do all three today given how much time we have and progress we are making and the amount of time Mr. Feaman and I think this will take.

14:59:20

14:59:31

THE COURT: Okay.

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

Am I blocking you?

14:59:44 MR. O'CONNELL: Your Honor, could I step to the side?

THE COURT: Yes, absolutely.

MR. ROSE: You can have the chart.

MR. O'CONNELL: Okay.

14:59:53 THE COURT: Mr. Rose, I have to ask you. I received a, I think it was a flash drive, and it had proposed orders on matters that were not necessarily going to be heard today. I don't think I got a flash dive with a proposed order.

15:00:07 I did receive Mr. Feaman's on these particular orders.

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

THE COURT: Okay. But I did on the other

15:00:17 ones. That's what seemed odd to me.

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

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

MR. ROSE: There's three matters today and

15:00:27 they are sort of related, and they involve how

are we going to deal with the claim by Mr. Stansbury against the Estate of Simon Bernstein.

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

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

The genesis of the motion to appoint us was what happened at mediation. We had a mediation in the summer. The parties signed a written mediation settlement agreement. We have asked Your Honor at next week's hearing to

approve the mediation settlement agreement. It is signed by every single one of the ten grandchildren or their court-appointed guardian ad litem, Diana Lewis, who has now been approved by this Court, upheld by the 4th District, and upheld by the Supreme Court this week. So I think it's safe to say that she's going to be here.

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

And as part of this, once we had a settlement, there was a discussion of how do we get this relatively modest estate to the finish line. And the biggest impediment getting to the finish line is this lawsuit. Until this lawsuit is resolved, his client is something. We can debate what he is. He claims to be an interested person. I think technically under law he is a claimant. Judge, I think even Judge Colin ruled he was not a creditor and denied his motion to remove and disqualify Ted Bernstein as trustee. That was pending and there's an order that does that a long time

ago. If I could approach?

THE COURT: Sure.

MR. ROSE: I don't have the docket entry number. This is in the court file. This was

15:03:12 Judge Colin on August 22nd of 2014.

THE COURT: I saw it.

MR. ROSE: He has been trying to remove me and Mr. Bernstein for like almost three or four years now. But that's only significant because

15:03:24 he is not a creditor. He is a claimant. So what we want to do is we want to get his claim to the finish line.

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

15:03:35 We have a signed settlement agreement. Mr. Stansbury participated in the mediation, but we did not make a settlement with him. Okay.

So as a result of the mediation, all the

15:03:46 other people, everybody that's a beneficiary of this estate coming together and signing a written agreement, those same people as part of the written agreement said we want this case to finish, and how are we going to do that.

15:03:59 Well, let's see. Mr. Stansbury is the

plaintiff represented by Mr. Feaman. The estate was represented by -- do you?

THE COURT: No.

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

15:04:16

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

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

15:04:22

THE COURT: Thank you.

MR. ROSE: You will recall -- I don't want to talk out of school because we decided we weren't going to talk out of school. But I got Mr. Feaman's -- like I didn't have a chance to

15:04:33

even get this to you because I hadn't seen his until after your deadline, but.

THE COURT: This is demonstrative.

MR. ROSE: Okay.

THE COURT: He can pull up something new

15:04:39

demonstrative as well.

MR. ROSE: Mr. -- originally the defendant here originally was assigned when he was alive. When he died his estate was substituted in. He hired counsel. His counsel didn't do much in

15:04:54

the case because I did all the work because I

was representing the companies, Ted Bernstein and another trust. And in January of 2014 the PRs of the estate resigned totally unrelated to this.

15:05:13 So in the interim between the original PRs and the appointment of Mr. O'Connell, we had a curator. The curator filed papers, which I filed, it's in the file, but I have sent it to Your Honor, where he admits, he states that he

15:05:27 wanted to stay the litigation but he states that I have been doing a great job representing him and he hasn't even had to hire a lawyer yet because he is just piggybacking on the work I am doing.

15:05:36 I represented in this lawsuit the very one that Mr. O'Connell wants to retain my firm to handle. And he wants it with the consent -- and one thing he said was that there's some people that aren't here. Every single person

15:05:47 who is a beneficiary of this estate wants my firm to handle this for the reasons I am about to tell you. And I don't think there's any dispute about it.

I was the lawyer that represented the main

15:05:56 company LIC and AIM. Those are the shorthands

for the two companies. Mr. Stansbury was at one point a ten percent stockholder in these companies. He gave his stock back. Ted Bernstein who is my client, and the Shirley Bernstein trust, I represented all these people in the case for about 15 or 18 months before we settled. I could be off on the timing. But I did all the documents, the production, interviewed witnesses, interviewed everybody you could interview. Was pretty much ready to go to trial other than we had to take the deposition of Mr. Stansbury, and then he had some discovery to do.

15:06:11 15:06:23 15:06:33 15:06:45 15:06:57

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

So Mr. O'Connell was appointed, so he is now the personal representative. He doesn't know the first thing about the case. No offense. I mean, he couldn't. You know, it's not expected for him to know the first thing about it. I don't mean the first thing. But he doesn't know much about the case or the

facts.

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

15:07:07

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

15:07:19

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

15:07:28

THE COURT: That's the one Phillips deferred?

MR. ROSE: Well, what happened was Mr. Feaman filed an objection to it timely. And in an abundance of caution because it might require an evidentiary or more time than we had, Judge Phillips deferred. That was my order. And my main goal was I wanted to get into the case and so we could start going to the status conferences and get this case moving. And what happened was as soon as we

15:07:39

15:07:48

had the first status conference and we started the case moving, until we got the motion to disqualify, and stopped and put the brakes on.

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

MR. FEAMAN: Objection.

THE COURT: Legal objection?

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

THE COURT: Sustained.

MR. ROSE: Okay. So this case -- so anyway. Mr. Bernstein, Ted Bernstein, Ted, Simon and Bill, that's Ted, the dead guy Simon and his client Bill, were the three main shareholders of a company.

THE COURT: I got it.

MR. ROSE: Ted and Simon started it. They brought Bill in and gave him some stock for a while. Bill is suing for two and a half

million dollars. The only person alive on this planet who knows anything about this case is Ted. He has got to be the representative of the estate to defend the case. He has got to be sitting at counsel table. If he is not at counsel table, he is going to be excluded under the exclusionary rule and he will be out in the hallway the whole trial. And whoever is defending the estate won't be able to do it. This guy wants Ted out and me out because we are the only people that know anything about this case.

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

THE COURT: I understand.

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

Now, Eliot and Mr. Stansbury will probably object to that. It's not for today. So we have a settlement with the lawyers, the ones that withdrew. So we got a little bit of money
15:09:56 from that. But there's really not going to be enough money in the estate to defend his case, pay all, do all the other things you got to do. So this is critical for Mr. Stansbury.

So the original PR, the guys that
15:10:10 withdrew, they refused to participate in this lawsuit because they knew the facts. They knew the truth. They met with Simon. They drafted his documents. So they were not participating in this lawsuit.

15:10:21 Mr. Feaman stated in his opening that his client tried to intervene. So Bill tried to intervene directly into Illinois, and the Illinois judge said, no thank you, leave.

So when these guys withdrew we got a
15:10:38 curator. The curator I objected --

THE COURT: Mr. Brown?

MR. ROSE: Ben Brown. He was a lawyer in Palm Beach, a very nice man. He passed away in the middle of the lawsuit at a very young age.
15:10:52 But he -- the important thing -- I interrupted,

and I apologize for objecting. I didn't know what to do. But Mr. Brown didn't say, hey, I want to get in this lawsuit in Illinois; let me jump in here. Mr. Feaman and Mr. Stansbury
15:11:06 filed a motion to require Mr. Brown to intervene in the case.

THE COURT: In the federal case?

MR. ROSE: In the federal case in Illinois. Because it's critical for
15:11:17 Mr. Stansbury, it's critical for Mr. Stansbury to get this money into the estate.

THE COURT: Into the estate, I understand.

MR. ROSE: Okay. So we had a hearing before Judge Colin, a rather contested hearing
15:11:26 in front of Judge Colin. Our position was very simple -- one of the things you will see, my client's goals on every one of these cases are exactly the same. Minimize time, minimize expense, maximize distribution. So we have the
15:11:43 same goal in every case.

All the conflict cases you are going to see all deal with situations where the lawyers have antagonistic approaches and they want -- like in one case he has, it's one lawsuit the
15:11:54 lawyer wants two opposite results inside the

same lawsuit for two different clients. That's completely different. And even that case, which is the Staples case, it was two to one. There was a judge that dissented and said, look, I understand what you are saying, but there's still not really a conflict there.

But our goals are those goals.

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

Mr. Brown says, I am not touching this. So we had a hearing, and they forced Mr. Brown to intervene with certain conditions. And one of the conditions was very logical. If our goal is to save money and Mr. Stansbury, Mr. Feaman's client, is going to pay the cost of this, he will get it back if he wins, then

15:12:05 15:12:20 15:12:31 15:12:45 15:12:59

we got no objection anymore, as long as he is funding the litigation. He is the only guy who benefits from this litigation. None of the -- the children and the grandchildren they don't really care.

15:13:12

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

15:13:25

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

15:13:36

15:13:48

So one of the things, the third thing you are being asked to do today is vacate that order, you know. And I did put in my motion, and I don't know if it was ad hominem toward Mr. Feaman, it really was his client, his

15:13:58

client is driving this pace. He is driving us to zero. I mean, we started this estate with over a million dollars. He has fought everything we do every day. It's not just Eliot. Eliot is a lot of this. Mr. Stansbury is driving us to zero as quickly as possible.

15:14:11

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

15:14:27

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

15:14:39

15:14:50

They are supposed to be paying the bills. I think the evidence would show his client's in violation of Judge Colin's orders because his client hasn't paid the lawyer all the money that's due. And Mr. O'Connell, I think, can

15:15:00

testify to that. I don't think it's a disputed issue. But the lawyer's been paid 70 and he is owed 40, which means Mr. Feaman's client is right now technically in violation of a court order.

15:15:12

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

15:15:21

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

15:15:32

THE COURT: Net something net something, right?

15:15:45

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

15:15:53

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

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

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

This lawsuit is going to get resolved one way or the other. But in this lawsuit the 95 trust Ted Bernstein is the trustee, so he allowed, though under the terms of the trust in this case, and we cited it to you twice or three times, under Section 4J of the trust on page 18 of the Simon Bernstein Trust, it says that you can be the trustee of my trust, Simon said you can be the trustee of my trust even if you have a different interest as a trustee of a different trust. So that's not really an issue. And up in Chicago Ted Bernstein is the trustee of the 95 trust. He is represented by the Simon law firm in Chicago.

I have never appeared in court. He is

going to put in all kinds of records. My name never appears -- I have the docket which he said can come into evidence. I don't appear on the docket.

15:17:02 Now, I have to know about this case though because I represent the trustee of the beneficiary of this estate. I've got to be able to advise him. So I know all about his case. And he was going to be deposed.

15:17:14 Guess who was at his deposition? Bill Stansbury. Bill Stansbury was at his deposition, sat right across from me. Eliot, who is not here today, was at that deposition, and Eliot got to ask questions of him at that

15:17:27 deposition. He wanted me at the deposition. He is putting the deposition in evidence. If you study the deposition, all you will see is on four occasions I objected on what grounds? Privilege. Be careful what you talk about; you

15:17:40 are revealing attorney/client privilege. That's all I did. I didn't say, gee, don't give them this information or that information. And if I objected incorrectly, they should have gone to the judge in Illinois. And I guarantee

15:17:50 you there's a federal judge in Illinois that if

I had objected improperly would have overruled my objections. I instructed him to protect his attorney/client privilege. That's what I was there for, to advise him and to defend him at
15:18:00 deposition and to protect him. That's all I did in the Illinois case. And that is over.

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

So what we have now is we have this motion
15:18:36 which seeks to disqualify my law firm. We still have the objection to Ted serving as the administrator ad litem. And I think those two kind of go hand in hand.

There's another component you should know
15:18:50 about that motion. But as I told you, our goals are to reduce expense.

The reason that everybody wanted Ted to serve as the administrator ad litem, so he would sort of be the representative of the
15:19:03 estate, because he said he would do that for

free.

THE COURT: I remember.

MR. ROSE: Mr. O'Connell is a professional. He is not going to sit there for
15:19:13 free for a one-week, two-week jury trial and prepare and sit for deposition. That's enough money -- just his fees alone sitting at trial are enough to justify everything -- you know, it's a significant amount of money.

15:19:27 So that's what's at issue today.

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

THE COURT: Which motion?

15:19:40 MR. ROSE: The disqualification.

THE COURT: I wasn't sure.

MR. ROSE: I got you. That was sort of first up. All right. So I am back. That's the background. You got the background for the
15:19:48 disqualification motion. This is an adversary in litigation trying to disqualify me.

I think it is a mean-spirited motion by Mr. Stansbury designed to create chaos and disorder and raise the expense, maybe force the
15:20:04 estate into a position where they have to

settle, because now they don't have a representative or an attorney that knows anything about the case.

MR. FEAMAN: Objection.

15:20:11 THE COURT: Legal objection?

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

THE COURT: I will allow it only -- mean

15:20:25 spirited I will strike. The other comments I will allow because under Rule 4-1.7, and I may be misquoting, but it is one of the two rules we have been looking at under the Florida Bar, the commentary specifically talks about an

15:20:42 adverse party moving to disqualify and the strategy may be employed. So I will allow that portion of his argument, striking mean spirited.

MR. ROSE: Okay. If you turn to tab 2 of

15:20:53 the -- we, I think, sent you a very thin binder.

THE COURT: Yes, you did.

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

15:20:59 THE COURT: Yes.

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

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

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

THE COURT: I am just teasing you, sorry.

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

THE COURT: Yes.

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

THE COURT: Yes.

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

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

THE COURT: Thank you.

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

But the important things are I have never represented Mr. Stansbury in any matter. Generally in a conflict of interest situation you will see I represented him. I don't have any confidential information from Mr. Stansbury. I have only talked to him during his deposition. It wasn't very pleasant. And if you disqualify me to some degree my life will be fine, because this is not the most fun case to be involved in. I am doing it because I represent Ted and we are trying to do what's right for the beneficiaries.

15:21:56 15:22:07 15:22:18 15:22:24 15:22:28

THE COURT: Appearance for the record. Someone just came in.

MR. ELIOT BERNSTEIN: Hi. Eliot Ivan Bernstein.

THE COURT: Thank you.

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

THE COURT: Thank you. You may proceed. I just wanted the court reporter to know.

MR. ELIOT BERNSTEIN: Thank you, Your Honor.

MR. ROSE: I don't have any confidential information of Mr. O'Connell. He is the PR of

the estate. I don't know anything about Mr. O'Connell that would compromise my ability to handle this case. I am not sure he and I have ever spoken about this case. But in either case, I don't have any information.

15:22:39

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

15:22:50

15:23:05

Who gets the insurance proceeds? Bill Stansbury is not even a witness in that case. It has nothing to do with the issue over here, how much money does Bill Stansbury get? So you've got wholly unrelated, and that's the other part of the Rule 4-1.9 and 4-1.7, it talks about whether the matters are unrelated. And I guess when I argue the statute I will

15:23:17

15:23:31

argue the statute for you.

At best what the evidence is going to show you -- and I am not trying to win this on a technicality. I want to win this like up or
15:23:43 down and move on. Because this estate can't -- this delay was torture to wait this long for this hearing.

But if I showed up at Ted's deposition, and I promise you I will never show up again, I
15:23:57 am out of that case, this is a conflict of interest with a former client. I have ceased representing him at his deposition. He is never going to be deposed again. If it's a conflict of interest with a former client, all
15:24:09 these things are the prerogative of the former client. They are not the prerogative of the new client. The new client it's not the issue. So if I represented Ted in his deposition, I cannot represent another person in the same or
15:24:21 a substantially related matter.

So I can't represent the estate in this case because I sat at Ted's deposition, unless the former client gives informed consent. He could still say, hey, I don't care, you do the
15:24:35 Illinois case for the estate. I wouldn't do

that, but that's what the rule says. Use information. There's no information. I am not even going to waste your time. Reveal information. So there's no information. If
15:24:46 this is the rule we are traveling under, you deny the motion and we go home and move on and get back to litigation. If we are traveling under this rule, I cannot under 4-1.7 --

MR. FEAMAN: Excuse me, Your Honor, this
15:25:00 sounds more like final argument than it does opening statement what the evidence is going to show.

THE COURT: Overruled.

MR. ROSE: So under 4-1.7, except as in b,
15:25:17 and I am talking about b because that's maybe the only piece of evidence we may need is the waiver. I have a written waiver. I think it has independent legal significance. Because if I obtained his writing in writing, I think it's
15:25:30 admissible just because Mr. O'Connell signed it. But they object, they may object to the admission of the waiver, so I may have to put Mr. O'Connell on the stand for two seconds and have him confirm that he signed the waiver
15:25:40 document.

But except if it's waived, now let's put that aside. We never even get to the waiver. The representation of one client has to be directly adverse to another client. So
15:25:53 representing Ted in his deposition is not -- has nothing to do -- first of all, Ted had counsel representing him directly adverse. I was there protecting him as trustee, protecting his privileges, getting ready for a trial that
15:26:07 we had before Judge Phillips where he upheld the validity of the documents, determined that Ted didn't commit any egregious wrongdoing. That's the December 15th trial. It's on appeal to the 4th District. That's what led to having
15:26:23 Eliot determined to have no standing, to Judge Lewis being appointed as guardian for his children. That was the key. That was the only thing we have accomplished to move the thing forward was that, but we had that.

15:26:34 But that's why I was at the deposition, but it was not directly adverse to the estate.

Number two, there's a substantial risk that the representation of one or more clients will be materially limited by my
15:26:52 responsibilities to another. I have asked them

to explain to me how might -- how what I want to do here, which is to defend these people that I have been doing -- I have asked Mr. Feaman to explain to me how what I am doing
15:27:06 to defend the estate, like I defended all these people against his client, could possibly be limited by my responsibilities to Ted. My responsibilities to Ted is to win this lawsuit, save the money for his family, determine his
15:27:19 father did not defraud Bill Stansbury. So I am not limited in any way.

So if you don't find one or two, you don't even get to waiver. But if you get to waiver, and this is evidence, it's one of the -- I only
15:27:34 gave you three new things in the binder. One was the waiver. One was the 57.105 amended motion.

I think the significance of that is after I got the waiver, after I got a written waiver,
15:27:46 I thought that changed the game a little bit. You know, if you are a lawyer and you file a motion to disqualify -- so when I got the written waiver --

MR. FEAMAN: Your Honor --

15:27:54 THE COURT: Legal objection.

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

THE COURT: Sustained.

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

15:28:01

THE COURT: Sustained.

MR. FEAMAN: Thank you.

THE COURT: Sustained.

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

15:28:08

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

15:28:21

And if you look at the rules of professional conduct again, and we'll do it in closing, but I am the one who is supposed to decide if I have a material limitation in the first instance. That's what the rules direct. Your Honor reviews that. But in the first instance I do not have any material limitation

15:28:31

15:28:44

on my ability to represent the estate vigorously, with all my heart, with everything my law firm's resources, and with Ted's knowledge of the case and the facts to defend his case, there is no limitation and there's no substantial risk that I am not going to do the best job possible to try to protect the estate from this claim.

15:29:01

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

15:29:12

And we also would like you to appoint Ted Bernstein. There's no conflict of interest in him defending the estate as its representative through trial to try to protect the estate's money from Mr. Stansbury. It's not like Ted or I are going to roll over and help Mr. Stansbury or sell out the estate for his benefit. That's what a conflict would be worried about. We are not taking a position in -- we are not in the case yet, obviously. If you allow us to continue in this case, we are not going to take a position in this case which is different from any position we have ever taken in any case

15:29:25

15:29:41

15:29:53

because all --

THE COURT: Just for the record, for the record, I see you pointing. So you are not taking a position in the Palm Beach circuit

15:30:02 court --

MR. ROSE: Case.

THE COURT: -- civil case --

MR. ROSE: Different than we've --

THE COURT: -- that's different than

15:30:07 probate or even the insurance proceeds?

MR. ROSE: Correct. Different from what we did in the federal case in Illinois, different from we are taking in the probate case. Or more importantly, in fact most

15:30:17 importantly, we are not taking a position differently than we took when I represented other people in the same lawsuit.

You have been involved in lawsuits where there are eight defendants and seven settled

15:30:27 and the last guy says, well, gee, let me hire this guy's lawyer, either he is better or my lawyer just quit or I don't have a lawyer. So but I am not taking a position like here we were saying, yeah, he was a terrible guy, he

15:30:38 defrauded you, and now we are saying, oh, no,

it's not, he didn't defraud you. That would be a conflict. We have defended the case by saying that Mr. Stansbury's claim has no merit and we are going to defend it the same way.

15:30:49 And then that's what we'd like to do with the Florida litigation, and then time permitting we'd like to discuss the Illinois litigation, because we desperately need a ruling from Your Honor on the third issue you

15:31:00 set for today which is are you going to vacate Judge Colin's order and free Mr. Stansbury of the duty to fund the Illinois litigation.

Judge Colin entered the order. The issue was raised multiple times before Judge

15:31:14 Phillips. He wanted to give us his ruling one day, and we -- you know, he didn't. We were supposed to set it for hearing. We had numerous hearings set on that motion, the record will reflect, and those were all

15:31:26 withdrawn. And now that they have a new judge, I think they are coming back with the same motion to be excused from that, and that's the third thing you need to decide today.

THE COURT: All right.

15:31:36 MR. ROSE: Unless you have any questions,

I'll --

THE COURT: Give me one second to finish my notes. Just one second, please. I have to clean things up immediately or I go back and look and sometimes my typos kill me. Just one more second.

Mr. Feaman, back to you.

MR. FEAMAN: Thank you.

THE COURT: Feaman, forgive me.

15:34:17 MR. FEAMAN: No problem.

I would offer first, Your Honor, as Exhibit 1 --

THE COURT: I am going to do a separate list so I will keep track of all the exhibits. So Exhibit 1, go ahead.

MR. FEAMAN: It's a --

THE COURT: Stansbury Exhibit 1?

MR. FEAMAN: Yes.

THE COURT: Go ahead.

15:34:41 MR. FEAMAN: May I approach, Your Honor?

THE COURT: You may. Has everybody seen a copy?

MR. FEAMAN: Yes.

MR. ROSE: I have seen a copy. Do you have an extra copy?

MR. FEAMAN: Sure. We have one for everybody.

THE COURT: It appears to be United States District Court Northern District of Illinois Eastern Division.

15:35:03

MR. FEAMAN: There's exhibit stickers on the back.

MR. ROSE: Just for the record, I have no objection to the eight exhibits he has given, and he can put them in one at a time.

15:35:13

THE COURT: Okay. Great.

MR. ROSE: But no objection.

THE COURT: Okay. This is the first one in the complaint.

15:35:27

MR. FEAMAN: And we offer Exhibit 1, Your Honor, for the purpose as shown on the first page of the body of the complaint where it lists the parties, that the plaintiffs are listed, and Ted Bernstein is shown individually as the plaintiff in that action.

15:35:43

THE COURT: Give me one second. I have to mark as Claimant Stansbury's into evidence Exhibit 1.

///

///

(Claimant Stansbury's Exb. No. 1, Complaint, United States District Court Northern District of Illinois.)

THE COURT: And you are saying on page two?

15:35:57

MR. FEAMAN: Yes. After the style of the case, the first page of the body under the heading Claimant Stansbury's First Amended Complaint, the plaintiff parties are listed.

15:36:07

THE COURT: Yes.

MR. FEAMAN: And it shows Ted Bernstein individually as a plaintiff in that action.

THE COURT: Okay.

MR. FEAMAN: May I approach freely, Your Honor?

15:36:20

THE COURT: Yes, absolutely, as long as you are no way mad.

MR. FEAMAN: And, Your Honor, William Stansbury offers as Exhibit 2 a certified copy of the motion to intervene filed by the Estate of Simon Bernstein in the same case, the United States District Court for the Northern District of Illinois, the Eastern Division.

15:36:41

THE COURT: So received.

///

(Claimant Stansbury's Exb. No. 2, Motion to Intervene, United States District Court Northern District of Illinois.)

MR. FEAMAN: Thank you.

15:37:10 And the purpose for Exhibit 2, among others, is shown on paragraph seven on page four where it is alleged that the Estate of Simon Bernstein is entitled to the policy proceeds as a matter of law asserting the

15:37:36 estate's interest in the Chicago litigation.

THE COURT: Okay.

MR. FEAMAN: Next, Your Honor, I would offer Stansbury's Exhibit 4.

THE COURT: We have gone past Exhibit 3.

15:38:17 MR. FEAMAN: I am going to do that next.

THE COURT: Okay.

MR. FEAMAN: I think chronologically it makes more sense to offer 4 at this point.

THE COURT: Sure.

15:38:25 MR. FEAMAN: Exhibit 4, Your Honor, is a certified copy again in the same case, United States District Court for the Northern District of Illinois Eastern Division. It's a certified copy of the federal court's order granting the

15:38:41 motion of the estate by and through Benjamin

Brown as the curator granting the motion to intervene in that action.

And the purpose of this exhibit is found on page three under the analysis section where the court writes that why the estate should be allowed to intervene, showing that the setting up, I should say, a competing interest between the Estate of Simon Bernstein and the plaintiffs in that action, one of whom is Ted Bernstein individually.

15:39:09

15:39:36

THE COURT: All right.

(Claimant Stansbury's Exb. No. 4, Order Granting the Motion to Intervene, United States District Court Northern District of Illinois.)

15:39:59

THE COURT: You may proceed.

MR. FEAMAN: Thank you.

THE COURT: I generally do with everybody, I put all the evidence right here so if anybody wants to approach and look.

15:40:22

Okay. This is now 3?

MR. FEAMAN: Yes, Your Honor.

THE COURT: Okay.

MR. ELIOT BERNSTEIN: Excuse me, what did you say?

15:40:29

MR. FEAMAN: She puts them there so if you

want to look at them you can see them.

THE COURT: The ones that have been entered into evidence.

MR. ELIOT BERNSTEIN: Okay. He just gave me a copy of everything.

15:40:38

THE COURT: Yes.

MR. FEAMAN: Exhibit 3, Your Honor, is offered at this time it is a certified copy of the, again in the same court United States District Court Northern District of Illinois, it is actual intervenor complaint for declaratory judgment filed by Ben Brown as curator and administrator ad litem of the Estate of Simon Bernstein seeking the insurance proceeds that are at issue in that case and setting up the estate as an adverse party to the plaintiffs.

15:40:54

15:41:12

THE COURT: So received.

(Claimant Stansbury's Exb. No. 3, Complaint for Declaratory Judgement by Intervenor, United States District Court Northern District of Illinois.)

15:41:29

THE COURT: Thank you very much.

MR. FEAMAN: You are welcome.

Mr. Stansbury now offers as Exhibit 5 a

15:41:47

certified copy again for the United States District Court Northern District of Illinois, the answer to the intervenor complaint filed by the estate, which was Exhibit 3. Exhibit 5 is the answer filed by the plaintiffs.

15:42:08

And this is offered for the purpose as set forth at page three, the plaintiff Simon Bernstein -- excuse me -- the plaintiff's Simon Bernstein irrevocable trust which is different from the Simon Bernstein Trust that's the beneficiary of the Simon Bernstein estate down here, and Ted Bernstein individually and the other plaintiffs answering the complaint filed by the estate. And requesting on page seven in the wherefore clause that the plaintiffs respectfully request that the Court deny any of the relief sought by the intervenor in their complaint and enter judgment against the intervenor and award plaintiffs their costs and such other relief.

15:42:33

15:42:54

15:43:12

THE COURT: Just give me one second.

MR. FEAMAN: Thank you.

(Claimant Stansbury's Exb. No. 5, Answer to Intervenor Complaint, United States District Court Northern District of Illinois.)

15:43:56

THE COURT: I am sorry, I am having a problem with my computer again. Give me just one minute.

MR. FEAMAN: Exhibit 6 is a certified copy of the -- I am sorry, are you ready?

15:44:16

THE COURT: Yes, I am.

MR. FEAMAN: Thank you.

THE COURT: Exhibit 6 is a certified copy?

MR. FEAMAN: Of the deposition taken by the Estate of Simon Bernstein in the same action, United States District Court for the Northern District of Illinois of Ted Bernstein taken on May 6, 2015.

15:44:34

THE COURT: Okay.

(Claimant Stansbury's Exb. No. 6, Deposition of Ted Bernstein 5-6-15, United States District Court Northern District of Illinois.)

15:45:00

MR. FEAMAN: And the highlights of that deposition, Your Honor, are shown on the first page showing the style of the case and noting the appearances of counsel on behalf of Ted Bernstein in that action, Adam Simon of the Simon Law Firm, Chicago, Illinois, and Alan B. Rose, Esquire of the Mrachek Fitzgerald law firm of West Palm Beach, and James Stamos, the

15:45:10

15:45:31

attorney for the Estate of Simon Bernstein in Chicago, Illinois.

I will not read it into the record. I will just read three excerpts into the record in the interests of time, although I am offering the entire thing.

15:45:48

THE COURT: Okay.

MR. FEAMAN: So that we don't go back and forth with I will read this, you read that. So I am offering it entirely, but I would highlight three excerpts.

15:45:57

MR. ROSE: Just with respect to the documents coming into evidence, it has yellow highlighting. Can he represent that he has yellow highlighted everywhere where my name appears?

15:46:08

MR. FEAMAN: Yes.

MR. ROSE: And therefore we don't have to bother with places like searching the record.

15:46:15

MR. FEAMAN: That's correct. I highlighted everybody's copy.

MR. ROSE: I have no objection.

THE COURT: Okay.

MR. ROSE: I just wanted the record to be clear that the yellow highlighting reflects the

15:46:21

places where I either spoke or my name came up.

MR. FEAMAN: That's correct.

THE COURT: Okay.

MR. ROSE: Thank you, Your Honor.

15:46:28 MR. FEAMAN: The first subpart I was reading into the record would be beginning at page 63, line 20, statement by Mr. Rose. "This is Alan Rose, just for the record. Since I am Mr. Bernstein's personal counsel, he is not

15:46:54 asserting the privilege as to communications of this nature as responded in your e-mail. He is asserting privilege to private communications he had one on one with Robert Spallina who he considered to be his counsel. That's the

15:47:10 position for the record and that's why the privilege is being asserted."

The second -- although the ones I am going to read into the record are not all of them, but just three different examples. The second

15:47:31 one would be at page 87, line six, statement by Mr. Rose. "I am going to object, instruct him not to answer based on communications he had with Mr. Spallina. But you can ask the question with regard to information that

15:47:59 Spallina disseminated to third parties or."

The next item is found on page 93, line one, "Objection to form."

THE COURT: Okay.

MR. FEAMAN: Next I will offer Exhibits 7 and 8 at the same time because they are related, and I will describe them for the record.

15:48:52

THE COURT: Exhibit 7 is. Thank you. And 8.

MR. FEAMAN: You are welcome.

15:49:27

Exhibit 7 is an e-mail from TheodoreKuyper@StamosTrucco.com, attorneys for the estate in the Chicago action, to Brian O'Connell or BOConnell@CiklinLubitz.com, with a copy to Peter Feaman and William Stansbury, enclosing a court ruling, dated January 31st, 2017, enclosing a court ruling. And in the last line saying in the interim, quote, we appreciate your comments regarding the Court's ruling.

15:50:02

15:50:31

And then Exhibit 8 is an e-mail from James Stamos, attorney for the estate in the Chicago action, sent Tuesday, February 14th, 2017, to Brian O'Connell, Peter Feaman, William Stansbury, saying, quote, See below. What is

15:50:53

our position on settlement?, close quote. I think he is right about the likely trial setting this summer.

The e-mail response to an e-mail from counsel for the plaintiffs in the Chicago action that solicits information concerning a demand for settlement.

And we'll save comment and argument on those exhibits for final argument, Your Honor.

15:51:10 15:51:52

THE COURT: Okay.

(Claimant Stansbury's Exb. No. 7, E-mail, 1-31-2017, Theodore Kuyper to Brian O'Connell, etc.)

(Claimant Stansbury's Exb. No. 8, E-mail, 2-14-2017, James Stamos to Brian O'Connell, etc.)

15:51:57

MR. ELIOT BERNSTEIN: Your Honor?

MR. FEAMAN: Next --

MR. ELIOT BERNSTEIN: Sorry, thought you were done.

MR. FEAMAN: Next I would call Brian O'Connell to the stand.

15:52:02

THE COURT: Okay.

- - -

Thereupon,

BRIAN O'CONNELL,

a witness, being by the Court duly sworn, was examined and testified as follows:

THE WITNESS: I do.

THE COURT: Have a seat. Thank you very much.

15:52:20

Before we start I need six minutes to use the restroom. I will be back in six minutes.

(A recess was taken.)

THE COURT: All right. Call Mr. O'Connell. I apologize. Let's proceed.

15:58:54

MR. FEAMAN: Thank you, Your Honor.

DIRECT (BRIAN O'CONNELL)

BY MR. FEAMAN:

Q. Please state your name.

A. Brian O'Connell.

15:58:59

Q. And your business address?

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

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

15:59:09

A. Yes.

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

A. I do.

15:59:22

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

15:59:34 A. To interested persons, yes.

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

A. Correct.

15:59:44 Q. And he is seeking damages as far as you know in excess of $2 million dollars; is that correct?

A. Yes.

Q. Okay. And the present asset value of the

15:59:55 estate excluding a potential expectancy in Chicago I heard on opening statement was around somewhere a little bit over $200,000; is that correct?

A. Correct.

Q. And --

16:00:11 A. Little over that.

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

A. Yes.

16:00:21 Q. And if the estate is successful in that

lawsuit then that money would come to the Estate of Simon Bernstein, correct?

A. Correct.

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

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

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

A. Depends how one defines a claimant versus a creditor. He certainly sits in a claimant position. He has an independent action.

Q. Right.

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

Q. So if he is successful in his litigation, it would -- the result of the Chicago action, if it's favorable to the estate, would significantly increase the assets that he would be able to look to if he was successful either in the amount of

300,000 or in an amount of two million?

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

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

A. True.

Q. Correct?

A. Yes.

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

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

Q. Okay.

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

Q. Okay. We entered into evidence Exhibits 7 and 8 which were e-mails that were sent to you

first by an associate in Mr. Stamos's office and --
MR. FEAMAN: Could I approach, Your Honor?
THE COURT: Yes. Do you have an extra copy for him so I can follow along?
16:02:56 MR. FEAMAN: I think I do.
THE COURT: Okay. If you don't, no worries. Let me know.
Does anyone object to me maintaining the originals so that I can follow along? If you
16:03:03 don't --
MR. FEAMAN: I know we do.
MR. ROSE: If you need my copy to speed things up, here.
BY MR. FEAMAN:
16:03:24 Q. There's our copies of 7 and 8.
A. Which one did you want me to look at first?
Q. Take a look at the one that came first on January 31st, 2007. Do you see that that was an
16:03:41 e-mail directed to you from is it Mr. Kuyper, is that how you pronounce his name?
A. Yes.
Q. Okay. On January 31st. Do you recall receiving this?
16:03:53 A. Let me take a look at it.

Q. Sure.
A. I do remember this.
Q. All right. And did you have any discussions with Mr. Kuyper or Mr. Stamos concerning your comments regarding the Court's ruling which was denying the estate's motion for summary judgment?
A. There might have been another e-mail communication, but no oral communication since January.
Q. Did you send an e-mail back in response to this?
A. That I don't recall, and I don't have my records here.
Q. Okay.
A. I am not sure.
Q. Why don't we take a look at Exhibit 8, if we could. That's the e-mail from Mr. Stamos dated February 14th to you and me and Mr. Stansbury. Do you see that?
A. Yes.
Q. And he says, "What's our position on settlement?," correct?
A. Correct.
Q. Okay. And that's because Mr. Stamos had

received an e-mail from plaintiff's counsel in Chicago soliciting some input on a possible settlement, correct?

A. Yes.

16:05:19 Q. And when you received this did you respond to Mr. Stamos either orally or in writing?

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

16:05:34 Q. So then you haven't had any discussions with Mr. Stamos concerning settlement --

A. No.

Q. -- since this?

A. Not -- let's correct that. Not in terms

16:05:44 of these communications.

Q. Right.

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

16:05:53 Q. Okay. And you are aware that -- would you agree with me that Mr. Ted Bernstein, who is in the courtroom today, is a plaintiff in that action in Chicago?

A. Which action?

16:06:06 Q. The Chicago filed, the action filed by

Mr. Bernstein?

A. Can you give me the complaint?

Q. Sure.

MR. FEAMAN: If I can take a look?

16:06:14 THE COURT: Go ahead.

BY MR. FEAMAN:

Q. This is the --

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

16:06:25 THE COURT: Same objection?

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

BY MR. FEAMAN:

Q. Take a look at the third page.

16:06:33 (Overspeaking.)

THE COURT: Hold on. Hold on. Hold on. I have got everybody talking at once. It's Feaman's case. We are going until 4:30. I have already got one emergency in the, we call it the Cad, that means nothing to you, but I am 16:06:41 telling you all right now I said we are going to 4:30.

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

///

BY MR. FEAMAN:

Q. Individually, correct?

A. Individually and as trustee.

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

16:06:57

A. Correct.

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

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

16:07:09

Q. Correct.

A. Okay.

THE COURT: Hold on. One more time. Go back and say that again. You are represented by Mr. Stamos?

16:07:16

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

THE COURT: Right.

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

16:07:22

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

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

16:07:32

BY MR. FEAMAN:

Q. All right. And are you aware --

THE COURT: Thank you.

BY MR. FEAMAN:

16:07:37 Q. And are you aware that Mr. Rose represents Mr. Ted Bernstein in various capacities?

A. Yes.

Q. Generally?

A. In various capacities generally, right.

16:07:52 Q. Including individually, correct?

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

16:08:10 Q. How long have you been involved with this Estate of Simon Bernstein?

A. A few years.

Q. Okay. And as far as you know Mr. Bernstein has been represented in whatever

16:08:23 capacity in all of this since that time; is that correct?

A. He is definitely -- Mr. Rose has definitely represented Ted Bernstein since I have been involved. I just want to be totally correct

16:08:34 about exactly what capacity. Definitely as a

fiduciary no doubt.

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

16:08:53 A. Could I take a look at it?

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

A. I am not sure. I don't want to guess. Because I know it's May of 2015. It's possible. 16:09:20 There were a number of documents in all this litigation, and I would be giving you a guess.

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

16:09:31 A. Yes.

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

A. Yes.

16:09:43 Q. Okay. And would you agree with me upon reviewing that deposition that Mr. Rose is representing Ted Bernstein there?

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

16:09:55 THE WITNESS: There's an appearance by

him.

THE COURT: Sustained.

BY MR. FEAMAN:

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

MR. ROSE: The objection is sustained.

THE COURT: I sustained the objection.

MR. FEAMAN: Oh, okay. Sorry.

BY MR. FEAMAN:

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

A. Yes. But I want to state my position precisely, which is as now has been pled that Ted Bernstein should be the administrator ad litem to defend that litigation. And then if he chooses, which I expect he would, employ Mr. Rose, and Mr. Rose would operate as his counsel.

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

Mr. Rose? Is that your position?

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

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

THE WITNESS: Ted Bernstein and Mr. Rose have no involvement in connection with the estate's position in the Illinois litigation, Your Honor. I am not seeking that. If someone asked me that, I would say absolutely no.

BY MR. FEAMAN:

Q. I am confused, though, Mr. O'Connell. Isn't Ted Bernstein a plaintiff in the insurance litigation?

A. Yes.

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

A. Right.

Q. Okay.

A. Which is why the estate has a contrary

position --

Q. So if the estate --

(Overspeaking.)

THE COURT: Let him finish his answer.

16:12:11 THE WITNESS: It's my position as personal representative that those proceeds should come into the estate.

BY MR. FEAMAN:

Q. Correct.

16:12:17 A. Correct.

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

16:12:25 A. Right.

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

A. As a trustee he is a beneficiary, residuary beneficiary of the estate. And then he

16:12:41 would be a beneficiary as to tangible personal property.

Q. So on one hand you say it's okay for Mr. Bernstein to be suing the estate to keep the estate from getting $1.7 million dollars, and on

16:12:52 the other hand it's okay for him and his attorney

to defend the estate. So let me ask you this --

A. That's not what I am saying.

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

16:13:07 A. Which one is Exhibit 8?

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

A. The 31st?

Q. Right.

16:13:19 A. Well, actually the Stamos e-mail is February 14th.

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

16:13:37 A. You have to state what case.

Q. Down here in Florida.

A. Which case?

Q. The Stansbury action.

A. The civil action?

16:13:44 Q. Yes.

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

Q. And Mr. Rose's client in Chicago doesn't

16:13:56 want any money to go to the estate. So when you

are discussing settlement with Mr. Stamos, are you going to talk to your other counsel, Mr. Rose, about that settlement when he is representing a client adverse to you?

16:14:16 A. No.

Q. How do we know that?

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

Q. So you --

16:14:24 A. Again, can I finish, Your Honor?

THE COURT: Yes, please.

THE WITNESS: Thanks. Because there's a differentiation you are not making between these pieces of litigation. You have an

16:14:33 Illinois litigation pending in federal court that has discrete issues as to who gets the proceeds of a life insurance policy. Then you have what you will call the Stansbury litigation, you represent him, your civil

16:14:48 action, pending in circuit civil, your client seeking to recover damages against the estate.

BY MR. FEAMAN:

Q. So Mr. Rose could advise you as to terms of settlement, assuming he is allowed to be counsel

16:15:02 for the estate in the Stansbury action down here,

correct?

A. About the Stansbury action?

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

16:15:13 A. That's possible.

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

A. Depends on what the facts and

16:15:24 circumstances are. Right now, as everyone knows I think at this point, there isn't enough money to settle, unless Mr. Stansbury would take less than what is available. There have been attempts made to settle at mediations and through communications

16:15:42 which haven't been successful. So certainly I am not as personal representative able or going to settle with someone in excess of what's available.

Q. Correct. But the outcome of the Chicago litigation could make more money available for

16:16:00 settlement, correct?

A. It it's successful it could.

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

16:16:08 A. Total conjecture.

Q. Okay.

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

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

16:16:16

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

16:16:29

THE COURT: Could you read back the question for me?

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

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

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

16:17:03

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

16:17:17

BY MR. FEAMAN:

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

A. Yes.

16:17:24

MR. FEAMAN: Thank you.

CROSS (BRIAN O'CONNELL)

BY MR. ROSE:

Q. And notwithstanding that disagreement, you still believe that --

16:17:29

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

MR. ELIOT BERNSTEIN: Are you done, Peter?

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

MR. ROSE: I am sorry, Your Honor.

16:17:36

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

MR. FEAMAN: Okay. We'll rest.

THE COURT: All right.

MR. FEAMAN: Not rest. No more questions.

16:17:55

MR. ELIOT BERNSTEIN: Excuse me, Your

Honor.
BY MR. ROSE:
Q. And notwithstanding the fact that in Illinois Ted as the trustee of this insurance trust
16:18:02 wants the money to go into this 1995 insurance trust, right?
A. Right.
Q. And he has got an affidavit from Spallina that says that's what Simon wanted, or he's got
16:18:14 some affidavit he filed, whatever it is? And you have your own lawyer up there Stamos and Trucco, right?
A. Correct.
Q. And not withstanding that, you still
16:18:21 believe that it's in the best interests of the estate as a whole to have Ted to be the administrator ad litem and me to represent the estate given our prior knowledge and involvement in the case, right?
16:18:30 A. It's based on maybe three things. It's the prior knowledge and involvement that you had, the amount of money, limited amount of funds that are available in the estate to defend the action, and then a number of the beneficiaries, or call
16:18:48 them contingent beneficiaries because they are

trust beneficiaries, have requested that we consent to what we have just outlined, ad litem and your representation, those items.

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

16:19:03

A. Yes.

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

16:19:13

A. Correct.

Q. Because that's the deal we have, Mr. Stansbury is funding litigation in Illinois and he gets to sort of be involved in it and have a say in it, how it turns out? Because he stands to

16:19:23

improve his chances of winning some money if the Illinois case goes the way he wants, right?

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

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

16:19:33

A. Approximately, yes.

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

THE COURT: I don't have an order in

16:19:46

evidence.

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

THE COURT: Oh, in the Illinois?

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

16:19:55 THE COURT: Oh, in the Illinois.

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

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

16:19:58 MR. ROSE: I am sorry.

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

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

THE COURT: In the Illinois is the Florida

16:20:05 order?

MR. ROSE: Yes.

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

MR. ROSE: Right.

16:20:08 BY MR. ROSE:

Q. The evidence it says for the reasons and subject to the conditions stated on the record during the hearing, all fees and costs incurred, including for the curator in connection with his

16:20:16 work, and any counsel retained by the administrator

ad litem will initially be borne by William Stansbury. You have seen that order before, right?

A. I have seen the order, yes.

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

A. Absolutely.

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

A. I have knowledge from my counsel.

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

A. Yes. It's information everyone has.

Q. Okay.

A. Should have.

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

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

Q. Very minimal. Minimal?

A. Not a significant amount.

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

A. Yes.

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

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

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

A. Sure.

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

A. Yes.

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

A. No.

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

meetings between them?
A. No, not personal knowledge.
Q. Were you involved in the business?
A. No.
16:22:11 Q. Do you have any idea who the accountant -- well, you know who the accountant was because they have a claim. Have you ever spoken to the accountant about the lawsuit?
A. No.
16:22:17 Q. Have you ever interviewed any witnesses about the lawsuit independent of maybe talking to Mr. Stansbury and saying hello and saying hello to Ted?
A. Or talking to different parties, different
16:22:29 family members.
Q. Now, did you sign a waiver, written waiver form?
A. Yes.
Q. And did you read it before you signed it?
16:22:38 A. Yes.
Q. Did you edit it substantially and put it in your own words?
A. Yes.
Q. Much different than the draft I prepared?
16:22:45 A. Seven pages shorter.

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

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

16:22:54

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

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

16:23:15

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

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

THE COURT: But a written consent is

16:23:21

necessary under the rules, and that's been raised as an issue.

MR. FEAMAN: The rule says that --

THE COURT: I mean, whether you can waive is an issue, and I think that specifically

16:23:30

under four point -- I am going to allow it. Overruled.

MR. ELIOT BERNSTEIN: Can I object?

THE COURT: Sure.

MR. ELIOT BERNSTEIN: That just came on

16:23:39

February 9th to me.

THE COURT: Okay.

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

THE COURT: Okay.

16:23:43 MR. ELIOT BERNSTEIN: Which kind of actually exposes a huge fraud going on here. But I will get to that when I get a moment. It shouldn't be in. I hardly had time to review it. And I will explain some of that in a

16:23:54 moment, but.

THE COURT: I am overruling that objection. All documents were supposed to be provided by the Court pursuant to my order by February 9th. This is a waiver of any

16:24:04 potential conflict that's three pages. And if you got it February 9th you had sufficient time. So overruled.

I am not sure what to call this, petitioner's or respondent's, in this case. I

16:24:30 am going to mark these as respondent's.

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

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

(Trustee's Exb. No. 1, Personal

16:24:39 Representative Position Statement.)

BY MR. ROSE:

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

A. Yes.

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

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

MR. ROSE: Oh, I am sorry.

THE COURT: That's okay.

I have to add it to my exhibit list.

You may proceed, thank you.

BY MR. ROSE:

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

A. For the reasons stated previously, yes.

Q. And other than having to go through this

expensive procedure to not be disqualified, you still agree that it's in the best interests of the estate that our firm be counsel and that Ted Bernstein be administrator ad litem?

16:26:02 A. For the defense of the Stansbury civil action, yes.

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

A. Correct.

16:26:10 Q. Now, you were asked if you had a fiduciary duty to the interested persons including Mr. Stansbury, right?

A. I was asked that, yes.

Q. So if you have a fiduciary duty to him,

16:26:20 why don't you just stipulate that he can have a two and a half million dollar judgment and give all the money in the estate to him? Because just because you have a duty, you have multiple duties to a lot of people, correct?

16:26:32 A. Correct.

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

A. Correct.

16:26:39 Q. And you have been a lawyer for many years?

A. Yes.

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

16:26:51

A. Yes, yes and yes.

MR. ROSE: Nothing further.

THE COURT: Redirect?

MR. FEAMAN: Yes.

16:26:58

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

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

THE COURT: You can.

16:27:10

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

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

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

16:27:20

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

16:27:33

and I would like to have my....

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

16:27:43

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

MR. ROSE: It's the same ruling --

(Overspeaking.)

16:27:52

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

MR. ROSE: By virtue of Judge Phillips' final judgment upholding the documents, he is not a beneficiary of the residuary estate. He has a small interest as a one-fifth beneficiary of tangible personal property, which is --

16:28:02

THE COURT: I understand.

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

16:28:13

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

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

16:28:19

THE COURT: Well, that would be your

argument, just like you are arguing that Mr. Stansbury doesn't have standing to disqualify you, correct?

MR. ROSE: Right.

16:28:26 THE COURT: So that's an argument you can raise.

You may proceed.

CROSS (BRIAN O'CONNELL)

BY MR. ELIOT BERNSTEIN:

16:28:31 Q. Mr. O'Connell, am I a devisee of the will of Simon?

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

THE COURT: That is true. Sustained.

16:28:40 That was not discussed.

BY MR. ELIOT BERNSTEIN:

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

MR. ROSE: Objection, calls for a legal

16:28:46 conclusion.

BY MR. ELIOT BERNSTEIN:

Q. -- in your opinion?

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

16:28:51 THE COURT: He was asked regarding his

thoughts regarding a claimant, so I will allow it. Overruled.

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

BY MR. ELIOT BERNSTEIN:

Q. Okay, so beneficiary?

A. Right.

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

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

A. Which Stansbury action?

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

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

Q. You have never seen the complaint?

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

Q. So Ted --

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

MR. ELIOT BERNSTEIN: I am sorry, okay.

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

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

MR. ELIOT BERNSTEIN: Excuse me.

16:29:56 THE COURT: Wait.

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

THE COURT: Mr. Rose.

16:30:02 MR. ROSE: It's public record.

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

MR. ROSE: Okay.

16:30:09 THE COURT: Because I know that's why you are objecting, and you know I have to allow --

MR. ROSE: Okay.

THE COURT: All right? The legal objection is noted. Mr. O'Connell can respond.

16:30:19 He asked to see a document.

BY MR. ELIOT BERNSTEIN:

Q. I would like to show you --

THE DEPUTY: Ask to approach, please.

MR. ELIOT BERNSTEIN: Oh, ask to.

16:30:28 BY MR. ELIOT BERNSTEIN:

Q. Can I approach you?

THE COURT: What do you want to approach with?

MR. ELIOT BERNSTEIN: I just want to show

16:30:34 him the complaint.

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

MR. ELIOT BERNSTEIN: It's your second

16:30:40 amended complaint.

MR. ROSE: No objection.

BY MR. ELIOT BERNSTEIN:

Q. Is Ted Bernstein a defendant in that action?

16:30:46 A. I believe he was a defendant, past tense.

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

A. In connection with this action?

16:31:01 MR. ROSE: Objection, relevance.

BY MR. ELIOT BERNSTEIN:

Q. Yes, in connection with this action?

THE COURT: Which action?

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

16:31:07

THE COURT: If he can answer.

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

THE COURT: No, no, no.

16:31:14

MR. ELIOT BERNSTEIN: Okay.

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

MR. ELIOT BERNSTEIN: Sorry.

THE COURT: Ask a question and move on.

16:31:18

MR. ELIOT BERNSTEIN: Got it.

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

THE WITNESS: Sure. Thanks, Your Honor. I am going to give a correct answer. We have not had a settlement in connection with Ted Bernstein in connection with what I will call the Stansbury independent or civil action.

BY MR. ELIOT BERNSTEIN:

Q. Okay. So that lawsuit --

16:31:25

16:31:37

A. The estate has not entered into such a

settlement.

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

16:31:52 A. The estate prior to -- I thought you were talking about me, my involvement. Prior to my involvement there was a settlement.

Q. With Shirley's trust, correct?

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

16:32:04 Q. Well, you just --

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

MR. ELIOT BERNSTEIN: Sorry, okay.

THE WITNESS: I recall there being a

16:32:08 settlement again prior to my involvement with Mr. Stansbury and Ted Bernstein.

BY MR. ELIOT BERNSTEIN:

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

16:32:24 A. The estate, the estate, my estate, when I have been personal representative, we are not in litigation with Ted. We are in litigation with Mr. Stansbury. That's where the disconnect is.

Q. In the litigation Ted is a defendant,

16:32:41 correct?

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

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

16:32:55

So let me ask you --

THE COURT: You can't testify.

MR. ELIOT BERNSTEIN: Okay.

BY MR. ELIOT BERNSTEIN:

16:33:03 Q. Ted Bernstein, if you are representing the estate, there's a thing called shared liability, meaning if Ted is a defendant in the Stansbury action, which he is, and he hasn't been let out by the estate, then Ted Bernstein coming into the

16:33:22 estate can settle his liability with the estate. You following? He can settle his liability by making a settlement that says Ted Bernstein is out of the lawsuit, the estate is letting him out, we are not going to sue him. Because the estate

16:33:40 should be saying that Ted Bernstein and Simon Bernstein were sued.

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

MR. ELIOT BERNSTEIN: Okay.

16:33:47 THE COURT: But is that a question?

MR. ELIOT BERNSTEIN: Yeah, okay.
THE COURT: I can't --
MR. ELIOT BERNSTEIN: I will break it down, because it is a little bit complex, and I want to go step by step.
16:33:54
THE COURT: Thank you. And we will be concluding in six minutes.
MR. ELIOT BERNSTEIN: Then I would ask for a continuance.
16:34:01
THE COURT: We will be concluding in six minutes.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: Ask what you can.
MR. ELIOT BERNSTEIN: Okay.
16:34:08
BY MR. ELIOT BERNSTEIN:
Q. Ted Bernstein was sued by Mr. Stansbury with Simon Bernstein; are you aware of that?
A. I am aware of the parties to the second amended complaint that you have handed me.
16:34:23
Q. Okay.
A. At that point in time.
Q. So both those parties share liability if Stansbury wins, correct?
MR. ROSE: Objection.
16:34:30
THE WITNESS: No.

THE COURT: Hold on.

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

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

16:34:38

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

16:34:47

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

THE WITNESS: And the problem, Your Honor,

16:34:57

would be this, and I will answer the question, but I am answering it in the blind without all the pleadings. Because as I -- I will give you the best answer I can without looking at the pleadings.

16:35:08

THE COURT: You can only answer how you can.

THE WITNESS: As I recall the state of this matter, sir, this is the independent action, the Stansbury action, whatever you want

16:35:17

to call it, Ted Bernstein is no longer a

defendant due to a settlement.
BY MR. ELIOT BERNSTEIN:
Q. He only settled with Mr. Stansbury, correct? The estate, as you said a moment ago, has not settled with Ted Bernstein as a defendant. So the estate could be --
THE COURT: Mr. Bernstein, Mr. Bernstein.
MR. ELIOT BERNSTEIN: Uh-huh.
THE COURT: From the pleadings the Court understands there is not a claim from the estate against Ted Bernstein in the Stansbury litigation. Is the Court correct?
MR. ELIOT BERNSTEIN: The Court is correct.
THE COURT: Okay.
MR. ELIOT BERNSTEIN: But the estate, if Mr. O'Connell was representing the beneficiaries properly, should be suing Ted Bernstein because the complaint alleges that he did most of the fraud against Mr. Stansbury, and my dad was just a partner.
THE COURT: Okay. So that's your argument, I understand.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: But please ask the questions

pursuant to the pleadings as they stand.

MR. ELIOT BERNSTEIN: Okay.

BY MR. ELIOT BERNSTEIN:

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

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

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

MR. ROSE: Okay.

THE WITNESS: One of the disconnects here is that he is not a current beneficiary in the litigation as you just stated.

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

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

MR. ELIOT BERNSTEIN: Oh.

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

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

BY MR. ELIOT BERNSTEIN:

Q. Could the estate sue back a

counter-complaint to Ted Bernstein individually who is alleged to have committed most of the egregious acts against Mr. Stansbury? He is a defendant in the action. Nobody settled with him yet from the
16:37:05 estate. Could you sue him and say that half of the liability, at least half, if not all, is on Ted Bernstein?

A. Anyone, of course, theoretically could sue anyone for anything. What that would involve would
16:37:19 be someone presenting in this case me the facts, the circumstances, the evidence that would support a claim by the estate against Ted Bernstein. That I haven't seen or been told.

Q. Okay. Mr. Stansbury's complaint, you see
16:37:34 Ted and Simon Bernstein were sued. So the estate could meet the argument, correct, that Ted Bernstein is a hundred percent liable for the damages to Mr. Stansbury, correct?

A. I can't say that without having all the
16:37:51 facts, figures, documents --

Q. You haven't read this case?

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

16:37:57 Q. Let me ask you a question.

A. -- trying to.

MR. ROSE: Your Honor?

BY MR. ELIOT BERNSTEIN:

Q. Let me ask you a question.

16:38:04 THE COURT: Hold on one second, sir.

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

16:38:12 continuance?

THE COURT: March we have another hearing.

MR. ELIOT BERNSTEIN: Can we continue this hearing?

THE COURT: Yes. But I am going to give

16:38:15 you a limitation. You get as much time as everybody else has.

MR. ELIOT BERNSTEIN: That's fine.

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

16:38:23 MR. ELIOT BERNSTEIN: Okay. Can I submit to you the binder that I filed late?

THE COURT: Sure.

MR. ELIOT BERNSTEIN: (Overspeaking).

THE COURT: As long as it has been -- has

16:38:29 it been filed with the Court and has everybody

gotten a copy?

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

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

16:38:40

MR. ELIOT BERNSTEIN: Okay.

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

MR. ROSE: Your Honor, we had a couple of other -- I mean, he can continue it but we have limited time. There is a summary judgment hearing set for next week in this case. So right now -- not this case, Your Honor, I mean the Stansbury case.

16:38:45

16:38:56

THE COURT: Oh, you did see the look in my face?

MR. ROSE: Right. No, I understand. So I am right now traveling under a court order that authorizes me to appear, but I would like to on the record I am not going to -- I think we need to cancel that hearing or advise Judge Marx, because I don't feel comfortable going forward in the light of this motion, no matter how frivolous I think it is, pending. That's why I would hope to get this concluded today.

16:39:04

16:39:16

THE COURT: I understand.

MR. ROSE: But it's not anyone's fault. That's why I wanted to raise it in the minute we have. So I think we should either continue it or I would withdraw the motion without prejudice, whatever I need to do with Judge Marx. But I want Mr. Feaman's comment on the record.

MR. FEAMAN: I think it should be continued until there's a disposition of this.

MR. ELIOT BERNSTEIN: Yeah.

MR. ROSE: And then --

MR. FEAMAN: And in fact, that judge or that division, sorry, I didn't mean to interrupt, stayed all discovery in that case until this motion was heard, so.

THE COURT: I am trying.

MR. ROSE: No, I understand.

MR. FEAMAN: No, we are not.

MR. ROSE: The other thing is Mr. Feaman has represented this is the last witness. So I would think we would finish this hearing in a half an hour, and we have a couple hours set aside. And you were going to just state what other matters you were going to address.

The one thing I wanted -- we had sent you in an order to -- at that same hearing if there's time to handle some just very mop-up motions in the Shirley Bernstein estate.

16:40:11 THE COURT: Let me see how long we have set for next time.

MR. ROSE: We have two hours on the 2nd.

THE COURT: All right. Here's what I want done. Within the first hour we are going to

16:40:19 finish this motion. With all due respect, now I will have some time to review some of what you have given me, but I don't know if I will rule from the bench, so you are also going to have to give me time.

16:40:31 MR. ROSE: That's fine.

THE COURT: Thanks. I appreciate that.

MR. ROSE: I will tell Judge Marx that we need a continuance for let's say 45 days or something.

16:40:38 THE COURT: I need time to rule on that motion once I have everything. And we are just going to have to take things as they come. I mean, that's just how we'll have to do it. We have a lot of -- how can I put this --

16:41:00 positions being presented. And so, like I

said, so, Mr. Eliot -- and I am only calling you that because there's a lot of Bernsteins in the room.

MR. ELIOT BERNSTEIN: That's okay.

16:41:08 THE COURT: It's not disrespectful, I am not trying to be, because I have two Bernsteins.

Mr. Eliot Bernstein.

MR. ELIOT BERNSTEIN: Yes.

16:41:14 THE COURT: So you will get ten more minutes.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: Then Mr. Feaman will have his final say because it was his witness, on that

16:41:22 witness.

MR. ELIOT BERNSTEIN: And then do I get to say something at some point?

THE COURT: You will get to say something at some point, yes.

16:41:30 MR. ELIOT BERNSTEIN: Thank you.

THE COURT: Okay. But we are going to wrap it all up within an hour.

MR. ELIOT BERNSTEIN: That one hearing?

THE COURT: Yes, the motion to disqualify

16:41:36 and the motion to vacate.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: So the first hour -- and you can see I am pretty militant, because if not we are not going to get anything done here. So we
16:41:45 are -- no, not yet. Then we are going to move on to the administrator ad litem motion which would be the next consecutive motion.

Yes?

MR. ELIOT BERNSTEIN: What day is that on?

16:41:57 THE COURT: March 2nd. I can give you an extra copy of the scheduling order if you would like.

MR. ELIOT BERNSTEIN: Okay. All I want to make the Court aware of here is I am dealing
16:42:06 with a serious medical issue that I am telling you I am bleeding talking to you. It's very serious, and it has been for three weeks. And I just want to say I will let you know if I -- as soon as I can how long it's going to take.
16:42:21 He has got to put in full. It's complicated. But I have had facial reconstruction and it takes time for the teeth to adjust once he puts. And I do not have teeth for three weeks, and these spikes are like nails in your mouth.
16:42:37 So every talk tongue bite will hurt.

THE COURT: You can --

MR. ELIOT BERNSTEIN: I will let you know if it's going to take any longer than that by say a week before that hearing, okay? And I will give you a doctor's note that it's still ongoing, et cetera. Because I can't -- I mean, the last three weeks they've bombarded me with all this stuff, not saying I wasn't prepared for it. But I have been severely stressed, as the letter indicates. I am on severe narcotics, heavy muscle relaxers that would make you a jellyfish. So just appreciate that.

THE COURT: I do.

MR. ELIOT BERNSTEIN: Okay. I appreciate that.

THE COURT: The Court appreciates what you have represented. We'll deal with it. Do you need an extra copy of the scheduling order?

MR. ELIOT BERNSTEIN: Me?

THE COURT: You.

MR. ELIOT BERNSTEIN: Oh, for March 2nd?

THE COURT: Yes.

MR. ELIOT BERNSTEIN: Can I get one, please?

THE COURT: I am trying to find it. I

have so many papers.

MR. ELIOT BERNSTEIN: Did you serve it to me?

THE COURT: Me personally?

16:43:32 MR. ELIOT BERNSTEIN: Did somebody?

THE COURT: I have no idea. You should, actually yes.

MR. ELIOT BERNSTEIN: Is it today's order?

MR. FEAMAN: Yes, he is on the list.

16:43:39 THE COURT: He is on the service list. I double checked when you were late.

MR. ELIOT BERNSTEIN: I got it.

THE COURT: You did get it, okay. So you do have it. All right. Excellent.

16:43:44 Thank you everyone. I am taking -- you know what, Court's in recess. He has some of the exhibits in evidence. But I think he took Mr. Feaman's original e-mail.

MR. ROSE: We'll straighten it out, Your

16:43:55 Honor.

THE COURT: Thank you. Court's in recess.

(Judge Scher exited the courtroom.)

MR. FEAMAN: Don't go off the record. Stay on the record. We have got to have

16:44:11 custody of these original exhibits. We've got

to know who's going to get them and all that.

MR. ROSE: Mr. Feaman, would you please check these and determine if they are your copies or the Court's copies? Thank you, sir.

16:44:22 MR. FEAMAN: This looks like a copy, copy, copy, original.

THE DEPUTY: This is for the Court.

MR. FEAMAN: I just want to go through it and make sure the Court has all the originals.

16:45:25 MR. ROSE: Those are the eight -- I handed Mr. Feaman the eight exhibits that he put in and the one exhibit that was trustee's exhibit.

MR. FEAMAN: The Court has all the exhibits.

16:46:03

(The proceedings adjourned at 4:46 p.m.)

C E R T I F I C A T E

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The State of Florida

County of Palm Beach

I, Lisa Mudrick, RPR, FPR, certify that I was authorized to and did stenographically report the foregoing proceedings, pages 1 through 117, and that the transcript is a true record.

Dated February 21, 2017.



LISA MUDRICK, RPR, FPR
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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 502012CP004391XXXXNBIH

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

/

Proceedings before the Honorable

ROSEMARIE SCHER

Volume II

Thursday, March 2, 2017

3188 PGA Boulevard

North branch Palm Beach County Courthouse

Palm Beach Gardens, Florida 33410

1:35 - 3:39 p.m.

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

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P R O C E E D I N G S

- - -

BE IT REMEMBERED that the following proceedings were had in the above-styled and numbered cause in the north Branch Palm Beach County Courthouse, City of Palm Beach Gardens, County of Palm Beach, in the State of Florida, by Lisa Mudrick, RPR, FPR, before the Honorable ROSEMARIE SCHER, Judge in the above-named Court, on March 2, 2017, to wit:

- - -

THE COURT: I have evidence in my office. That's what I was looking for. One second. All right.

13:37:58 First thing, please everyone place their name on the record.

MR. FEAMAN: Good afternoon, Your Honor. Peter Feaman on behalf of William Stansbury. With me in the courtroom today is my paralegal

13:38:12 from my office Trish Roth and Jeff Royer who was here last time.

THE COURT: All right.

MR. FEAMAN: Thank you.

MR. ELIOT BERNSTEIN: Your Honor, Eliot

13:38:22 Bernstein, pro se.

THE COURT: Thank you.

MR. ROSE: Good afternoon, Your Honor, Alan Rose. With me is Michael Kranz from my law firm. And we represent the Simon Bernstein estate, Ted S. Bernstein as trustee. And in other matters we represent Mr. Bernstein as trustee and as personal representative of the Shirley Bernstein Trust and estate.

13:38:32

MR. O'CONNELL: Brian O'Connell, Your Honor. I am the personal representative of the Estate of Simon Bernstein.

13:38:46

JUDGE DIANA LEWIS: Your Honor, I am Diana Lewis. I represent the Eliot Bernstein children in the capacity as guardian ad litem.

13:38:59

THE COURT: Thank you. Yes, ma'am?

MS. CANDACE BERNSTEIN: Candace Bernstein.

THE COURT: All right. My recollection is Mr. Eliot, only to distinguish from all the Bernsteins, it was his opportunity, I told him he had ten more minutes, I had timed everybody, and it was my recollection I think Mr. O'Connell was still on the stand and it was Mr. Eliot's time, only you know I am not being disrespectful just for the record to establish which Bernstein I am talking about, to continue

13:39:15

13:39:28

your cross-examination.

MR. ELIOT BERNSTEIN: Your Honor, before we start that, I filed yesterday and Mr. Feaman filed yesterday --

13:39:38 THE COURT: I didn't receive anything from Mr. Feaman. I did receive -- I am just saying. But go ahead, yes, sir.

MR. ELIOT BERNSTEIN: It appeared that he mailed you a response.

13:39:52 THE COURT: I did not receive -- did you e-mail my JA a response, Mr. Feaman?

MR. FEAMAN: Yes, Your Honor. We had no opposition to his motion for continuance.

THE COURT: That I did receive.

13:40:01 MR. FEAMAN: And joined in it and said if we could have some additional time to take some discovery then we would be glad to avail ourselves of that.

THE COURT: Thank you.

13:40:11 MR. ELIOT BERNSTEIN: And, Your Honor, that discovery is essential because some of the things we learned at the last hearing contradicts this entire case, that I am not a beneficiary, have no standing. It was a

13:40:24 compounding statement that Mr. Rose has told

over and over that ended up in orders here, that ended up in Illinois. And now we have absolute proof from Mr. O'Connell and Mr. Rose that, well, he is calling me a tiny beneficiary
13:40:38 yesterday in the e-mail to you, but a beneficiary. And that contradicts --

THE COURT: Don't assume that I received like what my JA tells me. I received -- let me tell you for the record.

13:40:48 MR. ELIOT BERNSTEIN: Okay.

THE COURT: Your motion was a formal pleading, so I read that, of course, as a formal pleading I read everything.

MR. ELIOT BERNSTEIN: Okay.

13:40:55 THE COURT: I said to my JA, please find out everybody, ask them just for their response. I do know Mr. Feaman did not object. That's the extent of what I know.

Because those kinds of communications
13:41:06 aren't formal, and I had heard that Mr. Rose's office did object. But I want you to know what I know and what I don't know beyond that.

MR. ELIOT BERNSTEIN: Okay. I will help you through it. I need time, as I have pled in
13:41:18 my motion to vacate that I filed on

February 16th, time to question these witnesses. Because Mr. O'Connell's statement to this Court in fact contradicts Mr. Rose's filings and prior statements Mr. Rose has made to sheriff's. So I am going to have to call and subpoena the sheriff who he made statements that I was a beneficiary of my mother's trust on the record in an investigation. And then he came to the Court and told this whole story I am not a beneficiary of anything.

If you will look at the case management omnibus motion he filed to Judge Phillips that started this whole nonsense that I am not a beneficiary of anything, it says in there the overarching issue is Eliot is not a beneficiary of anything. That false statement led to orders that were never done on a construction hearing. There was only a validity hearing. Mr. Rose I will pull up and he can testify to that.

Although he has told you that there's been some kind of determinations, all of those determinations were based on him misleading the Court as an officer of the Court. And I put most of that in my motion to vacate, and I will

be preparing proper responses for that.

But we need, Mr. Feaman and I, time to do new discovery on certain people that will -- you know, you don't want to be rushing into a 13:42:37 decision here on this issue when new information just came out February 9th was when I first received it that contradicted the whole statements in all these pleadings that are forthcoming. And I think we'll be able to show 13:42:51 that there's been fraud on this Court. The other date in that hearing if you look at the transcript Mr. Rose claimed that I had no standing, and you overruled that, or whatever you call it, you did.

13:43:03 THE COURT: I did.

MR. ELIOT BERNSTEIN: Okay. Meaning you allowed me to question Mr. O'Connell. Well, every other time he said that before Judge Phillips, it was whatever he said. They were 13:43:13 never litigated the matters that I was a beneficiary or not, but it just got somehow accepted the more he said it to that judge.

So now that completely contradicts the orders that were issued that I am not a 13:43:27 beneficiary of anything whatsoever. Now it's I

am a little, I am a TPP beneficiary. But the truth is I am a beneficiary of the will of Simon Bernstein. And Mr. O'Connell on the stand flipped his story as well that he was
13:43:43 putting into this Court that he had consent of all the beneficiaries. Well, in fact they are saying that Mrs. Lewis is a beneficiary, is representing my children as parties here.

THE COURT: She's appointed as the
13:43:57 guardian on behalf of the children.

MR. ELIOT BERNSTEIN: Who are supposed to be the beneficiaries.

THE COURT: Yes.

MR. ELIOT BERNSTEIN: Okay. Except my
13:44:04 children have never been notified by anybody, PR, trustees, anything, that they are beneficiaries of anything.

THE COURT: All right. I have to keep it narrow to you want additional time to do
13:44:13 additional discovery?

MR. ELIOT BERNSTEIN: Totally.

MR. FEAMAN: And, Your Honor, if I just may add?

THE COURT: Yes.

13:44:18 MR. FEAMAN: Thank you. What I said in my

joinder and consent was that we still had outstanding objections to the subpoena that we had served on Mr. Rose. Your Honor may recall --

13:44:30 THE COURT: I recall that, I do, that you wanted e-mails.

MR. FEAMAN: I said if the Court is inclined to give more time then that is something that we could handle. Thank you.

13:44:39 THE COURT: Thank you.

MR. ELIOT BERNSTEIN: Oh, Your Honor, one more point.

THE COURT: Last point.

MR. ELIOT BERNSTEIN: There's an open

13:44:44 issue of production that I requested production of Mr. O'Connell.

THE COURT: Not set for today.

MR. ELIOT BERNSTEIN: No, I know.

THE COURT: I understand.

13:44:50 MR. ELIOT BERNSTEIN: Very important documents relating to this idea of my brother representing the estate which he was denied twice for by the Court. But I asked Mr. O'Connell for production, and he actually

13:45:04 advised me to ask him, and then he objected to

it, and it's still not here, meaning it's never been heard, correct, Mr. O'Connell?

MR. O'CONNELL: I would have to see the item, Your Honor, that Mr. Eliot is referring to.

13:45:16

MR. ELIOT BERNSTEIN: Well, the Court has never heard it, and I need all those documents. They are original documents. They are business records that are all pertinent to this settlement.

13:45:23

So can we have that also heard so that he is either compelled to give me the documents or he -- you know, whatever you do, you order one way or the other?

THE COURT: Today's hearing, the first hearing at issue is whether or not Mr. Rose is on or off. That's the first matter. I put that very simply. But the first matter we are concluding is whether Mr. Rose on behalf of the Mrachek law firm is allowed to proceed as the attorney. That's the removal order that we are here about today.

13:45:35

13:45:49

MR. ELIOT BERNSTEIN: And that's all relevant, and we need to depose him now that he's got contradictory statements.

13:45:59

THE COURT: Okay. The problem I am having -- well, let me hear the response, please.

MR. ROSE: Okay. And I just need a minute to lay out a few of the facts and clear them.

The issue today is whether I can defend the estate in the state court action.

THE COURT: Right.

MR. ROSE: It has nothing to do with my serving as counsel for Ted Bernstein in these proceedings.

THE COURT: Yes, I understand.

MR. ROSE: All the efforts to remove me have been denied and dismissed long ago.

THE COURT: Let me ask you. The effort it's only for the state court action, the civil action in front of Judge Marx?

MR. ROSE: Correct.

THE COURT: Why is he not hearing this then?

MR. ROSE: Because I was retained -- a couple reasons, but --

THE COURT: Why is he not hearing the motion to remove him?

MR. FEAMAN: Because it was Judge Phillips

who entered the order allowing Mr. Rose to represent in that court.

THE COURT: But do you understand the Court's -- I think this is something Judge Marx should decide. Wait. Let me ask because then I will let you finish. Tell me why it should be me. I was clear last time, but it just hit me at this moment, if here you represent Ted Bernstein, correct?

13:47:13 MR. ROSE: Here I represent Ted Bernstein as a trustee.

THE COURT: As a trustee. Your motion to disqualify him has to do with the action in front of Judge Marx?

13:47:23 MR. FEAMAN: That is correct, Your Honor.

THE COURT: Explain to me why that judge shouldn't make the decision on whether to remove Mr. Rose?

MR. FEAMAN: Our thinking was, Your Honor, 13:47:31 it was because Judge Phillips entered the order allowing it. And therefore, we came back to the Court that entered --

THE COURT: I see what you are saying.

MR. FEAMAN: -- the order allowing it to 13:47:41 begin with.

MR. ROSE: There's two aspects of the motion. One is to appoint Ted Bernstein as administrator ad litem to represent the interests of the estate.

13:47:45 THE COURT: I understand that.

MR. ROSE: That's an issue for Your Honor.

THE COURT: That's me.

MR. ROSE: The other issue is whether, Your Honor, whether the order that Judge

13:47:52 Phillips entered retaining me to represent the estate should be vacated, and that's all before Your Honor. We have spent I can't tell you how much money to get to this point.

THE COURT: Oh, I understand.

13:48:02 MR. ROSE: And so I think you are the correct judge because the issue isn't simply disqualification. The interest deals -- the issue deals with what's in the best interests of the estate and its beneficiaries.

13:48:15 If I could just have one minute to give you a little history briefly, just I think it will be helpful and I would --

THE COURT: I very much remember this chart. I very much remember the --

13:48:27 MR. ROSE: It's a new chart.

THE COURT: It's a new chart?

MR. ROSE: It's completely different.

THE COURT: Okay. But do you know what I'm saying? Oh, that chart.

MR. ELIOT BERNSTEIN: (Inaudible).

MR. ROSE: Completely different.

THE COURT: Stop.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: I will let you know --

13:48:32 MR. ELIOT BERNSTEIN: I have not seen that.

THE COURT: Nobody has seen this. So before you show me -- put it back down. You are going to stay quiet and you are going to

13:48:41 sit down. You know, I am very fair. I hear from each one of you. I am sure I am going to make someone very unhappy across the board with a ruling. But I will not be accused of not listening to everybody. All right.

13:48:54 MR. ROSE: Okay.

THE COURT: I am not seeing it. Do me one favor and listen to me for one second. The first response I have, before we get into the background, is your response to their motion

13:49:05 that they need more time.

MR. ROSE: Okay.

THE COURT: Okay?

MR. ROSE: Okay. This started with a motion filed in August of last year. We had a hearing in September of last year. And then there were objections filed. Mr. Bernstein objected. He was unavailable for an extended period of time. We got a hearing set before Your Honor. We have waited for four or five months to get this done.

13:49:15 13:49:29 13:49:42 13:49:53 13:50:06

I'd like to explain the issues that Eliot Bernstein is suggesting that he needs discovery for some farfetched thing, and I'd like to explain to you his standing in a limited area so that you understand what he is saying.

Mr. Feaman has served discovery that we have objected to. But I think when you do this hearing, you will understand that the discovery he seeks is not relevant to the issue of whether there's a conflict of interest under Rule 4-1.9 or a conflict of interest under Rule 4-1.7.

And these estates again are very small. We have spent a lot of money preparing. We are all here. Everyone is ready to roll. We've

got two hours reserved. And we need to get some progress made as to who's going to defend the estate in the Stansbury case. And at the same time there's other motions, who is going
13:50:18 to -- how are we handling the -- how is the estate handling its Illinois litigation which is -- and both of these matters are now set for trial. So there's some urgency.

THE COURT: I remember the exact standing
13:50:26 of Mr. Eliot with regard to being a beneficiary. There is a pour over trust from the Simon estate where the children, the ten grandchildren, are the beneficiaries, correct?

MR. ELIOT BERNSTEIN: No.

13:50:39 MR. ROSE: If you said there's a --

THE COURT: Pour over trust from the Simon estate?

MR. ROSE: Pour over from the Simon trust.

THE COURT: Correct.

13:50:45 MR. ROSE: And the ten grandchildren are the beneficiaries, correct.

MR. ELIOT BERNSTEIN: Incorrect.

THE COURT: No, it is correct. Wait for me. Wait for me one second. Let me finish.

13:50:50 MR. ELIOT BERNSTEIN: Okay.

THE COURT: That does not change any tangible property you would be a potential beneficiary of, correct?

MR. ROSE: Correct.

13:50:59 THE COURT: See, I wasn't excluding you. There's tangible property and there's a pour over trust.

MR. ELIOT BERNSTEIN: That's the problem, though. The ten grandchildren are not the

13:51:07 beneficiaries. That's never been determined. There's been no construction hearings in any of these cases yet. Right, Mr. Rose?

MR. ROSE: Totally incorrect.

MR. ELIOT BERNSTEIN: There have been

13:51:17 construction hearings? Can you give her the date of those hearings?

THE COURT: I am not going there. I am not letting you two litigate it. That's my understanding from the pleadings right now.

13:51:25 It's not relevant for right this second.

MR. ELIOT BERNSTEIN: It doesn't say the ten -- okay.

THE COURT: Okay?

MR. ELIOT BERNSTEIN: It's very relevant,

13:51:30 but okay.

THE COURT: Just trying to get to why we are here today.

MR. ELIOT BERNSTEIN: Your Honor, Mr. Stansbury's lawsuit they've said they don't 13:51:39 have enough money in the trust to pay it if he wins so they would be coming to my tangible personal property interests. So it does affect me in this case in the retention of Ted, and I will be able to show why.

13:51:55 THE COURT: You don't have to. You have standing. You are sitting there. I have allowed it. I have allowed it. You are a tangible beneficiary whatever assets remain outside of the Simon trust. I think everyone 13:52:08 is on the same page. If it's a dollar or if it's ten dollars, that's where you have -- now, I have no idea the dollar figures in any of this.

MR. ELIOT BERNSTEIN: None of us do.

13:52:20 THE COURT: Go ahead, Mr. Rose.

MR. ROSE: I am sorry, and I keep --

THE COURT: Go ahead.

MR. ROSE: I am not engaging with Mr. Eliot. He is engaging with me.

13:52:26 THE COURT: I am going to ask, Mr. Eliot,

to let him finish so we can at least move forward to the next point. Go ahead.

MR. ROSE: Just for the record, I conceded at the last hearing that he had limited standing. I did not say that he did not have standing.

13:52:35

THE COURT: I agree.

MR. ROSE: What I tried to get the impression -- does the Court know -- it's your next question which is the tangible personal property consists of furniture and jewelry.

13:52:41

THE COURT: Yes.

MR. ROSE: The furniture is dwindling in value. It's being stored. The jewelry -- this is about a hundred thousand. And my point was only that when you take a hundred thousand and you divide it five ways, best case is 20,000. And my point is --

13:52:51

THE COURT: It's not for right now. Let's move on.

13:53:00

MR. ROSE: No, okay.

THE COURT: Okay? Do you see what I am saying?

MR. ROSE: I got you. And I do, though, think, since you are new to the case, I would

13:53:06

like to just clear up a couple things just if I could briefly, very briefly?

THE COURT: Only if you think it's going to help. I don't want to poke the bear. I want to keep moving. I don't want everybody yelling at each other. Do you see what I am saying?

MR. ROSE: I do, absolutely.

THE COURT: Go ahead.

13:53:25 MR. ROSE: I just want -- we had a trust construction trial in the Shirley Bernstein Trust.

THE COURT: Yes. And I know that Judge Phillips decided in the Shirley Bernstein.

13:53:36 MR. ELIOT BERNSTEIN: It was only a validity hearing. The construction was severed.

THE COURT: Mr. Bernstein?

MR. ELIOT BERNSTEIN: Okay, I am sorry.

13:53:42 THE COURT: You keep interrupting. You can't do that.

MR. ELIOT BERNSTEIN: I am sorry.

THE COURT: Go ahead.

MR. ROSE: I would like to do, just so you

13:53:47 know.

THE COURT: Sure.

MR. ROSE: Eliot Bernstein was a contingent beneficiary. This is Shirley's side.

13:53:53 THE COURT: Yes.

MR. ROSE: Judge Phillips tried the case.

THE COURT: Yes.

MR. ROSE: Eliot is named in the will as a contingent beneficiary if Simon died.

13:54:00 THE COURT: Okay.

MR. ROSE: Now, as soon as Simon -- Shirley dies when Simon is alive and survives for 30 days, then that contingency disappears and he is no longer a tangible beneficiary in

13:54:13 Shirley's estate. He was a contingent beneficiary of the Shirley trust if Simon didn't exercise a power of appointment.

So the trial we had on January -- the trial we had on December 15th, 2015, was to

13:54:25 determine whether Simon's 2012 documents were valid and whether his exercise of his power of appointment was valid. Judge Phillips determined -- the exercise of the power of appointment was valid.

13:54:37 So now in the Shirley side the power of

appointment was exercised so Eliot is no longer a beneficiary. So he had some standing in that case as a potential beneficiary while we were dealing with the trial.

13:54:50 THE COURT: I am relying on Judge Phillips' order.

MR. ROSE: Then we have the trial.

THE COURT: I have to. That is the law.

MR. ROSE: The same thing -- the same

13:54:58 thing over here --

THE COURT: I am not going to do this. I am going to make this very, very clear. Hold on. Stop, please, Mr. Rose, please.

MR. ROSE: I am sorry.

13:55:06 THE COURT: I am going to use Mr. Feaman as an example. I know he disagrees with a lot of what you are saying. And I am using this for Mr. Eliot and just because he is on the other side. He is sitting there professional

13:55:18 as an attorney, not reacting. So I have no idea if he is thinking I enjoyed my lunch or if he is thinking I disagree with everything he said. I am not saying favoritism. I used him because I happened to look straight up. I need

13:55:32 everybody to have that kind of expression.

When it's your turn you are allowed to talk, but I cannot have the constant -- what happens is one of you reacts, the other one reacts, the other one reacts. I am going to let everybody 13:55:45 do their presentation. I am going to make a ruling, and we are going to move on.

Continue, please.

MR. ROSE: That's the end of the story. He is clearly a beneficiary. We have never 13:55:52 denied he is a beneficiary for a very narrow purpose. But based on the rulings it is exactly that which is a very narrow purpose.

So we are here. Everyone is ready. I think you can rule on the motion. If at the 13:56:05 end of hearing the evidence you think there's some reason you need additional discovery, which I don't think that the record and the evidence and the law would require, you know, we can address it at that point. But we are 13:56:16 here. We need to get -- move forward.

And just Judge Phillips had entered on order, I am sorry, Judge Colin had entered an order about a month after this lawsuit was filed prohibiting Eliot from filing papers 13:56:32 without permission. Yesterday he filed about

4,000 pieces of paper. It's very hard for everybody to follow, including his -- the guardian for his children have to read the pages and it's billing time. But we have spent so many times in front of Judge Colin deciding what hearings we are going to have and not have, we waste so much time, that we are here, everyone is ready, we are prepared, he has ten minutes of cross-examination, we can make our argument and then you can rule and we can go to the next motion, and we have about six or eight things. We have settlements we want to get approved that are set for today, and they should be -- it should be very routine. And I think we should move forward today, and we'd ask that you do so.

THE COURT: Thank you.

If you will give me a second, what happened is I have so many notebooks I am trying to find the one that I was looking for something. That's what I was looking for.

At this time we are going to continue with this hearing. Mr. O'Connell, please take the stand.

MR. ELIOT BERNSTEIN: Your Honor?

THE COURT: No. I am denying the motion to continue. Mr. O'Connell, take the stand. You can complete your cross-examination.

- - -

Thereupon,

BRIAN O'CONNELL,

a witness, being by the Court duly sworn, was examined and testified as follows:

THE WITNESS: I do.

13:59:01 THE COURT: Thank you. Please have a seat. You may proceed.

CROSS (BRIAN O'CONNELL)

BY MR. ELIOT BERNSTEIN:

Q. Mr. O'Connell, can you please state your

13:59:15 full name and address for the record?

A. Brian O'Connell, 515 North Flagler Drive, West Palm Beach, Florida.

Q. In what capacity are you testifying today?

A. As an individual.

13:59:27 Q. Not in a fiduciary capacity?

A. I am a fiduciary, but I have been called as a witness. I am an individual witness.

Q. Okay. Are you also a practicing lawyer in Florida?

13:59:38 A. Yes.

Q. And your bar number, please?
A. 308471.
Q. Okay. Mr. O'Connell, did you obtain all of the LIC, LIC Life Insurance Concept financial
13:59:51 records from the beginning of the Stansbury's lawsuit to the present to review as part of making your recommendations to hire Alan Rose and appoint Ted Bernstein?
A. I can't answer that sitting here today
14:00:04 because there was a volume of files of information that we have collected. I couldn't give you an accurate answer as to exactly what material I have, over what timeframe. It's just impossible to do that accurately.
14:00:16 Q. Okay. A yes or no to these questions if you can. You want me to ask it again? Just looking for a simple yes or no.
THE COURT: Do your best answer yes or no. If he can't answer yes or no he doesn't have to
14:00:28 answer yes or no.
THE WITNESS: Could I explain, Your Honor, after?
THE COURT: First answer yes or no, then you will be allowed to explain.
14:00:34 THE WITNESS: I don't know on that

question. I don't know the answer.

BY MR. ELIOT BERNSTEIN:

Q. Okay. Are these records they would be relevant to the lawsuit in the claims of Stansbury and the Estate of Simon Bernstein, yes or no?

14:00:45

A. I don't know.

Q. Okay. If you had the records when did you obtain those records?

A. Since I am not sure what records I have, I don't know if I have them. I don't know what they say. And I certainly haven't reviewed them as of the last few days.

14:01:01

Q. Okay. When I came to your offices in August 2015 to pick up copies of Simon's business records, did you produce those documents at that time to me?

14:01:21

A. I produced documents to you. But again, I'd have to go through my records to determine what copies were made for you at that time. I have no way of giving a precise answer today as to what was given.

14:01:34

MR. ELIOT BERNSTEIN: Which, Your Honor, might be reason for more discovery time and whatnot.

///

BY MR. ELIOT BERNSTEIN:

Q. Mr. O'Connell, did you obtain copies of all the Arbitrage International records from the beginning of the Stansbury lawsuit to the present to review as part of making your recommendations to hire Alan Rose and Ted Bernstein, appoint Ted Bernstein, yes or no?

14:01:50

A. I don't know.

Q. Okay. If -- would you think those would be relevant to this lawsuit and the claims in the case?

14:02:03

A. I don't know because I'd have to see them.

Q. Okay.

A. If there are such records.

Q. Okay. And you don't know if you turned those records over to me when I came to pick up Simon's business records at your office in August 2015?

14:02:13

A. I don't recall.

Q. Okay. Did you obtain copies of the IRS certified records from Simon and Shirley's businesses and their personal tax returns?

14:02:23

A. We have certain tax records for Simon Bernstein. But again, I couldn't tell you precisely what they are, for what years.

14:02:45

Q. Are they Simon's? Are they certified?
A. I don't recall that, but I could tell you generally tax returns typically aren't certified.
Q. Are they signed, the ones you've produced?
14:03:00 A. I am not sure.
Q. Were you produced -- did you order tax returns?
A. We ordered tax returns.
Q. Did you receive them from the IRS?
14:03:06 A. We received certain information from the IRS, because I do recall one item we got was a letter that they didn't have records that old; I know that.
Q. Yes or no would be simple. So did you get
14:03:17 the tax returns that you were ordering?
A. The problem is when you say the tax returns, there are a number of years for which we made a request. And I can't be precise in terms of what exactly were produced and for what year it
14:03:31 relates.
MR. ELIOT BERNSTEIN: Again, this might need more discovery time here to figure these things out because they are all germane, but.
BY MR. ELIOT BERNSTEIN:
14:03:45 Q. Did you turn those records you got over to

any of the beneficiaries?

A. Again, I don't know what was furnished to whom, if requests were made or not, I don't know.

Q. Okay. Right immediately before Ben Brown 14:03:57 died mysteriously, the prior curator to you, he had alleged he received the tax returns from the IRS and was transferring them to you.

MR. ROSE: Objection, hearsay and relevance.

14:04:10 THE COURT: It is hearsay, so sustained.

MR. ELIOT BERNSTEIN: Okay.

BY MR. ELIOT BERNSTEIN:

Q. Do you recall receiving tax returns from Mr. Ben Brown that were from the IRS?

14:04:20 A. Not with any specificity. And I don't want to guess.

Q. Can you describe what the Stansbury lawsuit is all about?

A. Well, there's a number of counts. Some 14:04:39 have been resolved. There have been dismissals, for example, of Ted Bernstein. And there's -- without seeing it, I can probably give a better answer, but there's several, there's some breach of an oral contract. There's a claim for a fraudulent 14:04:54 misrepresentation. There's a conspiracy count.

These are just things I can recall sitting here. But in terms of what the actual accounts are, it would be best to look at the lawsuit itself.

Q. Have you looked at the lawsuit?

14:05:10 A. Yes.

Q. Okay. Because the last time and in your pleadings you state that you have no knowledge of the lawsuit; is that correct?

A. Well, I'd have to see what it is that you

14:05:20 are referring to. But I have a general knowledge of the lawsuit because I have seen the complaint. That would be the source of, one source of information that I have.

Q. Okay. Because Mr. Rose has pled that you

14:05:32 have no knowledge, and I believe your statement says you have no knowledge. But I will get to that in a moment.

A. I'd have to see my statement.

Q. Okay. We are going to get that out.

14:05:42 We'll get that, circle back to that.

Is that all you have to say on the Stansbury lawsuit that know of?

A. That the lawsuit speaks for itself.

Q. Have you spoken to me ever about the

14:05:53 lawsuit?

A. I don't recall.

Q. Do you recall a three-hour conversation with my wife and me regarding the Stansbury litigation?

14:06:02 A. I remember a lengthy conversation with you and your wife about estate issues. Not too long after I took over, yes, you came to the office. Again, I'd have to refresh my recollection as to what exactly we covered. But I recall that much.

14:06:17 It was pending issues involving estate matters that were of concern to you. And then I think we even talked about was there a way to resolve the issues that you had. So those were sort of the generalities that I recall.

14:06:29 Q. Okay. Because your bill mainly says that it was regarding the Stansbury lawsuit --

A. I'd have to see the bill.

Q. -- for three hours. But -- and let me ask you another question. Did you bill for that three

14:06:41 hours?

A. Again, without seeing the bill to be sure.

Q. Okay.

A. But I am going to take an assumption that I did.

14:06:47 Q. Okay. Okay. And after I just heard you,

you said there was some breach of contract issues, some conspiracy issues, some fraud issues, and the defendants we know were Ted Bernstein that was sued and Simon Bernstein and their companies, correct?

14:07:19 A. Originally.

Q. Okay.

A. And there's been some dismissals principally of Ted Bernstein and some of the entities.

14:07:24 Q. Okay. And I was looking for yes or no, but okay.

Okay. So is it possible that some of the issues involved in the Stansbury claims could involve negligence, yes or no?

14:07:39 A. I don't recall a negligence claim or count in the complaint. And there's a second amended complaint. That would be what one would need to look to answer that for sure. But sitting here without looking at it, I don't recall a negligence

14:07:54 claim.

Q. Are you aware of Florida Statute 768.1, yes or no?

A. 768.01 perhaps?

Q. 768.81.

14:08:23 A. 81?

Q. Yes.

MR. ELIOT BERNSTEIN: Your Honor, can I approach?

THE DEPUTY: I will bring it to the witness.

14:08:29

THE COURT: Thank you.

MR. ELIOT BERNSTEIN: Do you want one, Your Honor?

THE COURT: I have my statute book. I am looking it up right now.

14:08:32

MR. ELIOT BERNSTEIN: Okay. Okay. Let me get back to where I was.

THE COURT: The comparative fault statute?

MR. ELIOT BERNSTEIN: Yes.

14:09:04

BY MR. ELIOT BERNSTEIN:

Q. Can you read subdivision C for the record, Mr. O'Connell?

MR. ROSE: I am going to object. I mean, the statute is the statute. They can make whatever argument they want to make in the argument, but he doesn't have to read the statute.

14:09:15

MR. ELIOT BERNSTEIN: Well --

THE COURT: Just let him read it. Overruled.

14:09:23

THE WITNESS: "Negligence action means, without limitation, a civil action for damages based upon a theory of negligence, strict liability, products liability, professional malpractice whether couched in terms of contract or tort, or breach of warranty and like theories. The substance of an action, not conclusory terms used by a party, determines whether an action is a negligence action."

14:09:48 BY MR. ELIOT BERNSTEIN:

Q. And then can you just read real quick number three short?

A. Sure. "Apportionment of damages. In a negligence action, the court shall enter judgment

14:09:57 against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability."

Q. Okay. And both Ted and my father were sued in the Stansbury action, correct?

14:10:17 A. Yes, originally.

Q. Okay. And so it could be that Ted committed, and according to Mr. Stansbury's complaint, most of the egregious acts of fraud on Mr. Stansbury, checking account fraud, et cetera,

14:10:40 and that my father was more of a passive partner in

this thing who might not have even known what was going on with Ted?

So would there be the ability to say that there was an apportionment of damages that could result that where Ted is found maybe a hundred percent liable for the damages to Mr. Stansbury?

A. Well, at this point, I will give you a no at this point. Because what you would have to do is -- and look the complaint, because everyone has to travel under the complaint and what's been alleged in that and what legal theories are being claimed.

Again, like I mentioned, negligence I don't recall being a count within that particular complaint. Then you have to couple that with the fact that you had a dismissal of Ted in certain entities as a defendant. Then on top of that you'd have to have, which I certainly don't have and not been given, facts to support that type of a I will call it apportionment claim as you have alluded to it. So someone would have to have that information to make that assessment after considering everything else that I just said.

Q. And so since you didn't know if there was a negligence and we'd have to circle back to that

with more discovery because you need to check your records, we could find that there's a negligence theory here that establishes that there's shared fault in the action, correct?

14:12:19 MR. ROSE: Objection. And may I be heard?

THE COURT: Give me just one second.

MR. ROSE: Okay.

THE COURT: All right. I just reviewed the complaint at issue in the Stansbury case. 14:12:43 There does not appear to be a negligence action. Am I missing it?

MR. FEAMAN: There is not a negligence action per se, Your Honor.

THE COURT: Okay. Thank you.

14:12:50 So let's move on. Don't forget, I said you had ten minutes.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: I have already given you ten. I am going to give you five more.

14:12:58 MR. ELIOT BERNSTEIN: Well, I am going to need more just based on the fact that there's some certain things that are germane --

THE COURT: Okay. I understand your objection.

14:13:05 (Overspeaking.)

MR. ELIOT BERNSTEIN: -- consideration. Thank you.

THE COURT: I understand your objection.

MR. ELIOT BERNSTEIN: Okay.

14:13:07 THE COURT: And wait. And you put it on the record so it's preserved.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: But you get six more minutes.

BY MR. ELIOT BERNSTEIN:

14:13:13 Q. Mr. O'Connell, when did you -- did you perform a due diligence investigation into Ted Bernstein's potential liability in the Stansbury lawsuit?

A. I have not. I have never been presented

14:13:24 with any facts by anyone or even an allegation to suggest that such a liability might exist.

Q. Well, the complaint actually alleges that Ted committed the frauds?

A. And then, as I have mentioned, Ted was

14:13:35 dismissed as a defendant by Mr. Stansbury.

Q. Yeah, that's okay. Whether Mr. Stansbury in the estate would have to determine if Ted had liability in this, correct?

A. No.

14:13:47 MR. ROSE: Objection, again.

THE COURT: Go ahead, place your legal objection on the record.

MR. ROSE: Well, my legal objection is a lack of relevancy under the two statutes that are relevant to these issues. But he can finish.

THE COURT: Thank you.

You may proceed.

BY MR. ELIOT BERNSTEIN:

14:13:59 14:14:08 14:14:25 14:14:40 14:14:57

Q. Did you do a due diligence investigation to check out if Ted had any liability in this lawsuit?

A. Not the way you've phrased it. I mean, we examined the lawsuit and determined the defendant initially. And, of course, we are here today for a different form of defense. But I have no information specifically relates to the topics that you are raising that Ted has some type of a contribution, I think would be your theory for that, or a portion you have also used that term.

Q. But if you did find that out through due diligence that Ted had liability, you would be able to take action on behalf of the beneficiaries to have Ted sued or charged with that, correct?

A. If, yes, if that information exists, if

someone provides us with that information, then, of course, we could.

Q. Okay.

A. That begs the issue of --

14:15:09 Q. That's good.

A. -- us needing the information after the years that have gone by that this litigation has been pending that I have never been provided.

Q. Okay. Okay. So but you just said that as 14:15:19 the estate could do that after reviewing to see if Ted had liability. And my question is this, do you think that Ted, if he is in your chair right there right now representing the estate on behalf of Stansbury, will file a lawsuit against Ted saying 14:15:38 that he committed most of the egregious acts and he should be apportioned the damages?

A. I wouldn't --

MR. ROSE: Again, I will object. Legal ground is that the estate has no claim against 14:15:49 Ted Bernstein under any circumstances. And for the record, under Section 768.31(c) and 768.31(b)(5), which states that when a party has been dismissed and given a release, there's no claim for contribution, it discharges the 14:16:09 tort-feasor to whom it is given from all

liability for contribution to any other tort-feasor.

Mr. Feaman is in the courtroom, and he can confirm that there's a settlement agreement that includes a release of Mr. Ted Bernstein.

14:16:18

And under 768.81, just for the record, there's no liability if there's apportionment of fault. The jury could award him a billion dollars, put a hundred percent on Ted Bernstein, and the estate pays nothing under 781 --

14:16:29

MR. ELIOT BERNSTEIN: Your Honor --

(Overspeaking.)

THE COURT: I understand the legal implications of 768.81. Next question. Mr. Eliot has approximately three more minutes, and I want him to have his time.

14:16:33

MR. ELIOT BERNSTEIN: Well, that's not enough time, I mean literally. I have requested and shown the reasons why. But okay. And I will say this is more infringement on my due process right, but.

14:16:46

THE COURT: I have absolutely --

MR. ELIOT BERNSTEIN: Okay.

14:16:56

THE COURT: Wait. Wait. I want to say

this. I have always -- I will never be upset by you establishing your record, so that's fine, go on.

BY MR. ELIOT BERNSTEIN:

14:17:05 Q. When did you first read the will of Simon Bernstein, the 2012 will?

A. Shortly after I was appointed as the personal representative.

Q. Did you read a copy or the original?

14:17:16 A. I believe it was a copy.

Q. Why didn't you read the original?

A. Well, the original would be in the court file, and we rely on copies.

Q. Okay. When did you first see the

14:17:36 paragraph in the alleged valid will of my father that makes me a beneficiary as devisee?

A. When I would have read the will I would have seen the children as beneficiaries as to tangible personal property.

14:17:49 Q. So how long have you let Ted Bernstein and Alan Rose falsely claim in the court that I have no standing?

MR. ROSE: Objection, argumentative.

THE COURT: Overruled. You can answer.

14:17:59 THE WITNESS: And I haven't let them do

anything.
BY MR. ELIOT BERNSTEIN:
Q. Well, did you object at the validity hearing when it was said I wasn't a beneficiary of the estate?
14:18:08
A. I am not sure which hearing you are referring to and whether or not I was present.
Q. You weren't present. But the estate, you left and abandoned the estate at that validity hearing, in fact, and left it unrepresented. But
14:18:17
you would have, obviously, opposed any statements like the ones that are full in these pleadings before the Court right now where Mr. Rose is claiming Eliot is not a beneficiary of anything whatsoever? That's incorrect, correct?
14:18:29
A. Sort of a compound question, but I will try to answer it the best I can. Based on what Mr. Rose just said in open court, I am not aware that he is contesting that you are beneficiary of
14:18:44
the Simon Bernstein estate as to tangible personal property.
Q. He said he conceded, which means he changed his entire pleadings, the pleadings before Judge Phillips --
14:18:53
THE COURT: Okay, question. You ask a

question. You don't stand there and --

MR. ELIOT BERNSTEIN: I got you.

(Overspeaking.)

THE COURT: Last question.

14:19:00 MR. ELIOT BERNSTEIN: Well, I have got a few more.

THE COURT: Last question.

BY MR. ELIOT BERNSTEIN:

Q. Have you negotiated a signed settlement 14:19:09 between Stansbury and the estate?

A. No. You mean is there a signed settlement agreement between Mr. Stansbury and the estate?

Q. That Mr. Stansbury signed that you sent to him that you negotiated a settlement between the 14:19:26 estate and Mr. Stansbury?

A. At this point to get some clarity here, because we have had exchanges of correspondence about trying to settle the case. But if you are saying do I have a signed settlement agreement 14:19:39 that's been approved by the Court that's been --

Q. No, I didn't say -- I just asked do you have a signed one by Mr. Stansbury?

A. Again, I'd have to look through my file because I remember exchanging proposals. Whether 14:19:51 or not Mr. Stansbury signed off on one of those,

because we did have a hearing before Judge Colin about approving a settlement. But that was objected to by counsel for the grandchildren, therefore it wasn't approved. So it's possible
14:20:04 there could be something that was signed in that era. But I'd want to look at the file to be sure, if that's what you are referring to.

Q. Okay. So --

THE COURT: All right. That was the last
14:20:16 question.

MR. ELIOT BERNSTEIN: Can I finish that question?

THE COURT: You can finish one more.

MR. ELIOT BERNSTEIN: Okay.

14:20:20 BY MR. ELIOT BERNSTEIN:

Q. In Shirley's trust construction case in relation to Simon's trust you were served a complaint in Shirley's trust, you entered and intervened on behalf of the estate. Did you not at
14:20:35 that time answer your first affirmative defense that Ted Bernstein was not a validly serving trustee of the Simon Bernstein Trust?

A. I'd need to see that. It's possible. I'd need to see the pleading itself.

14:20:47 Q. Okay.

MR. ELIOT BERNSTEIN: I can get that if you'd like, Your Honor.

THE COURT: If you want to hand it to him.

MR. ELIOT BERNSTEIN: Okay. Hold on.

14:20:57 THE COURT: Does anyone have that pleading handy?

MR. ROSE: If I could enlighten you?

THE COURT: Yes. Which pleading are you referencing?

14:21:13 MR. ROSE: No, in the trust --

MR. ELIOT BERNSTEIN: (Inaudible). (Overspeaking.)

THE COURT: No, I asked which pleading you are referencing, and he was just trying to tell

14:21:20 me.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: Do you have the pleading, Mr. Eliot?

MR. ELIOT BERNSTEIN: I am looking for it.

14:21:25 THE COURT: I was just going to ask him if he had the pleading he can show you the pleading if he can get it. Do you know which pleading?

MR. ROSE: I can tell you what it is.

14:21:31 THE COURT: What is it?

MR. ROSE: In the trust construction case Judge Colin ordered that we try the validity of five documents.

THE COURT: Yes, I remember.

14:21:42 MR. ROSE: One of them affected Mr. O'Connell --

THE COURT: I might be able to pull it up from the court file.

MR. ROSE: -- which was the will. So 14:21:46 Mr. O'Connell filed an answer in the case. But then we entered into a stipulation and an order that Mr. O'Connell would abide by whatever Judge Phillips ruled at the trial so that he wouldn't have to sit through a trial and incur 14:21:57 the expense.

THE COURT: Got it.

MR. ROSE: So I think he withdrew his -- he entered into an agreement and he did not pursue any defenses, and the documents were 14:22:04 upheld as valid. It would be his answer filed in, not in the Estate of Simon Bernstein, but I think it's the 2014 3698 case.

MR. ELIOT BERNSTEIN: It's Mr. O'Connell's answer. It's his only affirmative defense, 14:22:22 Your Honor, if you want to look it up. It's

his answer to the Shirley Bernstein Trust, construction complaint on behalf of the estate.

BY MR. ELIOT BERNSTEIN:

Q. Mr. O'Connell, what made you say that?

14:22:34 A. Originally?

Q. Yes.

A. Before it was settled? My review of the Shirley Bernstein Trust.

Q. You said the Simon Bernstein Trust he

14:22:46 wasn't validly serving under?

A. Sorry, Simon Bernstein Trust, correct.

Q. Okay. So now what was it?

A. My review -- originally when that affirmative defense was entered based on my review

14:22:55 of the Simon Bernstein Trust.

Q. You claimed that Ted wasn't validly serving. On what grounds? On what basis?

MR. ROSE: Objection, Your Honor. Under the statute -- it's not relevant. But under

14:23:06 the statute Mr. O'Connell has no, would have had no standing, just like Mr. Bernstein had no standing, and Mr. Feaman has no standing --

THE COURT: Sustained.

MR. ROSE: -- because only the settlor or

14:23:17 the co-trustee or the beneficiary trust can

seek removal.

THE COURT: All right. Let's wrap it up.

MR. ELIOT BERNSTEIN: Well, you are not going to let me ask any more questions?

14:23:23 THE COURT: I am not.

MR. ELIOT BERNSTEIN: Okay. Again, my --

THE COURT: Your objection is so noted for the record.

Okay. Redirect.

14:23:34 MR. FEAMAN: Thank you, Your Honor.

THE COURT: You are welcome, thank you.

MR. ELIOT BERNSTEIN: Oh, excuse me, Your Honor?

THE COURT: Yes, sir.

14:23:42 MR. ELIOT BERNSTEIN: Just one last thing. Do I get to make an opening statement and stuff at this proceeding?

THE COURT: We are way past that.

MR. ELIOT BERNSTEIN: Well, I was late

14:23:52 last time.

THE COURT: And that's why you waived it.

MR. ELIOT BERNSTEIN: So I waived it?

THE COURT: You waived it by being late.

MR. ELIOT BERNSTEIN: Oh, okay.

14:23:58 THE COURT: Okay? Thank you.

MR. FEAMAN: May it please the Court?
THE COURT: Absolutely, thank you.
REDIRECT (BRIAN O'CONNELL)
BY MR. FEAMAN:
14:24:05 Q. Good afternoon, Mr. O'Connell.
A. Good afternoon.
Q. Mr. Eliot actually brought this up when we were here the first time concerning the counts of the Stansbury lawsuit, and I actually thought about
14:24:24 what he had to say. So I would like to follow up and ask you some more questions on the Stansbury lawsuit. If I could hand you a copy of the second amended complaint?
A. Sure.
14:24:38 Q. Okay.
A. I have got it.
Q. And this is the second amended complaint in the lawsuit that is pending where Mr. Rose seeks to become counsel for the estate, correct?
14:24:55 MR. ROSE: If I could, just a brief objection for the record?
THE COURT: For the record.
MR. ROSE: To the extent we are going to argue that we should be disqualified because of
14:25:02 some potential contribution, I would just note

it's not in the papers --

MR. FEAMAN: Move to strike.

THE COURT: I get to hear his entire argument before you get to move to strike anything.

14:25:11

MR. FEAMAN: Yes, ma'am.

THE COURT: I don't know what you are striking.

MR. ROSE: The grounds -- those grounds

14:25:17 aren't in the motion to disqualify our firm as valid or the objection to our retention that's the basis of vacating your order.

THE COURT: Continue.

MR. ELIOT BERNSTEIN: Excuse me, I just

14:25:31 missed that piece. Can somebody read that back? I am sorry.

THE COURT: Sure, I can have the court reporter read back his objection. Thank you.

MR. ELIOT BERNSTEIN: I am sorry.

14:25:38

THE COURT: No, that's all right.

MR. ELIOT BERNSTEIN: I was out there for just a second.

MR. FEAMAN: Response, Your Honor.

THE COURT: I was just waiting to hear the

14:25:48 question. He asked that Mr. Rose's objection

be read back, and I said sure, and I was giving the court reporter the opportunity to read it back.

MR. ELIOT BERNSTEIN: I am sorry, Your Honor.

14:25:58

THE COURT: That's quite all right. Thank you.

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

"MR. ROSE: Those grounds aren't in the motion to disqualify our firm as valid or the objection to our retention that's the basis of vacating your order."

THE COURT: Mr. Feaman, you wanted a response?

14:26:50

MR. FEAMAN: My response is we allege that Mr. Rose has a conflict of interest.

THE COURT: I think that's broad enough. We are talking about the lawsuit he is saying he has a conflict. Let's move on. Overruled.

14:27:01

MR. FEAMAN: Thank you.

BY MR. FEAMAN:

Q. So the lawsuit is case number 13933 in the general jurisdiction division, correct?

A. Correct.

14:27:11

Q. And this is not the first time you are looking at this, correct?

A. Correct.

Q. In fact, you have looked at it in somewhat detail because you and I carried on some serious settlement negotiations, did we not?

A. Yeah, we have over a span of time, yes.

Q. Okay. Let me then first draw your attention to paragraph 26 on page six. Let me know when you are there.

A. I am there.

THE COURT: Hold on. The Court is not there yet. I assume you want the Court to follow along? Does anyone have an objection to me pulling up the complaint?

MR. ELIOT BERNSTEIN: No, ma'am.

MR. FEAMAN: It's public record.

THE COURT: Just for the record.

MR. ROSE: That's fine, or you can have my copy.

THE COURT: Just give me one second. I have got the docket up. And just tell me when it was filed, the amended complaint.

MR. FEAMAN: The amended complaint was served and filed on or about September 3rd,

2013.

THE COURT: Thank you. Got it.

You may proceed, thank you.

BY MR. FEAMAN:

14:28:21 Q. Now, it's alleged there that LIC Holdings and Arbitrage became the alter ego of Simon Bernstein and Ted Bernstein; is that correct?

A. I see that, yes, that language.

Q. Now, LIC Holdings and Arbitrage were two

14:28:36 corporate defendants before -- in this action before they were settled out; is that correct?

A. Correct.

Q. And that was the corporations under which Mr. Stansbury and Mr. Simon Bernstein and Mr. Ted

14:28:48 Bernstein did business, correct?

A. Well, that's what's alleged in here.

Q. Okay. And it says that the allegations are against both Simon Bernstein and Ted Bernstein, correct?

14:29:01 A. Yes, in 26.

Q. And then the last sentence of page six says, "The wrongful action of Simon Bernstein and Ted Bernstein in diverting and converting corporate assets rendered LIC and possibly Arbitrage

14:29:18 insolvent," correct?

A. That's what it says. That's the allegation.

Q. Right. And now you are aware that Mr. Ted Bernstein's deposition has not been taken in this case, correct?

14:29:27

A. I am not sure.

THE COURT: Can I ask you to clarify which case?

MR. FEAMAN: Sorry.

14:29:36

THE COURT: The civil case?

MR. FEAMAN: The Stansbury action.

THE COURT: Thank you.

MR. FEAMAN: Refer to it that way for the record.

14:29:40

THE COURT: Thank you.

THE WITNESS: I don't know either way.

BY MR. FEAMAN:

Q. In fact, are you aware that other than the beginning of the deposition of Mr. Stansbury, that

14:29:48

in the Stansbury action no depositions have yet been taken in that case; are you aware of that?

A. I recall Mr. Stansbury's deposition, but I am not sure what other depositions may or may not have been taken.

14:30:01

Q. If I told you that no other depositions

have been taken, that wouldn't surprise you, would it? You wouldn't have any reason to disagree with that?

A. I don't sitting here without again looking at some more material.

Q. All right. And then could I draw your attention to paragraph 27?

A. Sure.

Q. It says, "Throughout 2009 Simon Bernstein and Ted Bernstein continued to make false statements to Stansbury to hide the fact that LIC and/or Arbitrage was their alter ego in that they converted corporate property and corporate assets of LIC," correct?

A. That's what it says.

Q. Now, assume for me for a moment that discovery shows that in fact most of that conduct was performed by Ted Bernstein. Would you agree that then possibly the Estate of Simon Bernstein could have a third party complaint against Ted Bernstein?

MR. ROSE: Objection, under the same grounds as before. I mean, first of all, the statute prohibits the claim for contribution which would be a third party claim for

contribution.

THE COURT: That's not a legal objection.

MR. ROSE: Also, he is the opposing party in the lawsuit that's pending. I really object 14:31:11 to him asking him his opinion about strategy in the case, which is -- I mean, it's a delicate balance, I understand, but, you know.

THE COURT: Which is why I asked you first if you think Judge Marx should hear this. So 14:31:24 if you want me to hear it, I've got to know what's going on.

MR. ROSE: And I want you to hear it. It would be the same issue in front of Judge Marx. I am saying he is asking him trial strategy. I 14:31:32 understand what they are getting at with this contribution thing. And the reason why I suggest it's completely irrelevant is there is --

THE COURT: Wait a minute. Are you 14:31:39 objecting trial strategy is work product as between attorney and client? Do you see what I am saying? I need a basis.

MR. ROSE: My basis for the record is this is completely irrelevant because it's 14:31:49 undisputed in this record that there's no claim

for contribution which exists. So to ask about a third party claim that doesn't exist I think is an improper question and the objection should be sustained.

14:31:59 THE COURT: I am overruling it. It goes to the weight of the evidence and me deciding overall whether or not there's a conflict. I am going to let him explore his theory, but it all goes to whether or not there's a conflict

14:32:12 that exists.

You may continue.

MR. FEAMAN: And with Your Honor's permission I would just like to state for the record that there's nothing in this record to

14:32:20 support what Mr. Rose has said. Thank you.

BY MR. FEAMAN:

Q. Now, so my question was --

THE COURT: Do you want it read back?

MR. FEAMAN: Yes.

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

"Q. Now, assume for me for a moment that discovery shows that in fact most of that conduct was performed by Ted Bernstein. Would you agree that then possibly the Estate of

Simon Bernstein could have a third party complaint against Ted Bernstein?"

THE WITNESS: I don't know enough to make that analysis sitting here right now because it would have to go through -- actually it would be two contribution statutes, related statutes in Chapter 768 I can think of that one would have to review besides the one that I have been provided.

14:33:18 BY MR. FEAMAN:

Q. Okay.

A. And obviously then take that against what the facts are that you are referencing that might be disclosed in discovery, apply that against the dismissal, release, look at the settlement agreement that was signed, and take an analysis of all of those items, to give you a correct answer to your question.

Q. And you haven't seen the release even, have you?

A. I have talked to Mr. Rose about it. I haven't -- I don't have it in my hands. It's not part of my files.

Q. You haven't made an independent determination outside of what Mr. Rose may have

told you that there might be something in that release which would somehow keep the Estate of Simon Bernstein from suing Ted Bernstein out of the Stansbury lawsuit, correct?

14:34:01 A. I don't know that. I understood it was a confidential settlement.

Q. Okay. So then you don't know; is that correct?

A. It is because, as I just said, I was told

14:34:10 it was a confidential settlement. I inquired of Mr. Rose generally what the terms and conditions was. I looked at the docket. I see the dismissal with prejudice of the parties you referred to before.

14:34:21 Q. And so going back to what the facts might develop, you really don't know yet whether the Estate of Simon Bernstein could sue Ted Bernstein arising out of the conduct alleged in the Stansbury lawsuit, correct?

14:34:35 A. Right. I think I have answered that, but I will say it again. I don't have enough information to apply case law. There's a Supreme Court decision I can think of that deals with contribution that would be relevant here, yeah, a

14:34:50 number of items. But I would have to start with

some sort of a factual basis, looking at documents, what's the nature of the tort, what's the contribution, if it's a contract claim, if there's no contribution, all of those items would have to be looked at because this complaint has contractual claims and it has tort claims.

Q. Right. And assume for me, if you would, that the release would not bar an action by the estate. And assume for me that the facts would support a jury's conclusion as to the truthfulness of what's alleged in paragraphs 26, 27, 28 and 29. Isn't it true that in that event, and I am admitting now that you don't know this yet, but that the estate could have an action against Ted Bernstein?

A. Then I would --

MR. ROSE: I am going to object for the record on multiple grounds, first of which is I can't believe a lawyer in this courtroom who's negotiated a general release --

MR. FEAMAN: Move to strike.

THE COURT: Hold on. One second, please.

MR. FEAMAN: He can object, Your Honor, but he can't make statements like that.

THE COURT: I indicated at the very

beginning, remember point one, that no one was to take a strike at the lawyer. If you want to put on the law, put on the law.

MR. ROSE: Okay.

14:36:06 THE COURT: I am looking at 768.81.

You may proceed with your objection.

MR. ROSE: Can I clarify the point since this is not pled and we are traveling --

THE COURT: Sure.

14:37:01 MR. ROSE: Is there a position taken in this case by the movant that there is not a mediation settlement agreement signed that includes a general release negotiated by counsel at a mediation, including Mr. Feaman

14:37:14 who was the lead counsel for the plaintiff, that includes a general release of all defendants? And if that's an issue, I need to know that just to be on notice of what the issues are in the case so I can be prepared to

14:37:26 meet the evidence that's going to be presented today. I don't think it's too much to ask if that's actually a disputed issue of fact today. And if it is, I would submit to the Court that when we prove the opposite it should reflect on

14:37:39 the credibility of the movant.

MR. FEAMAN: Move to strike --

MR. ROSE: And I have a legal objection after I --

THE COURT: Mr. Feaman, it's the Court's understanding there was a dismissal and a settlement with regards to Ted individually from the Stansbury lawsuit; is that correct?

MR. FEAMAN: That is correct.

THE COURT: All right. Move on, Mr. Rose. That was the basis of your issue, correct?

MR. ROSE: But that included a release. The settlement agreement that was signed included a general release. I didn't know that was a disputed issue of fact.

THE COURT: I don't think it's been raised as a disputed issue of fact.

MR. ROSE: Okay. Then my legal objection is --

THE COURT: I did not believe there was an issue raised that it was a disputed issue. Was in fact I believe there was a release executed in the Stansbury litigation?

MR. FEAMAN: Right.

THE COURT: With regards to Ted Bernstein?

MR. FEAMAN: Correct. Now, there may be a

legal issue as to whether the terms of that --

THE COURT: I was going to say I am not going there.

MR. FEAMAN: Correct.

14:38:35 THE COURT: The question is is there a release?

MR. ROSE: So that's a stipulated fact for the purposes of the hearing?

THE COURT: There are. A release has been

14:38:42 executed. The effect of that release to the Court on this day is not making any determination.

MR. ELIOT BERNSTEIN: Your Honor?

MR. ROSE: And then my legal objection is

14:38:48 the same as it was before under 768.81, 31, sorry.

THE REPORTER: I'm sorry, what?

THE COURT: 768.31.

THE REPORTER: 768.31?

14:38:58 MR. ELIOT BERNSTEIN: Your Honor?

THE COURT: Is that correct? That was off the top of my head. Is that correct?

MR. ROSE: Yes, Your Honor. I apologize, I am not trying to disrupt the proceedings.

14:39:03 THE COURT: That's okay.

MR. ROSE: But I appreciate the clarification.

THE COURT: Very spirited proceedings. That's all right.

14:39:09 Yes, Mr. Eliot?

MR. ELIOT BERNSTEIN: Well, Your Honor, on that settlement in Shirley's estate all parties didn't enter into that settlement.

THE COURT: We are not -- that wasn't --

14:39:16 it was just --

MR. ELIOT BERNSTEIN: Oh, okay.

THE COURT: The only thing was whether or not Stansbury had released Ted.

MR. ELIOT BERNSTEIN: Okay.

14:39:24 THE COURT: That was the only question.

MR. ELIOT BERNSTEIN: None of the beneficiaries know about it.

THE COURT: I kept it very clear --

MR. ELIOT BERNSTEIN: Okay.

14:39:28 THE COURT: -- because I know there's a lot of disputes within that one statement if I go too far.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: You may proceed.

14:39:35 MR. FEAMAN: Thank you, Your Honor.

THE COURT: Mr. Feaman, you may proceed.

MR. FEAMAN: Can you read back my last question?

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

"Q. And assume for me, if you would, that the release would not bar an action by the estate. And assume for me that the facts would support a jury's conclusion as to the truthfulness of what's alleged in paragraphs 26, 27, 28 and 29. Isn't it true that in that event, and I am admitting now that you don't know this yet, but that the estate could have an action against Ted Bernstein?"

14:40:15 MR. ROSE: I object also on the grounds I don't think you ask a fact witness to make assumptions that aren't supported by the record.

THE COURT: I am going to say he is

14:40:32 proposing a hypothetical which is often the case even in medical malpractice and things of that nature. So I will allow it.

Mr. Feaman, go ahead.

BY MR. FEAMAN:

14:40:40 Q. You may answer, sir.

A. Sure. Let's see if we can get to the bottom of this by looking at 768.31(b)(5).

Q. Sure. What's the title of that statute?

A. Contribution Among Tort-Feasors.

14:40:50 Q. Okay. Does it relate to negligence?

A. Actually I think the Florida Supreme Court has ruled in a 1970s case that it applies to all tort actions.

Q. Okay.

14:41:10 A. But I'd have to have that case in front of me.

Q. Well, take a look at Count II, if you would, at page ten. That's a breach of an oral contract against LIC Holdings, Arbitrage, Simon

14:41:38 Bernstein and Ted Bernstein, correct?

A. Right, a contract claim.

Q. Okay. And take a look, if you would, as to Count III.

A. Count III, fraud in the inducement again

14:41:57 as to a contract.

Q. Right. That's an employment agreement against Simon Bernstein and Ted Bernstein, correct?

A. Correct.

Q. Okay. Take a look at Count V. It's page

14:42:10 15.

A. I am sorry, did you say page five or Count V?

Q. Count V. I am sorry, I may have misspoken. Page 15, Count V, that's a civil conspiracy against Simon Bernstein and Ted Bernstein, right?

A. It incorporates Counts III and IV.

Q. Okay. And then take a look at Count VIII, that's unjust enrichment, on page 18, again, against all four defendants, including Simon Bernstein and Ted Bernstein, correct?

A. That's what it says.

Q. Okay. And you cannot say with certainty as you sit here today that under no circumstances would the estate ever have a claim against Ted Bernstein arising out of this Stansbury action, can you?

A. I can't say with a hundred percent certainty. But based on if there's a release, there's a settlement, under the statute that I have given you, there's no contribution, which I believe is the topic we are debating here.

Q. Well, let's move on from contribution to allowing a jury to apportion percentages of fault. That certainly would be allowed, would it not, on a

jury verdict form --

MR. ROSE: Objection.

BY MR. FEAMAN:

Q. -- without a claim for contribution?

14:43:34 THE COURT: Legal objection?

MR. ROSE: Legal objection is that that statute does not impose liability on the person based on the percentages of fault. Specifically that statute, as Your Honor is

14:43:47 well aware, liability is only apportioned on the defendant. In the non-party defendants they can be a hundred percent liable that there's no --

THE COURT: I know, but your objection is

14:43:56 interpreting the statute. Do you have a different legal objection?

MR. ROSE: It's a completely irrelevant question as to this line of questioning is irrelevant on that basis. It's a fiction. We

14:44:07 are doing this whole hearing based on a fiction that there's some claim that doesn't exist, based on negligence that doesn't exist under the statute.

MR. FEAMAN: Goes to weight, not

14:44:19 admissibility, Your Honor.

THE COURT: I got to agree it goes to the weight whether or not it could actually be added as a nonparty defendant under the various claims, whether -- I am not going to say anything else. Based on the objection as you have raised it I will overrule it.

MR. FEAMAN: Could you read it back, please?

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

"Q. Well, let's move on from contribution to allowing a jury to apportion percentages of fault. That certainly would be allowed, would it not, on a jury verdict form without a claim for contribution?"

THE WITNESS: And are you talking about what's -- I assume you are talking about what's pled in the second amended complaint?

BY MR. FEAMAN:

Q. Yes.

A. I think the problem there is you don't have a negligence count.

Q. You've got an unjust enrichment count, correct?

A. I don't count that as a negligence count.

THE COURT: Mr. --

MR. FEAMAN: Okay. I will move on, Your Honor.

THE COURT: Thank you.

14:45:34 BY MR. FEAMAN:

Q. Now, the reference to LIC Holdings and Arbitrage, those are two entities that during Mr. Simon Bernstein's lifetime and that of Ted Bernstein they each owned at least 45 percent each

14:45:50 and possibly 50 percent each at the time of Mr. Simon Bernstein's death, correct?

A. That I am not sure what the exact ownership percentage was at that point.

Q. Okay.

14:46:02 A. That would be a guess, and I am not going to guess.

Q. And have you investigated whether Mr. Ted Bernstein, who kept running the corporations after Simon Bernstein's death, made any payments to the

14:46:16 estate as a result of renewal commissions that might have been paid --

MR. ROSE: Objection.

BY MR. FEAMAN:

Q. -- to Simon Bernstein?

14:46:25 THE COURT: Before you object I need to

hear the whole question.

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

MR. FEAMAN: Okay.

14:46:31 THE COURT: I need you to say it again. I lost it.

MR. FEAMAN: Sure. Read it back again.

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

"Q. And have you investigated whether Mr. Ted Bernstein, who kept running the corporations after Simon Bernstein's death, made any payments to the estate as a result of renewal commissions that might have been paid

14:47:05 to Simon Bernstein?"

MR. ROSE: Objection as to relevancy and materiality. It's beyond the scope of examination.

THE COURT: Sustained. Next question.

14:47:11 BY MR. FEAMAN:

Q. Now, Mr. Rose represents Mr. Ted Bernstein, correct?

A. In different capacities in different proceedings.

14:47:21 Q. Okay.

A. In the call it the Bernstein matters, yes.
Q. Okay. And you are aware that both Simon and Ted were running Arbitrage and LIC at the time that Mr. Simon passed away, correct?
14:47:38 A. I know these entities involved the father and son at various and sundry times.
Q. Okay.
A. I don't have any, of course, personal knowledge of that. A lot of what I have been told
14:47:53 is that.
Q. Did you make an investigation as to whether as a result of money that came in to LIC or Arbitrage after Mr. Simon Bernstein's death should have been payable to Mr. Simon Bernstein, but now
14:48:08 that he would be dead the estate, such that the estate if those monies weren't paid would then have a claim against Ted Bernstein?
MR. ROSE: Objection, same relevancy and materiality, beyond the scope.
14:48:21 THE COURT: Sustained.
MR. FEAMAN: May I respond, Your Honor?
THE COURT: Sure.
MR. FEAMAN: If there's a potential that the estate could have a claim against Ted
14:48:30 Bernstein for corporate misconduct after

Mr. Bernstein dies, because the corporations may owe Mr. Simon Bernstein some money, that's also potential conflict of interest between Mr. Rose and now representing the estate.

14:48:43 THE COURT: Okay. That's argument. What you just said that's your argument, but it is beyond.

MR. FEAMAN: That's my respectful response to your ruling.

14:48:55 THE COURT: No, I understand.

MR. FEAMAN: Okay.

BY MR. FEAMAN:

Q. Do you know what happened to the commissions that Simon Bernstein was to receive

14:49:06 after his death?

MR. ROSE: Objection, same objection.

THE COURT: I don't want to try that lawsuit now, okay? Thank you.

MR. FEAMAN: May I approach, Your Honor,

14:49:18 to grab an exhibit?

THE COURT: Absolutely. They are all up here for you.

MR. ROSE: While he is doing that, for scheduling purposes how much time do we have

14:49:31 for today?

THE COURT: Until 4:30.

MR. ROSE: Thank you.

MR. ELIOT BERNSTEIN: Your Honor, did you get my exhibit list that I gave you last time?

14:49:35 THE COURT: I have your binder. But these are exhibits entered into evidence he is looking through. These were entered at the last --

MR. ELIOT BERNSTEIN: Already.

14:49:44 THE COURT: Yes. They've already been entered. The Court was holding them.

MR. ELIOT BERNSTEIN: My confusion, thank you.

THE COURT: No.

14:49:50 MR. ELIOT BERNSTEIN: Just didn't see it there.

THE COURT: Here's your book.

MR. ELIOT BERNSTEIN: Oh, no, don't lift it.

14:50:00 THE COURT: It's got the colored tabs.

MR. ELIOT BERNSTEIN: Yes.

MR. FEAMAN: Your Honor, let the record reflect that I am handing Your Honor a copy of Exhibit 1, Rose Exhibit 1, so that you can read

14:50:08 along.

THE COURT: Thank you.
MR. ROSE: That's Trustee Exhibit 1 for the record.
THE COURT: I can look at my exhibit list.
14:50:17 MR. ROSE: I don't want the record to suggest there was a Rose exhibit that wasn't in evidence.
THE COURT: I have this as Stansbury. Stansbury entered all of these 1 through 8 are
14:50:33 without objection. The trustee --
MR. FEAMAN: This would be -- it's marked as Trustee's Exhibit 1.
THE COURT: The PR waiver?
MR. FEAMAN: Yes.
14:50:43 THE COURT: That was Trustee's Number 1.
MR. FEAMAN: Yes. I am handing that to the witness, Your Honor.
THE COURT: Thank you. I was just checking my exhibit list.
14:50:50 MR. FEAMAN: Okay.
BY MR. FEAMAN:
Q. Now, the Trustee's Exhibit 1 was that prepared by you?
A. My office, yes.
14:51:03 Q. Was there a draft prepared for you by

Mr. Rose?

A. Yes.

Q. And --

A. I made extensive revisions to it.

14:51:15 Q. I would like to draw your attention to page two of Trustee's Exhibit 1. In the middle of the page, the third paragraph that begins with "I have been advised," do you see that?

A. Yes.

14:51:30 Q. Okay. And it says, "I have been advised that Mrachek --" and you are referring for the record that's Alan Rose's firm, correct?

A. Correct.

Q. Okay. "I have been advised that Mrachek

14:51:43 represented those defendants."

What defendants are you referring to there?

A. That would be the defendants with whom the I will call it the settlement was reached with

14:51:55 regard to this matter.

Q. With regard to the Stansbury litigation?

A. Stansbury litigation.

Q. Is that what you were referring to there?

A. Stansbury litigation, yes.

14:52:05 Q. Okay. "And the position taken is not in

conflict or adverse to the estate's position;" do you see that?

A. I see that.

Q. Okay. So that's what they told you?

14:52:16 A. Well, that was part of the discussion that I had with Mr. Rose. And, of course, from looking at the lawsuit itself the interest of the estate is to pay as little as possible to your client, which is also the position that's being advocated by

14:52:32 Mr. Rose. And was his position when he was representing the defendants who were dismissed as a result of your settlement.

Q. Would you agree with me in this waiver that there's nowhere that you take that position,

14:52:47 but the only place you make reference to there not being in conflict with at least the ongoing lawsuit that Stansbury has with the Mrachek firm representing the estate is that one sentence?

A. Just give me one moment just to look at

14:53:07 page three.

Q. Sure.

A. That's the primary section that would deal with conflict or uses the terminology of conflict --

14:53:20 Q. All right.

A. -- besides the last sentence.

Q. All right. And would you agree with me that your statement here makes absolutely no reference to Mrachek's, the Mrachek firm's activity on behalf of Ted Bernstein in what we call the Chicago litigation, whereas you saw there was a deposition admitted into evidence in this proceeding that shows Mr. Rose representing Mr. Ted Bernstein in that deposition in the Chicago action? Would you agree with me that your statement here makes no reference to any potential conflict that might create between the Mrachek law firm and the estate?

A. Well, the language here doesn't make any reference to the Chicago litigation and the estate, that's correct. But there's no involvement either past, present or future contemplated by Mr. Rose representing the estate in connection with the Chicago litigation.

Q. No involvement --

MR. ROSE: I would object before -- I waited until he finished the question. This has now vastly exceeded the length of his direct examination and it's very --

THE COURT: You do need to wrap it up.

MR. ROSE: -- argumentative.
THE COURT: I am not handling the argument.
MR. ROSE: I know.
14:54:39 THE COURT: We need to --
MR. FEAMAN: Thank you. Just one follow-up on that.
THE COURT: Absolutely.
BY MR. FEAMAN:
14:54:46 Q. You said no involvement past. Okay. But are you not aware of the deposition that Mr. Rose attended and appeared on behalf of Ted Bernstein in that Chicago litigation where he made objections and even instructed Mr. Bernstein not to answer a
14:55:02 question in that litigation?
A. I think you might not have heard my whole answer.
Q. Okay.
A. Regarding representing the estate. I am
14:55:10 talking about Mr. Rose not having any involvement in the Chicago litigation representing the estate.
Q. But he certainly had involvement in the Chicago litigation representing Ted Bernstein who is suing the estate, correct?
14:55:23 MR. ROSE: Objection, cumulative.

THE COURT: I will allow it. Just answer the question.

THE WITNESS: I just recall that based on this deposition that, yes, went into evidence earlier he represented Ted Bernstein as a witness in a deposition.

14:55:33

THE COURT: This is the Court being just particular about the exhibits. Is this an extra copy for me that you gave me or was it the actual exhibit?

14:55:42

MR. FEAMAN: The actual exhibit is in front of the witness.

THE COURT: Okay. Thank you. I just wanted to make sure before I put it with my notes. Thank you.

14:55:51

MR. FEAMAN: I am almost done, Your Honor.

THE COURT: Thank you.

BY MR. FEAMAN:

Q. Now, going back to your statement that's Trustee's Exhibit 1.

14:56:00

A. Okay.

Q. Right here.

A. Got it.

Q. I want to draw your attention to the third paragraph of page two.

14:56:14

A. Yes, I am there.

Q. You state that "Some of the direct and indirect beneficiaries of the estate I am administering advise me," and then continuing on, "the beneficiaries wanted Mrachek to represent the estate in the Stansbury lawsuit."

So that gets me to ask the question, if only some of them, who is not consenting? Obviously we know Mr. Eliot Bernstein who we have already established is a beneficiary of the Simon Bernstein estate. Who else in addition to Mr. Bernstein if only some want Mr. Rose and his firm to come in?

A. I am not aware of any objections from anyone other than Mr. Eliot.

Q. Do you have any in writing, any consents in writing from anybody?

A. I am not sure. There could be e-mail correspondence on this. That I am not positive.

Q. You didn't actually take the time to have people sign consents, did you?

A. Not formal consents.

Q. Okay.

A. That's why my best recollection this was discussions, perhaps e-mails, but probably more

likely telephonic discussions with the various counsel.

Q. And when you say indirect beneficiary, would you be referring to one of the grandchildren?

14:57:47 A. Correct, contingent type beneficiaries.

Q. Eliot's?

A. Yes, that's the reference.

Q. All right. Now, have you ever made an investigation as to whether any of Eliot's children

14:57:56 have actually reached the age of capacity and are no longer minors?

A. Again, I'd need to look at the file. He might have one child who is an adult.

Q. Okay. So if he has one child that's an

14:58:13 adult, then a consent from the guardian ad litem as to his position would no longer be valid, would it?

MR. ROSE: Objection, I think it calls for a legal conclusion.

14:58:21 THE COURT: Sustained.

MR. ROSE: I'd like to be heard.

THE COURT: Sustained.

MR. ROSE: Thank you.

MR. FEAMAN: No further questions.

14:58:25 THE COURT: Thank you. All right.

MR. ROSE: I only have one redirect.

THE COURT: Well, you would be allowed to call him in your case in chief.

MR. ROSE: That's fine.

14:58:35 THE COURT: Mr. O'Connell, let me ask that you get off the stand at this time.

THE WITNESS: Yes, Your Honor.

MR. ELIOT BERNSTEIN: Can I redirect a question or two?

14:58:50 THE COURT: I didn't let him do it, so, no, I am not letting you do it. I did not let Mr. Rose do the same thing you are asking me to do. That's what he asked me to do.

MR. ELIOT BERNSTEIN: He is allowed to

14:58:58 call him back up as part of the proceeding, you said?

THE COURT: No, we are done with this witness now. So we are going to proceed to the next witness in Mr. Feaman's case. But we are

14:59:07 going to take six minutes because I have to use the restroom. Thank you.

(Witness excused.)

(A recess was taken.)

THE COURT: Mr. Feaman, are you ready to

15:04:39 proceed with the next witness?

MR. FEAMAN: I have a few questions of Mr. Rose.

THE COURT: Okay.

MR. ROSE: I guess I can't object to being called as a witness.

15:04:48

THE COURT: I think in this proceeding for the very limited purpose of his representation, I think that if we keep it limited to that, which is what the motion is about, clearly I don't expect or anticipate that Mr. Feaman will be asking about strategy or anything like that. It would be for the limited purposes of representation. If we go beyond then you are going to have to object on your own behalf.

15:05:05

15:05:17

MR. ROSE: I'd like permission to object on my own behalf.

THE COURT: That's what I said, you have to. I don't know how else to proceed.

MR. FEAMAN: I have no objection.

15:05:24

THE COURT: Okay.

MR. ROSE: And then I also -- just to be very -- you know, I'd object to Eliot being able to cross-examine me or at least request that the Court give him very narrow latitude.

15:05:36

THE COURT: He will have the same latitude

as Mr. Feaman. It will be strictly related to whether or not he represents various parties, the extent of his representation of parties. That is the limits of Mr. Rose being allowed to be questioned, because he is still counsel, and the only issue is representation. You don't have to believe him. You don't have to like it. But it's limited to that. Fair enough?

MR. ROSE: Fair enough.

15:06:02 THE COURT: Fair enough, Mr. Feaman?

MR. FEAMAN: Yes.

THE COURT: Fair enough, Mr. Eliot?

MR. ELIOT BERNSTEIN: I am not sure.

THE COURT: Okay. That's honest.

- - -

Thereupon,

ALAN B. ROSE,

a witness, being by the Court duly sworn, was examined and testified as follows:

15:06:10 THE WITNESS: I do.

THE COURT: Have a seat. Again, see, the Court's a little nervous about this one, so go ahead.

///

///

DIRECT (ALAN B. ROSE)

BY MR. FEAMAN:

Q. Please state your name.

A. Alan Rose.

15:06:20 Q. By whom are you employed?

A. I am employed by the law firm Mrachek, Fitzgerald, Rose, Konopka, Thomas and Weiss.

Q. And for how long?

A. Sixteen years plus.

15:06:33 Q. Okay. Now, you are aware that in the Chicago litigation that the Estate of Simon Bernstein was not originally a party to that litigation, correct?

A. Correct.

15:06:50 Q. And you are aware that at some point the estate, as shown by the exhibits here today, intervened in that litigation, correct?

A. Yes, but if I can explain?

MR. FEAMAN: It's just yes or no so we can

15:07:07 move on, Your Honor.

THE COURT: I know the facts.

THE WITNESS: Okay.

MR. FEAMAN: Okay. Just want to set a predicate.

15:07:12 THE COURT: Yes.

BY MR. FEAMAN:

Q. And would you agree with me, Mr. Rose, that when a motion was filed to allow the estate, Ben Brown was the curator then, do you recall that, 15:07:23 to allow the estate to intervene and Ben Brown was the curator, and there was a motion filed in front of Judge Colin, correct?

A. Technically I think what happened was you filed a motion to appoint an administrator ad litem 15:07:41 for the Chicago action, and the judge appointed Ben Brown as the administrator ad litem.

Q. Okay.

A. And I objected on behalf of the trustee.

Q. And you objected on behalf of the trustee 15:07:53 when there was a motion filed to obtain the Court's permission to in fact intervene in the Chicago lawsuit, correct?

A. I don't understand exactly. What I did was on behalf of the trustee we did not want the 15:08:12 estate's money being spent in Illinois in a lawsuit. We had a hearing, and Judge Colin allowed the intervention conditioned on Mr. Stansbury paying it. And once Mr. Stansbury was paying the expenses, so therefore there's no risk to the 15:08:26 estate, it is a great deal and I am in favor of it,

and I have not been involved beyond that.

Q. So on behalf of the trustee, you are talking about Ted Bernstein as the trustee which is the pour over trust to the Simon Bernstein estate, correct?

15:08:41

A. Correct, Ted Bernstein as the trustee of the trust which is the sole residuary beneficiary of this estate.

Q. Right. So on behalf of Ted Bernstein trustee you did not want the estate to intervene to make a claim toward the $1.7 million dollars in Chicago in that case where Ted Bernstein is an individual plaintiff on his own in that case, correct?

15:08:49

15:09:03

A. I disagree.

Q. He is not an individual plaintiff in the Chicago lawsuit?

A. No, that's not the part I disagreed with. The part I disagreed with was I disagree with the what you called the intent. My concern is the person who's a witness of material information in the Illinois case, who I had spoken with and whose testimony I believe convinced me that the estate has a non-winning case, which is free to pursue so long as it doesn't deprive the beneficiaries of

15:09:12

15:09:29

their remaining limited assets, which is not happening now that Mr. Stansbury is funding the litigation.

So I don't agree that the motive of why we 15:09:42 objected is what you did. We did not object to them intervening per se. Only we objected to the further drain of the very limited resources of this estate.

Q. Sure. And now in fact, though, you are 15:09:54 aware that the attorney up in Chicago representing the estate is now even willing to take it on a contingency, isn't he?

A. I don't understand -- I don't know the answer to that.

15:10:08 Q. Okay.

A. And I didn't understand the question because it had a double negative.

Q. Well, you said it was a non-winner of a case. Are you aware that the attorney in Chicago 15:10:16 now wants to take the case on a contingency whereby nobody would risk any money?

A. I am aware that Mr. O'Connell has filed a motion asking for that relief, which we oppose.

Q. Okay. And you oppose on behalf of the 15:10:29 trustee?

A. Correct, and the beneficiaries.

Q. Okay. And that's the same person that you represent is the same person who is the plaintiff in Chicago, correct?

15:10:37 A. Well, that's the next motion we are going to decide after this hearing, but -- and the judge will decide the issue.

Q. I just want to establish and then I am done. I just want to establish that you

15:10:47 represented Ted Bernstein as the successor trustee to the pour over trust, not wanting the estate to intervene in a case where that same client that you represent was a plaintiff opposing the estate in Chicago; is that correct?

15:11:03 A. I don't think that's an accurate statement. And I think Mr. O'Connell was aware of all that when he consented to our representation.

Q. And one more thing. You were here in the court when Mr. O'Connell said that Mr. Bernstein,

15:11:19 Eliot, Mr. Eliot was a beneficiary of the Estate of Simon Bernstein, correct? Correct? It's a perfunctory. You heard him say that?

A. I didn't -- I blanked out on the question.

THE COURT: That's okay.

15:11:35 THE WITNESS: I apologize.

THE COURT: That's okay. We'll just have it read back.

THE WITNESS: I was thinking about something else.

15:11:38 THE COURT: That's okay. Let's have the question read back.

BY MR. FEAMAN:

Q. You were here when Mr. O'Connell said that Mr. Eliot is a beneficiary of the Simon Bernstein

15:11:47 estate, correct?

A. I was here when he said it. I have said it. I don't dispute it. I have told the judge that. I don't understand. For tangible personal property.

15:11:55 Q. Okay.

THE COURT: What am I being handed?

BY MR. FEAMAN:

Q. I am handing you a pleading that you filed in September 2015 entitled Trustee's Omnibus Status

15:12:08 Report and Request for Case Management Conference. And the very first page you said, relating to Mr. Eliot, he is not a named -- he is not named as a beneficiary of anything. And it's in the Estate of Simon Bernstein. So my question is when did you

15:12:25 suddenly become aware that he is a beneficiary of

the estate?

A. That sentence is -- I now see that sentence is technically wrong. It's not -- I am talking about where the money is and the money is in the trust. He is not a beneficiary of the trust. I may have made a misstatement.

THE COURT: Are you asking me to take this into evidence?

MR. FEAMAN: Yes.

15:12:45 THE COURT: Objection?

MR. ROSE: No. It's in the court file.

THE COURT: I know. Let me just mark it.

MR. FEAMAN: No further questions.

THE COURT: All right.

15:12:55 MR. ELIOT BERNSTEIN: Can I?

THE COURT: Not yet. I can only mark and think in small little doses.

And am I missing any exhibits up here, Mr. Feaman?

15:13:09 MR. FEAMAN: I don't believe so, Your Honor.

THE COURT: You had given Mr. O'Connell an original. I just want to make sure it's returned. I am very particular. I make myself

15:13:18 nuts. But nonetheless, we are stuck with me.

It was Number 1, the waiver. Did the original waiver come back?

MR. FEAMAN: Yes, Your Honor.

THE COURT: Okay. Thank you. All right. So Number 9 is entered into evidence.

(Claimant Stansbury's Exb. No. 9, Pleading.)

THE COURT: Limited to what he discussed, Mr. Eliot.

MR. ELIOT BERNSTEIN: Your Honor, I kind of object that I didn't have time to prepare. I didn't know this would be a witness today. It wasn't on the witness list.

THE COURT: So noted.

MR. ELIOT BERNSTEIN: No time to prepare proper questioning.

THE COURT: Okay.

MR. ELIOT BERNSTEIN: So I am just going to wing it for a moment.

CROSS (ALAN B. ROSE)

BY MR. ELIOT BERNSTEIN:

Q. Mr. Rose, can you state your name and address for the record.

THE COURT: We already had that.

MR. ELIOT BERNSTEIN: Oh, okay.

BY MR. ELIOT BERNSTEIN:

Q. Your Florida Bar number?

A. It's in evidence in every paper I file.

Q. You don't know it?

15:14:19 A. I do know it, 961825.

Q. Thank you.

You said to the Court today that Judge Phillips entered an order from the validity hearing stating that I was not a beneficiary and had no

15:14:37 standing; is that correct?

A. The validity trial resulted in a final judgment. Thereafter there were a series of hearings before Judge Phillips where he made what I would call follow-on rulings that would implement

15:14:53 the result of the final judgment dated December 15, 2015.

Q. Well, you actually claimed to the Court repeatedly that Judge Phillips on December 15th ruled that, and you actually led the judge to

15:15:10 believe that and she said, oh, I am relying on that order.

MR. ELIOT BERNSTEIN: I urge you, Your Honor, to look up on that order on that validity hearing --

15:15:17 THE COURT: We are going past --

(Overspeaking.)

MR. ELIOT BERNSTEIN: Oh, it's very central to this, meaning that he made a statement to the Court today --

15:15:23 THE COURT: Please, next question. Next question.

BY MR. ELIOT BERNSTEIN:

Q. Has there been a construction hearing of who the beneficiaries are in any of these cases?

15:15:32 A. There was a final judgment that resolved --

Q. Yes or no to the question. Was there a construction hearing in any of these cases?

A. The construction matter that's in Count I

15:15:45 has been settled by agreement of all the beneficiaries.

Q. And I am a beneficiary?

A. You are not a beneficiary of the trust, the Shirley Bernstein Trust, which was the sole

15:15:57 subject of the construction proceeding. The only thing relevant to the estate that was tried in this case number 3698 was the narrow issue of whether Simon Bernstein's will dated July 25, 2012, was valid and enforceable according to its terms.

15:16:13 Q. So there has been no formal construction

hearing? You are basing it off of a validity hearing?

A. There's nothing to construe with the will. The will has never been challenged. Well, you have challenged that the will is valid, but no one has said that the will needed any construction. And the only issue that needed some construction was inside the Shirley Bernstein Trust. Before Judge Colin would allow that issue to be heard, he wanted a narrow issue tried, which is which documents were valid so that we didn't construe a trust that he later determined was invalid. And once he ruled that and we had a guardian ad litem appointed to protect the trust interests of all the beneficiaries who were being represented by you, then everyone entered into a mediated settlement agreement that is one of the motions we are going to seek approval for later today, including the court-appointed guardian ad litem.

Q. Is your answer no, there was no construction hearing in any of these cases?

A. I think I have answered your question.

Q. You haven't.

THE COURT: Okay. Let's move on because this is about whether or not --

MR. ELIOT BERNSTEIN: Well, can I get an answer to the question or show that he is nonresponsive?

THE COURT: He did answer.

15:17:19 MR. ELIOT BERNSTEIN: Well, he didn't. He answered something else.

THE COURT: Don't argue with me, please. I understood. Certain things have been determined and certain things haven't been

15:17:27 determined.

MR. ELIOT BERNSTEIN: Well, he is misrepresenting what was determined, and that's a serious problem.

THE COURT: Mr. Eliot?

15:17:31 MR. ELIOT BERNSTEIN: And it's exactly moved to --

THE COURT: Mr. Eliot? Mr. Eliot?

MR. ELIOT BERNSTEIN: Yes, ma'am.

THE COURT: Remember I said you don't have

15:17:36 to like his answers?

MR. ELIOT BERNSTEIN: Oh, okay.

THE COURT: You don't have to like them.

MR. ELIOT BERNSTEIN: I just want the truth. Okay.

///

BY MR. ELIOT BERNSTEIN:

Q. At that validity hearing was the estate represented by counsel?

A. As I explained earlier, Mr. O'Connell entered into a stipulation that was, I think, approved by Judge Colin or Judge Phillips that he did not need to attend the hearing; he would abide by the ruling to conserve resources.

So Mr. O'Connell was not technically there. But what I was doing and what Ted Bernstein as trustee was doing, we were advocating the validity of the documents. So we were asserting the position that Mr. O'Connell would have wanted to assert, which is that the will was valid. So he wasn't -- technically the estate wasn't represented but their interests were being pushed by the movant, the complainant, the plaintiff.

Q. Did you have a construction hearing in Simon Bernstein's estate to determine the beneficiaries?

A. It was not necessary.

Q. Okay. To your knowledge has Ted Bernstein ever notified who you claim the beneficiaries are, the grandchildren, that they are beneficiaries?

A. Under the terms of Simon Bernstein's trust

and also under his power of appointment, he appointed the assets of the Shirley Bernstein Trust into his trust to be distributed on the same terms. The beneficiaries, technically ten trusts, none of
15:19:06 the grandchildren are individually beneficiaries. There are ten trusts created. Each trust needs a beneficiary. And because we don't have a beneficiary for three of the trusts that Eliot refused to serve, there's a guardian ad litem
15:19:18 appointed. But none of the grandchildren are individually beneficiaries. They are indirect beneficiaries through trusts created under Simon's testamentary documents.

THE COURT: Understand.

15:19:27 BY MR. ELIOT BERNSTEIN:

Q. Okay. Under those testamentary documents do you have those trusts for each of the grandchildren?

THE COURT: Mr. Bernstein?

15:19:34 MR. ELIOT BERNSTEIN: Yes.

THE COURT: Mr. Eliot, I am sorry, this is about whether we remove him or not. It's not -- it's like, in other words, you are getting into bigger issues and fights that are for a
15:19:44 later day.

MR. ELIOT BERNSTEIN: Okay. Okay. I got it.

THE COURT: We've got to stay on Mr. Feaman's, Mr. William Stansbury, he shouldn't represent.

15:19:50

MR. ELIOT BERNSTEIN: Okay.

BY MR. ELIOT BERNSTEIN:

Q. Were you party to the negotiated settlement with Mr. Stansbury?

15:20:02

A. I am aware that there --

Q. Yes or no?

A. I am not a party to it.

Q. Were you a party to the settlement? Were you there at the settlement with Mr. Stansbury?

15:20:11

A. Well, I am saying -- I was answering I am not a party to it. But I am aware there were settlement discussions. I have encouraged settlement discussions that Mr. Stansbury has. He entered into, I think, one agreement that was --

15:20:26

MR. FEAMAN: Objection. If the question talks of -- the settlement was at a mediation. So if the settlement with regard to Mr. Bernstein and some of the other defendants by Mr. Stansbury in the Stansbury action, if

15:20:39

it's questions about what happened at the

mediation, I would object because that's confidential.

THE COURT: Let me --

MR. ELIOT BERNSTEIN: I am just asking if he was there.

15:20:46

THE COURT: Whether or not he was there is not confidential. Let me clarify something that may be kicking up a little. He is not a party. He might be an attorney for a party.

15:20:56

MR. ELIOT BERNSTEIN: A person, sorry.

THE COURT: No, I am only saying because some of what you may interpret as being defensive is just he is not a party, just like no other lawyer is a party to a lawsuit.

15:21:07

MR. ELIOT BERNSTEIN: Right.

BY MR. ELIOT BERNSTEIN:

Q. Were you a person at the settlement?

THE COURT: And also let me also tell you Mr. Feaman is correct and on point that you can ask if he was present. Those negotiations are confidential under law.

15:21:17

MR. ELIOT BERNSTEIN: I am not going to ask that.

THE WITNESS: I think my answer does not involve anything that happened at mediation.

15:21:26

If Mr. Bernstein would just step slightly to the side, Mr. Feaman can correct me if I am wrong. But I believe there was a written settlement agreement between Mr. Stansbury and Mr. O'Connell as the personal representative that was presented to the Court that has nothing to do with the mediation.

BY MR. ELIOT BERNSTEIN:

Q. No, I am talking about the Shirley trust settlement, not the Simon settlement that you also negotiated?

A. Was I present? I attended a mediation.

THE COURT: Okay.

BY MR. ELIOT BERNSTEIN:

Q. Did you represent any parties at that mediation?

THE COURT: Settlement discussions and who he represented -- I am --

MR. ELIOT BERNSTEIN: I just need to know which parties he represented --

THE COURT: I know, but --

MR. ELIOT BERNSTEIN: -- to show a conflict, Your Honor.

THE COURT: Not at the mediation. You can pick another thing. If he is in court, if he

is at a discovery.
BY MR. ELIOT BERNSTEIN:
Q. Did you represent any parties in the settlement?
15:22:21 THE COURT: Place your objection on the record.
MR. ROSE: I am concerned that --
THE COURT: He could also violate attorney/client privilege.
15:22:30 MR. ELIOT BERNSTEIN: I am not going to ask him any questions about the settlement.
THE COURT: I know. But the -- I understand you are not trying to go outside the bounds. I am going to ask you to ask another
15:22:39 question because I don't want to put him in a position of violating.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: But at the same time I am trying to have your --
15:22:47 MR. ELIOT BERNSTEIN: Got you.
THE COURT: And if you could stick to things that happened in court, because things that happened in court are public record.
BY MR. ELIOT BERNSTEIN:
15:22:57 Q. Do you represent Ted Bernstein as a

defendant in the Stansbury action?

A. I do not. I did at one point in time.

Q. Did you also simultaneously represent Ted Bernstein as the trustee for the Shirley Bernstein Trust?

15:23:18

A. I did represent Ted Bernstein as the trustee of the Shirley Bernstein Trust in the Stansbury litigation defending the interests of the trust, just as we proposed to defend the interests of the estate. And I represented Ted Bernstein as trustee of the Shirley Bernstein Trust in proceedings in the probate court, various proceedings.

15:23:33

Q. Okay. You stated today that you had consent of all the beneficiaries. And Mr. Feaman adequately asked you, am I a beneficiary of the Simon estate? Yes or no? I don't need an explanation.

15:23:45

A. The question has a --

MR. FEAMAN: Objection, asked and answered.

15:24:09

MR. ELIOT BERNSTEIN: (Inaudible).

(Overspeaking.)

THE REPORTER: Excuse me.

MR. ELIOT BERNSTEIN: Sorry.

MR. FEAMAN: Object, asked and answered.
THE WITNESS: I did not --
THE COURT: Sustained. It's been established that you are a tangible beneficiary of the Simon Bernstein estate.
15:24:16
MR. ELIOT BERNSTEIN: Actually I don't think there's a term tangible beneficiary. I am a beneficiary of tangible property; is that correct, for the record?
15:24:27
THE COURT: That is correct, you actually did correct me.
MR. ELIOT BERNSTEIN: Got to be careful, because that's -- there's a misinterpretation going on.
15:24:34
BY MR. ELIOT BERNSTEIN:
Q. Okay. You said you had consent of all beneficiaries to move forward on this settlement or to have Ted come into this case. Do you have my consent as a beneficiary?
15:24:48
A. I think what we said was they had the consent of the direct and indirect beneficiaries of the trust. I think what it actually says is that Mr. O'Connell has the consent of the beneficiary, which is Ted Bernstein as trustee, who is the residuary beneficiary. And then all the indirect
15:25:05

beneficiaries who are the trustees of the ten trusts, which is there are seven trusts for grandchildren whose trustee is their parent who have consented, and there are three trusts for Eliot's children whose guardian has consented.

15:25:22

So the statement was intended to state that consent was obtained from the direct beneficiary -- residuary beneficiary, all of the indirect beneficiaries. And in addition -- well, that's....

15:25:44

Q. Were you aware at the time of the guardianship hearings that gave Diana Lewis guardianship power of my children that one of the children was an adult child over the age of 18?

15:26:00

A. As I have explained, Your Honor, our view of the interests and who are technically the beneficiaries being trusts, it's also that issue was appealed and the appeals have been dismissed at the Fourth and at the Supreme Court. So I don't think we are relitigating the issue of guardian ad litem.

15:26:14

THE COURT: Okay. I want you to wrap up this line of questioning because it was very limited. One more question.

15:26:21

MR. ELIOT BERNSTEIN: Okay.

BY MR. ELIOT BERNSTEIN:

Q. So are you saying unequivocally that you have consent of all the beneficiaries to Ted Bernstein representing the estate of Simon, not the trusts, the estate of Simon?

15:26:34

A. Well, I don't have your -- of everyone, you would be the one person if we needed your --

Q. Yes or no, do you have consent of all?

THE COURT: Do not raise your voice. Do not raise your voice.

15:26:51

MR. ELIOT BERNSTEIN: I am sorry, it's getting difficult with these side tracks.

BY MR. ELIOT BERNSTEIN:

Q. Please, simple, do you have consent of all the beneficiaries of the Simon estate, yes or no?

15:26:58

MR. ELIOT BERNSTEIN: Sorry.

THE COURT: That's okay.

MR. ELIOT BERNSTEIN: I am just passionate.

THE WITNESS: To the extent that you are a beneficiary, no.

15:27:07

BY MR. ELIOT BERNSTEIN:

Q. Okay.

THE COURT: Okay?

///

BY MR. ELIOT BERNSTEIN:

Q. So that would be a no, correct?

THE COURT: He said no.

MR. ELIOT BERNSTEIN: Okay. Quantified it or something.

15:27:17

THE COURT: That's it. Okay.

MR. ELIOT BERNSTEIN: Oh, can I ask one last question?

THE COURT: One last question.

15:27:23

BY MR. ELIOT BERNSTEIN:

Q. Are you aware that two of my children are adults and that there's never been a competency hearing on either of them?

A. Well, I have testified to the structure of the documents, and so I don't think I can answer the question.

15:27:34

Q. So have you contacted my children --

THE COURT: All right.

BY MR. ELIOT BERNSTEIN:

15:27:44

Q. -- regarding settlement?

THE COURT: That's enough. Stop.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: Do you have your own --

MR. ROSE: No questions.

15:27:50

THE COURT: You are good? Okay.

Mr. Feaman, any other witnesses?

MR. FEAMAN: I rest, Your Honor.

THE COURT: All right.

(Witness excused.)

15:27:56 MR. ELIOT BERNSTEIN: And I reserve my rights to, you know, challenge this whole hearing as part of a sham. I didn't have time.

THE COURT: Okay.

MR. ELIOT BERNSTEIN: You knew I was

15:28:03 medically unfit for three weeks. You have medical evidence of that. And I am really sorry you moved this way instead of you allowing all this fraud to come out first. We have wasted a lot of time and money, as they've

15:28:14 done all along with this nonsense.

THE COURT: Okay.

MR. ELIOT BERNSTEIN: By the way, Your Honor, we are here all these years later because Ted Bernstein's counsel committed fraud

15:28:25 and forgery to this Court, fraud on this Court.

THE COURT: All right.

MR. ELIOT BERNSTEIN: And Mr. Rose was one of the people brought in by those people.

THE COURT: That's enough of a statement.

15:28:33 That was totally --

MR. ELIOT BERNSTEIN: Well, I didn't get an opening so I am sorry to try to --

THE COURT: But you were late. But you were late.

15:28:40 MR. ELIOT BERNSTEIN: I was sick.

THE COURT: Either way.

MR. ELIOT BERNSTEIN: And I petitioned. It seems to have no compassion of this Court.

THE COURT: If -- I will not, if you

15:28:49 noticed, I don't tolerate disrespect from anyone else. You have been very kind until now. Let's not change it.

MR. ELIOT BERNSTEIN: Yes. Oh, and, Your Honor, we have to go at the appointed time. I

15:29:08 thought that it was 3:30. But we have commitments that we have to walk out this door at 3:30, if that's okay?

THE COURT: Whatever you feel is appropriate. I am going to continue until

15:29:16 4:30.

MR. ELIOT BERNSTEIN: Didn't you schedule only for two hours? I am confused. Because that would totally kill me.

THE COURT: Let me look at the order.

15:29:23 MR. ELIOT BERNSTEIN: Okay. Thank you.

THE COURT: I have it right here.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: It says the continuation hearing being held -- oh, this was just that one. Does anybody have -- I do. Hold on. It does indicate two hours were reserved.

MR. ELIOT BERNSTEIN: I am really sorry, and I am going to have to go at the exact minute. I have a child that is in need. And I have been really sorry about that. But if you want to continue without me, that's your prerogative.

THE COURT: I did schedule this for two hours.

MR. ELIOT BERNSTEIN: Yes, that was my understanding.

THE COURT: This Court is very aware of what needs to be done with regards to appellate purposes. I scheduled this for two hours. I will stick to that commitment. In two weeks we will come back. Unless you have a trial or you are having surgery, you will be here on the date I am going to announce. Do we all understand each other?

MR. FEAMAN: Yes, Your Honor.

THE COURT: We understand each other? I am going to move something to make sure that we come back in two weeks. And I am going to give you a two-hour block. We are going to
15:32:28 conclude, if nothing else, this particular matter on whether or not the part -- because it will be too prejudicial to the parties to continue beyond two hours.

Mr. Eliot is correct, I scheduled this for
15:32:41 two hours. He was within his rights. If a lawyer asked me and said, I had this exact circumstance occur yesterday, and I ended at 4:30 because someone had told me I had only discussed 'til 4:30. So I am giving you the
15:32:56 same courtesy --

MR. ELIOT BERNSTEIN: I appreciate that.

THE COURT: -- I would extend to a lawyer.

MR. ROSE: Just briefly, Judge.

THE COURT: Yes.

15:33:01 MR. ROSE: I would suggest since the evidence is closed we could submit written final argument and --

THE COURT: You don't intend on calling any other parties?

15:33:11 MR. ROSE: I mean, I don't think they've

made their case, and I have -- I mean, I would move for involuntary denial of their motion without having to put on evidence which in a bench trial is a procedure. I don't know if
15:33:22 you want to hear evidence from me. I think you have heard the evidence. But, you know, my goal is to get beyond this because we have --

THE COURT: I would do that. I would receive written closings from everyone, and I
15:33:33 will issue an order.

MR. ROSE: That's fine. And then we can still set the other matters if you have two hours --

THE COURT: I will give it to you.

15:33:40 MR. ELIOT BERNSTEIN: If that's the case, then I would rather not schedule some indiscriminate date. I don't know all of my kids' schedules.

THE COURT: No, that's not how it works.
15:33:50 Sorry, I wouldn't give --

MR. ELIOT BERNSTEIN: I can't look at my schedule?

THE COURT: You can look at your schedule right now.

15:33:53 MR. ELIOT BERNSTEIN: I can't.

THE COURT: Well, then that's an obligation. This Court --

MR. ELIOT BERNSTEIN: I have three kids with obligations. I've got games --

15:34:00 THE COURT: If you can imagine if I let everybody do that to me I would never get anything set.

MR. ELIOT BERNSTEIN: Can't we agree on a time when we get back like we always do for a

15:34:09 hearing?

THE COURT: No, we don't always do that. I tell you a date.

MR. ELIOT BERNSTEIN: I thought that's how we have been doing it.

15:34:15 THE COURT: I am going to -- I am not promising you I will have an order done, though, that's the problem, on this case by the time you come back. How can I --

MR. ROSE: This is a very narrow issue. I

15:34:33 mean, there's no issue with I am going to be involved in the estate proceedings either way.

THE COURT: Okay.

MR. ROSE: It's just a question of whether I am going to be handling --

15:34:39 THE COURT: Okay. We can do that.

MR. ROSE: We can do everything else.

THE COURT: All right. March 16th, 2:00 o'clock, from 2:00 to 4:00.

MR. ELIOT BERNSTEIN: And, Your Honor, can I ask? I put in a motion to vacate that we haven't heard that would solve having any of these hearings, based on the fraud that you have seen in this court already, with him changing statements that I am not a beneficiary, beneficiary, not.

THE COURT: These have been -- we'll decide when that will be heard next. These have been rescheduled and rescheduled and rescheduled on the docket.

MR. ELIOT BERNSTEIN: But that fraud issue that you are not aware of in that motion to vacate would preclude them from even representing, because they've been misleading this Court in fraud.

THE COURT: I have made my ruling.

MR. ELIOT BERNSTEIN: Thank you. Have a good day.

THE COURT: I will have written rulings -- but I have to give you a date --

MR. ELIOT BERNSTEIN: Oh.

THE COURT: -- because you need to know when I need the closing. March 16th, 2:00 o'clock, my JA will send out an order on things that were not heard today. And I have that order here. So --

15:35:32

MR. ROSE: I think we need to clarify too because your case management order --

MR. FEAMAN: I didn't think Her Honor was done.

15:35:40

THE COURT: I am not. I am not. Sit down for a second. Thank you.

All right. I am looking at the order I am relying on which ending this now that gave two hours. The attorneys will submit written

15:35:53

closings on -- ready? And I am giving you, they can be no more than ten pages in total, written closings limited to ten pages double spaced. Do not give me a single spaced ten page, 25 page. Ten pages, single spaced --

15:36:18

MR. FEAMAN: Double spaced.

THE COURT: I am sorry, thank you, double spaced. And that is on Stansbury's motion to vacant, don't forget I have been briefed and re-briefed, and Stansbury's motion to

15:36:30

disqualify. Okay? I would like those within

two weeks. So by March 16th the closings.

MR. ELIOT BERNSTEIN: Your Honor, could I put in a pleading then? I mean, I was out. You have a medical doctor saying that I was out for three weeks heavily medicated. I still am recovering.

15:36:47

THE COURT: Mr. Eliot?

MR. ELIOT BERNSTEIN: Yes, ma'am.

THE COURT: You are going to let me finish.

15:36:54

MR. ELIOT BERNSTEIN: Okay.

THE COURT: And you keep interrupting me and telling me --

MR. ELIOT BERNSTEIN: Pardon.

15:36:58

THE COURT: No. You keep telling me why I can't do what I am going to do.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: And I am going to do it.

MR. ELIOT BERNSTEIN: Okay.

15:37:02

THE COURT: And then you can put everything you want on the record, all right?

MR. ELIOT BERNSTEIN: All right.

THE COURT: Give me a second.

MR. ELIOT BERNSTEIN: Sure.

15:37:07

THE COURT: Written closings actually I am

only making it a week. I want them before then. I want them by March 9th. Written closings by March 9th, ten pages, double spaced.

15:37:19 Our next hearing will be March 16th which will be the trustee's motion to approve retention of counsel and the trustee's ominous response and reply, will be March 16th for two hours.

15:37:34 MR. ROSE: I am going to interrupt. I think technically I have one clarification. I don't want to speak to Mr. Feaman directly. If there's not going to be any additional evidence on the motion to appoint Ted as guardian ad

15:37:48 litem, I mean as administrator ad litem, it's the same issue with the conflict and all that, we could submit written closings --

MR. FEAMAN: I concur.

MR. ROSE: -- on both of those.

15:37:55 THE COURT: No.

MR. ROSE: If not, then that's the next motion.

THE COURT: That's the next motion. That's what I am saying, the trustee's motion

15:38:03 to -- it's the administrator ad litem.

MR. ROSE: Yes.

MR. FEAMAN: Right.

THE COURT: Right. That's 3/16 I said, March 16th.

15:38:10 MR. FEAMAN: Okay.

THE COURT: And we have the omnibus reply, and Stansbury's motion for credit or discharge will be 3/16. That's all I am setting for 3/16 because I have got two hours, and I have

15:38:33 watched how things have proceeded. Everything else will be handled in due course. All right? Thank you.

MR. O'CONNELL: Your Honor, could I just make a statement on the record about the 16th,

15:38:46 not to change the date? But I personally wouldn't be able to appear. So I just want everyone to know that. If you want to call me as a witness I am happy to be deposed.

THE COURT: Fair enough. They all know he

15:38:56 is not available and they can depose him if he is not going to be here.

MR. O'CONNELL: And I will have someone from my office here on behalf of the estate.

THE COURT: All right. Thank you.

15:39:03 MR. O'CONNELL: Just so the Court is

aware.

MR. ELIOT BERNSTEIN: I don't think we need him as witness, do we?

THE COURT: I can't make that decision.

15:39:08 All right. Court is in recess.

MR. ROSE: Thank you, Your Honor.

THE COURT: Thank you.

(The proceedings adjourned at 3:39 p.m.)

C E R T I F I C A T E

- - -

The State of Florida

County of Palm Beach

I, Lisa Mudrick, RPR, FPR, certify that I was authorized to and did stenographically report the foregoing proceedings, pages 119 through 241, and that the transcript is a true record.

Dated March 8, 2017.



LISA MUDRICK, RPR, FPR
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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT

IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 502012CP004391XXXXNBIH

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

Deceased.

/

PROCEEDINGS BEFORE

THE HONORABLE ROSEMARIE SCHER

VOLUME III

Thursday, March 16, 2017

North County Courthouse

3188 PGA Boulevard

Palm Beach Gardens, Florida 33410

2:00 p.m. - 4:20 p.m.

Reported by:
Joyce A. Halverson, Court Reporter
Notary Public, State of Florida

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- - -

BE IT REMEMBERED that the following proceedings were had in the above-styled and numbered cause in the North County Courthouse, City of Palm Beach Gardens, County of Palm Beach, in the State of Florida, before the Honorable Rosemarie Scher, Judge of the above-named Court, on Thursday, the 16th day of March, 2017, at 2:00 p.m., to wit:

- - -

THE COURT: Have a seat. Thank you so much. Thank you all for being on time. Appreciate it. I have the wrong document. Sorry. All right. One second. I have left something on my desk.

Okay. Appearances for the record, please, starting on the far left.

MR. FEAMAN: Thank you. Peter Feaman, Your Honor, on behalf of William Stansbury. With me in court today is my law partner, Jeff Royer, and Mr. Stansbury is here in court today and his wife, Eileen Stansbury.

THE COURT: Thank you.

MR. ELIOT BERNSTEIN: Eliot Bernstein pro se, Your Honor, and my wife.

THE COURT: Okay. Thank you.

MR. ROSE: Alan Rose, Your Honor, on

behalf of Ted Bernstein as trustee. Along with me is Ted S. Bernstein and my associate, Michael Kranz.

MR. ROTHMAN: Zac Rothman just to observe for Brian O'Connell.

THE HONORABLE DIANA LEWIS: Diana Lewis, Guardian Ad Litem for the Eliot Bernstein children.

CINDY SWINAN: Cindy Swinan and my son Keith and we are here in support of the Bernsteins.

THE COURT: Okay. Don't take this wrong. That doesn't narrow it down for me. Which particular Bernsteins?

CINDY SWINAN: Eliot.

THE COURT: I didn't mean to be disrespectful. Like I always refer to Mr. Eliot as Mr. Eliot and Mr. Ted as Mr. Ted just because, without disrespect, because we have a lot of Bernsteins. All right. Thank you.

We are here pursuant to my order that was issued on March 3rd. We'll start with Trustee's Motion to Approve Retention of Counsel -- and we have taken care of that one -- to Appoint Ted S. Bernstein as

Administrator Ad Litem to Defend Claim Against Estate by William Stansbury, Docket Entry 471.

Mr. Rose, you may begin.

MR. ROSE: Thank you. Do you want opening or just witnesses? Five minute opening?

THE COURT: Sure. Five minutes per side. I'm going to time it just because we are going to end these two motions today and I am diligently working on an order for you all.

MR. ROSE: From the podium?

THE COURT: Wherever you're comfortable. Thank you.

MR. ROSE: So we are here on the second half of the motion and Mr. O'Connell's testimony -- there is an agreement that Mr. Feaman and I reached on the record at the deposition on Monday that Mr. O'Connell's testimony from the prior hearing is, it's one motion, is usable for the purpose of this hearing. So we are going to --

THE COURT: Give it to the clerk, hopefully.

MR. ROSE: We could or just the relevant parts. But it was one motion. This is a continuation of the same evidentiary hearing so

rather than asking the same questions, we have agreed that his testimony is in the record.

THE COURT: Thank you. Good job.

MR. ROSE: Mr. O'Connell testified to you as to his reasons for wanting to appoint an administrator ad litem. And he testified that it was mainly because he didn't have any personal involvement in the underlying case. Mr. Ted Bernstein did have direct involvement in the underlying case --

THE COURT: I'm sorry. Go ahead. No personal involvement in the underlying case.

MR. ROSE: -- whereas Ted Bernstein was a principal of the company, worked with his father and Mr. Stansbury, and is in much better position to be the corporate representative or the estate's representative at the trial and at the same time to hire my law firm. And Mr. O'Connell said those two things, in his mind, went hand in hand and he has testified about his reasons.

So what we believe makes the most sense is to have Ted Bernstein appointed as the administrator ad litem to handle the litigation.

This is a case that has failed to settle at two mediations and several motions were brought before this Court to approve settlements which motions have failed. And the parties do not seem to be in any position to settle the case so the only other way to resolve the claim if you can't settle it is to try it.

At the conclusion of a mediation in which we were unsuccessful in settlement -- and we can't talk about anything other than the fact of unsuccessfulness -- the decision was made we want to try the case as quickly as possible. And the solution was that if Ted will serve as the administrator for no fee and if my law firm steps in, which has extensive knowledge on the case, that was the group think decision.

Mr. O'Connell, exercising his business judgment and his legal judgment, decided that was in the best interest of the estate and he has already testified to that.

So for the purposes of today, we have two motions pending. The first one, obviously, is on the administrator ad litem and Mr. Stansbury has objected to Ted Bernstein serving as the

administrator ad litem. So, again, we have the position where the plaintiff is trying to decide who can represent the estate to defend itself in a two and a half million dollar claim.

Mr. Ted Bernstein will testify that he is willing to serve for free because it will be much less work for him if my law firm is handling the matter. We have already extensively worked and prepared the case. We have taken the deposition of Mr. Stansbury. Most of the document production is done. My law firm is handling the case which we have asked Your Honor to approve. Ted Bernstein is the administrator ad litem. He will serve for no fee. Mr. O'Connell said, on the other hand, he would charge his hourly rate and, you know, every hour he is involved in the case is a substantial expense.

Another point, Mr. O'Connell is extremely busy. There was a motion filed which we'll put in evidence complaining that Mr. O'Connell was unavailable to move this case forward. Mr. Stansbury filed a motion in the trial court saying I'm unhappy that Mr. O'Connell is

unavailable for months at a time and we need to get the case moving.

That was also an impetus for this because we want to get the case moving and concluded and until we get the claim of Mr. Stansbury resolved one way or the other, we can't close out the estate and make progress and stop incurring administrative expenses. So at the end of the day, it is our belief and the evidence will demonstrate it's in the best interest of this estate.

I don't know how much evidence you need to take on it. It's a fairly simple issue because --

THE COURT: Two hours worth. We have two motions. Essentially, I think that fairness would say you're going -- I said five minutes so you're going to sit down soon. I would think we should have this one done by 3:00 --

MR. ROSE: I agree.

THE COURT: -- then have the last hour for the other motion.

MR. ROSE: The arguments that are made by Mr. Stansbury are, one, I think something with this being an inherent conflict in settlement.

And Mr. O'Connell can handle the settlement of the case if it's going to settle. We weren't hired to settle the case. We were hired because this was a case that cannot be settled and it needs to be tried and my law firm is a commercial litigation trial firm and, you know, our goal is to try the case.

If Mr. Stansbury and Mr. O'Connell make a settlement agreement, great, we'll have to give notices and have hearings. That's a different ball game. But until there is a settlement, the only way to finish the case is to try it.

The other argument is conflict of interest and Mr. O'Connell covered that and Mr. Bernstein can, but there is no conflict between the positions we want to take in this courthouse, not this division but in the Palm Beach County Circuit Court, we believe that Mr. Stansbury's claim has no merit. He believes it does.

Mr. Ted Bernstein and Mr. O'Connell are 100 percent aligned on that and our goals are the same, minimize expenses, get the case tried as quickly as possible and we don't believe that the opposing party should decide who's

going to be representing the estate.

THE COURT: Thank you very much. Mr. Feaman.

MR. FEAMAN: Thank you, Your Honor. May it please the Court:

THE COURT: Thank you.

MR. FEAMAN: The premise of Mr. Stansbury's objection to the appointment of Ted Bernstein is based upon three points. Point number one, in the Fungess case, which I sent to Your Honor this morning -- I apologize because of the late notice -- we have an extra copy for Your Honor. We have handed them out again today at this hearing. But the case says in the Fourth District an administrator ad litem must represent beneficiaries of the estate with the same degree of neutrality and fidelity as the personal representative of the estate and administrator ad litem is also subject to the supervision of appointing by the court. It means that the administrator ad litem has the same fiduciary duty to the estate that a personal representative does. That is premise number one.

Then premise number two is that we go to

Florida Statute 733.504 and that discusses the removal of a personal representative and causes for removal. And therein under Subsection 9 it says a personal representative shall be removed if he or she is not qualified to act and may be revoked for any of the following causes. Number 9: Holding or acquiring a conflicting or adverse interest against the estate that will or may interfere with the administration of the estate as a whole.

So, therefore, if the administrator ad litem has the same duty as the personal representative to the estate and a conflict would cause removal of the personal representative, we see that Ted Bernstein is clearly conflicted in this case because he is suing, as Your Honor knows, now with the evidence, he is suing the estate in Chicago, both personally and as a purported trustee of a 1995 insurance trust.

THE COURT: Is he suing the estate or did the estate intervene in his litigation against the life insurance company?

MR. FEAMAN: Yes. The estate intervened and now they are adverse, when they were first

brought but he is a plaintiff in that personally. He is a plaintiff in that action adverse to the estate because they are both seeking the same pot of money, Mr. Bernstein individually and the estate for its part.

So with that conflict and because the administrator ad litem has the same duties as the PR to not have a conflict, there is enough in the record right now, Your Honor, for Your Honor to say, you know what, I can't appoint this gentleman as administrator ad litem because he is suing the very estate that I'm being asked to appoint him to represent and that should be the end of it. I think Your Honor can rule that right now.

And we are prepared to also put on additional evidence as to why Mr. Bernstein should not be appointed for reasons in addition to his conflict of interest. But, as a matter of law, I would respectfully suggest to the Court that the fact that he is suing the estate immediately precludes him from being the administrator ad litem for the estate. It doesn't matter what the capacity is. It is simply because of the law.

Because the third case that we cite -- the second case that we cited today was the Campbell case and --

THE COURT: Just to be clear, he really isn't suing the estate. The estate has intervened and they are an adverse party. I know I'm being particular but --

MR. FEAMAN: Okay. I'll rephrase. I'll just quote the statute. In Chicago Mr. Ted Bernstein holds a conflicting or adverse interest against the estate.

THE COURT: Okay.

MR. FEAMAN: Okay. Because the estate wants 1.7 million dollars and Mr. Ted Bernstein wants part of 1.7 million dollars as an individual plaintiff. Therefore, the Court need inquire no further than already what is in the record to say I'm sorry, I'm statutorily bound not to allow an appointment of this gentleman.

THE COURT: I have a question though. I'm thinking if I want to ask it or not. Wouldn't their positions be aligned for purposes of the civil lawsuit?

MR. FEAMAN: Are they aligned for purposes

of the civil lawsuit?

THE COURT: Yes.

MR. FEAMAN: On paper, yes.

THE COURT: And isn't that the only limited capacity that we are asking to appoint an administrator ad litem?

MR. FEAMAN: Yes. But the Court cannot otherwise ignore there is a conflict when, if the administrator ad litem is acting adversely to the estate in a related action.

THE COURT: No but that has nothing to do with the civil. They are aligned. I know what you're going to say.

MR. FEAMAN: No. It has everything to do with it and I am going to tell you why.

THE COURT: Okay.

MR. FEAMAN: There is settlement negotiations going on right now in Chicago between the attorney representing Mr. Bernstein and us.

THE COURT: Mr. Ted Bernstein?

MR. FEAMAN: Mr. Ted Bernstein. And the attorney representing the estate who is communicating with Mr. Stansbury, me and Mr. O'Connell as to whether money should be paid

before trial.

Now, to have Mr. Ted Bernstein also involved, whether directly or indirectly, in settlement negotiations that may simultaneously be taking place between the estate and Mr. Stansbury's action, puts in effect the fox guarding the hen house because here's Mr. Ted Bernstein wanting to keep 1.7 million dollars out of the estate.

His settlement judgment in that case and the settlement judgment that he may have in the Stansbury case has to be clouded and conflicted because he has got -- on the other hand, he wants the estate to get the money, you would think, because he is also, by the way, he is also the successor trustee of the pour-over trust, which is the beneficiary of the Simon Bernstein Estate. And as successor trustee, you would want that person to want the estate to get all of the money it can for its beneficiaries who are the grandchildren. Yet at the same time he is suing the estate in Chicago to keep his trust from eventually getting that money where he is successor trustee.

So there is conflicts all over the place, which is why we also filed a couple of months ago for Your Honor to sua sponte take a look at the conflict that Mr. Ted has as successor trustee because how can he sue --

MR. ROSE: I object. It's not set for hearing and it's an issue that has been ruled on multiple times by Judge Phillips and where he lacks standing --

THE COURT: I asked you a question so conclude.

MR. FEAMAN: I'll conclude with this, Your Honor. In the Campbell case, the Court held that an administrator, which would be Mr. Ted, stands in the position of a trustee holding the estate in trust for the heirs, distributors and creditors, of which Mr. Stansbury is one, while acting in such trust capacity he cannot deal with the beneficiary trust so as to acquire any advantage onto himself.

Taking that language and applying it to the case before Your Honor, he is trying to take an advantage onto himself in the Chicago litigation because he is a named plaintiff and trying to take that money and at the same time

acting as an administrator for the very estate.

And I don't think the Court is allowed to, respectfully, parse whether, okay, I'll let him represent the estate because in this action we can separate it, especially when it's complicated by the fact that the same attorney --

THE COURT: I asked you. That wasn't an unfair response. I did throw that out at you.

MR. FEAMAN: So I would conclude with that the conflict is so present that I think that they are asking the Court here to split hairs and ignore what is going on in Chicago to allow this.

And we believe that the evidence will show that for that reason and others regarding Mr. Bernstein and with regard to the testimony of Mr. O'Connell, whose deposition we took this week, that the only conclusion this Court can make at the end of the day or even right now is to say I just can't do this; you know, if you want somebody to represent the estate at counsel table at the trial, if it goes that far with Mr. Stansbury, have a junior lawyer from

the attorney representing the estate. There is situations where hospitals are defendants; they send an HR person to sit through the trial. That's really not a reason for this Court to ignore, just it doesn't pass the look test of he's adverse to the estate fighting over 1.7 million dollars and now is representing the estate and representing the pour-over trust but that's a different issue.

Thank you.

THE COURT: Thank you. Mr. Eliot.

MR. ELIOT BERSTEIN: Okay. In my view, we are here today as part of a new fraud on the Court and there have been prior frauds already proven and admitted. I was here to appear before Your Honor when you found that the pleadings and the testimony before the Court by officers of the Court was false and misleading. I am a beneficiary. That is now established. I have standing. And they don't have the consent of all of the beneficiaries for this little scheme they are pulling. That now has been proven in the past pleadings in all of the courts, the 4th DCA, the Illinois federal complaint. That was thrown out because

I am not a beneficiary of Simon's estate, according to Judge Robert Blakey.

So this new fraud here designed to allow Ted and his counsel Alan to represent the estate of Simon as a fiduciary and counsel in a lawsuit against William Stansbury while already acting as fiduciary and counsel in the Simon Bernstein Trust in the Stansbury action and already having acted as fiduciary in settling himself out in the Shirley trust in regard to the Stansbury lawsuit.

What the Court may not be aware of is the adverse interest and conflict of interest of Ted Bernstein with the Stansbury lawsuit that have allowed Ted to already self deal at the expense of the beneficiaries he claims to represent in trusts where he has no personal interest and thus stands nothing to lose personally if the estate and trust of Simon's beneficiaries are saddled with the entire damages of the lawsuit.

The Stansbury lawsuit has Ted Bernstein as an individual defendant and Simon Bernstein individually as a defendant when it was filed. The complaint, in fact, alleges Ted was the one

who directly committed the egregious acts of bad faith, including fraud against Stansbury.

Now, how, the Court may ask, do these adverse interests and conflict of interest of Ted individually and Ted as a fiduciary allow Ted to remove himself from liability personally in the Stansbury action and shift the entire liability to the Simon Bernstein Trust and Simon Bernstein Estate beneficiaries for a potential 2.5 million dollar damage claim and how did he do this with no objections raised by the fiduciary for the beneficiaries of the estates and trusts of Simon and Shirley?

Well, it's obvious. Ted as a fiduciary would have to pursue Ted on behalf of the beneficiaries. So Ted's not going to pursue himself for damages and object to settlement that enabled him to slip out the back door like he did already, acting as a fiduciary or file counter-complaints or lawsuits on behalf of the beneficiaries that allege Ted's the responsible party and should pay all of the damages of 2.5 million.

This is because Ted Bernstein will not sue or pursue Ted Bernstein. That is the

definition of a conflict of interest in adverse interests. So Ted, by not raising any objections as the fiduciary on behalf of beneficiaries, has settled himself out of the complaint already individually, shifting the liabilities, and now the people who would normally have a claim to say that Ted was the responsible party, Ted did this, can't raise a complaint because Ted is the fiduciary.

If you allow -- and, by the way, that's why they tried to tell you I had no standing and wasn't a beneficiary because they are afraid of anybody making this argument to the Court which would expose a 2.5 million dollar fraud that is occurring through a breach of fiduciary duties by ignoring conflict of interest which Ted and his counsel are fully aware of. So that's why they came to this Court and lied because it wasn't just an error.

And, by the way, if Mr. Rose, who put to Your Honor and claimed that he erred before this Court that I was a beneficiary, if he doesn't know who the beneficiaries are by now and his client doesn't --

THE COURT: The only thing I have a problem with is, you know, no disrespect, you can state what you believe but don't be rude. Go ahead. You have been doing good, by not being rude.

MR. ELIOT BERNSTEIN: Well, now I forgot where I was. Could you read back my last sentence? Sorry.

(Requested colloquy was read by reporter as follows:

"And, by the way, if Mr. Rose who put to Your Honor and claimed that he erred before this Court that I was a beneficiary, if he doesn't know who the beneficiaries are by now and his client doesn't --"

MR. ELIOT BERNSTEIN: -- then the Court needs to remove him just for incompetence. If you don't know who the beneficiaries are --

THE COURT: I won't tolerate that.

MR. ELIOT BERNSTEIN: Okay. So that would be a cause for removal, if the --

THE COURT: Move on.

MR. ELIOT BERNSTEIN: -- if the fiduciary doesn't know who the beneficiaries are in his peppered filing for two years with those claims

that I wasn't a beneficiary and had no standing --

THE COURT: Move on. You have made your point on that.

MR. ELIOT BERNSTEIN: I'm denied due process. Okay. By the way, now, the Court has this information that a fraud has been committed before the Court or pleadings that are full of false and misleading statements that have led to a denial of due process rights over the course of two years.

THE COURT: The Court has not made any findings that way. You can go on.

MR. ELIOT BERNSTEIN: On the record you stated I was a beneficiary in good standing.

THE COURT: I did but I didn't make a finding of denial of anything at that point.

MR. ELIOT BERNSTEIN: Okay. That alone contradicts all of the pleadings Mr. Rose has submitted since Judge Phillips in effect had a --

MR. ROSE: Objection. This is an improper opening statement for the issue we have. It's factually completely wrong because I have never --

THE COURT: Sustained. One more minute.

MR. ELIOT BERNSTEIN: The Court should also be aware that the Court has been mislead in these cases prior by, in the Shirley estate and trust by Ted and the fiduciary's counsel, Robert Spallina and Donald Tescher, who committed a series of fraudulent acts to change beneficiaries, they have come to the Court and confessed they fraudulently altered my mother's trust and sent it to my childrens' counsel.

MR. ROSE: Objection.

THE COURT: Sustained. That concludes the openings. Thank you, Mr. Eliot.

Mr. Feaman, you said you had a case for me. Do you want to give me that case? Everyone have a copy of that case?

MR. ROSE: I think it was e-mailed to me this morning.

THE COURT: I haven't read it so --

MR. FEAMAN: We e-mailed it at 10:00 and also gave them additional copies today, this afternoon.

THE COURT: Do you want the opportunity to provide two cases in response?

MR. ROSE: I think this is totally... No.

THE COURT: I give you the right. Call your first witness.

MR. ROSE: I would with one caveat. This is expensive time and the --

THE COURT: I just asked. Call your first witness.

MR. ROSE: Mr. Stansbury.

THE COURT: I'm very aware of how many people are in the courthouse and the expense of everything.

MR. ROSE: I was going to state if you would rule that simply because as trustee, as one trustee litigating in Illinois, he could not possibly be the person to handle the litigation here, like Mr. Feaman suggested, if that's where you would go, we could avoid the evidentiary hearing. I don't think that's where you should go but --

THE COURT: I did not make a decision yet. I promised I would not make that decision until I came out and I am unbelievably -- what is the word I want? -- I'm trying to think of a word that is more judicial but compulsive is the word coming to mind. I'm not capable of having somebody say here's a case you need to

read and making a ruling without reading it. Proceed.

MR. ROSE: That's fine.

Thereupon,

WILLIAM STANSBURY,

a witness, being by the Court duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROSE:

Q. Would you state your name for the record.

A. William Stansbury.

Q. You're suing the estate of Simon Bernstein for a substantial sum of money?

A. Yes.

Q. And Eliot just stated that Ted is the responsible party and should pay all of the damages; that Ted is 100 percent responsible for the claims you have made against Simon's estate. Do you agree with that?

A. No, I don't.

Q. Do you agree that Ted is responsible for most of the damages and most of the harm that was caused to you by Simon Bernstein?

A. Most of my conversations regarding my compensation were had with Simon.

Q. So there was a question at a prior hearing in which you did not attend, where Mr. O'Connell was asked if the estate should not be suing Ted Bernstein because the complaint alleges that he did most of the fraud against Mr. Stansbury and Simon Bernstein was just a partner. Is that accurate?

MR. FEAMAN: Objection. You can't cross examine or impeach somebody with someone else's testimony. He has to ask for what his view is. You can't say if so and so said this, what do you think about this.

THE COURT: Sustained.

MR. ELIOT BERNSTEIN: May I object?

THE COURT: I sustained the objection. What is your objection?

MR. ELIOT BERNSTEIN: My objection is this witness wasn't on any witness list, wasn't discussed during the trial.

THE COURT: Overruled. This isn't a trial. You may proceed.

BY MR. ROSE:

Q. Do you believe your complaint alleges that Ted Bernstein did most of the fraud and Simon Bernstein was just a bystander and a partner?

A. No.

Q. In fact, you testified -- strike that.

You would agree, wouldn't you, that most of your assumptions about your financial arrangements with the companies that are part of the underlying lawsuit, most of those discussions were with Simon Bernstein, correct?

A. Correct.

Q. Simon was the chairman of the company?

A. Yes.

Q. You considered Simon to be the leader of the company?

A. Yes.

Q. And Ted had a lesser role in the company than Simon?

A. Yes.

Q. You don't recall having much discussion with Ted Bernstein about your financial arrangements, do you?

A. No.

Q. And part of your claim is fraud, correct, that you were defrauded by Simon Bernstein?

A. Yes.

Q. And it's your testimony that the person who spoke to you and communicated whatever words would have constituted a fraud was Simon Bernstein?

A. Yes.

Q. Now, do you recall a time in July of 2016 where you filed a motion complaining that Mr. O'Connell was not available to attend to this case because of his other busy schedule?

A. I don't recall that, Mr. Rose.

MR. FEAMAN: Objection. Relevance.

THE COURT: Overruled.

MR. ROSE: May I approach?

THE COURT: You may.

MR. ROSE: I'll mark this as Trustee's Exhibit 1.

THE COURT: Okay.

MR. ROSE: I have stickers except I have to remove the sticker off my copy.

THE COURT: That's okay. I can use my stamp. Whatever you want.

MR. ROSE: I'll put the stickers on for now.

THE COURT: Trustee's 1?

MR. ROSE: Trustee's 1 for this hearing.

THE COURT: If you could write 12CP, I think it's 4391 -- I think I memorized the number on it -- that would be great.

MR. ROSE: 4391?

THE COURT: 4391, yes. Thank you.
MR. FEAMAN: Trustee's what?
MR. ROSE: For purposes of today is 1.
(Trustee's Exhibit No. 1, Plaintiff's Motion for Case Management Conference to Schedule Depositons)
BY MR. ROSE:
Q. Mr. Stansbury, I have handed you a document that is called Plaintiff's Motion for Case Management Conference to Schedule Depositions. Does it say on the first sentence Comes Now Plaintiff, William Stansbury?
A. It does.
Q. That would be you?
A. That is me. It is I.
Q. Were you aware of Mr. Feaman's filing? In other words, did you receive copies, without telling me any communications you had with him?
A. I may have. I assume I did. It's just not something that immediately I recall doing.
Q. Mr. Feaman is your lawyer; he is authorized to file papers in court asserting positions for you, correct?
A. I would assume.
MR. ROSE: I move this into evidence as

Exhibit 1.

MR. FEAMAN: No objection.

THE COURT: So received. I have marked this one into evidence.

BY MR. ROSE:

Q. This suggests Mr. O'Connell was unavailable from July through the end of November for deposition because of his schedule. Does that ring a bell to you?

A. I guess. Now that I'm seeing it, it does.

Q. Is it important to you that your case, your lawsuit against the estate, move forward at a reasonably quick pace?

A. It is.

Q. Do you think Mr. O'Connell -- well, strike that.

You are aware that Mr. O'Connell has requested that Ted Bernstein be appointed as the administrator solely to defend the claim that you have brought? You are aware of that?

A. I have heard that. You know, I don't know beyond what I heard what is going on but I have heard that.

Q. But we are here today for the judge to decide whether Ted can serve as the representative

of the estate to defend the lawsuit you brought, correct?

A. That is why we are here today.

Q. And you oppose that?

A. I do.

Q. Is there any person you can think of, other than yourself or Simon Bernstein, who's deceased, that would have personal knowledge at the same level as Ted Bernstein of the claims that you have raised in this lawsuit?

A. Probably not.

Q. And you're a claimant in the estate so you have some interest in, if you succeed, being able to collect against the estate, correct?

A. Obviously, if I succeed I aim to collect and it's against the estate, as I understand it. The estate has the ability to recover any deficiencies that are in it from other assets that may be in the trust. I'm not sure this is the only recovery option.

Q. But you would like there to be as much money in the estate as possible if you win your lawsuit, correct?

A. Certainly as much as I would win.

Q. So you are aware Mr. Ted Bernstein is

willing to serve for no fee as administrator ad litem, whereas Mr. O'Connell is going to charge $350 an hour for the hours he spends? Are you a aware of that?

MR. FEAMAN: Objection. Not relevant.

THE COURT: Overruled.

THE WITNESS: I don't know what Mr. O'Connell charges and simply because something is free doesn't necessarily mean it's the right or fair deal.

BY MR. ROSE:

Q. Would you agree Mr. O'Connell knows nothing about your company from personal knowledge and from having been there in 2006 through 2012, correct?

A. Are you referencing the time that I was there in 2006 because it was 2003 through 2012? Is that your line of questioning?

Q. You are suing LIC Holdings, correct?

A. I did.

Q. And your lawsuit arose out of your relationship with LIC Holdings, right?

I'll withdraw the question.

A. Yes.

Q. I'll ask you a different question. From

2003 to 2012, was Brian O'Connell involved at all in whatever business you were involved in?

A. Not that I'm aware of.

Q. Had you ever heard the name Brian O'Connell at that time?

A. No.

Q. Wouldn't you agree with me that Ted Bernstein knows a lot more about the case than Brian O'Connell?

A. I would assume that he would, yes.

Q. Do you believe Ted is motivated to adequately defend the estate against your claim; in other words, seeking to defeat your claim?

MR. FEAMAN: Objection. Calling for the witness to talk about the motivation of a third party. He can't know that.

THE COURT: Sustained.

BY MR. ROSE:

Q. I'm not really asking about that. Do you think -- do you have any reason to believe that Ted will not adequately, aggressively and vigorously defend the estate's interest against yourself in this lawsuit?

A. I would have no way of knowing.

Q. And you have no way to believe that he

wouldn't, correct?

A. I know he is suing the estate so he is trying to keep money out of it.

Q. Do you think Ted Bernstein is going to do something to help you win your lawsuit?

A. I doubt it.

Q. Now, you have settled your dispute with Ted Bernstein by giving him a general release, correct?

A. I'm not a lawyer, Mr. Rose. So yes, he was dropped as a defendant.

Q. And your counsel stipulated at the last hearing that you gave a general release to Ted Bernstein?

MR. FEAMAN: Objection. I don't recall that stipulation. Mischaracterizes what is in the record.

THE COURT: It actually was stipulated on the record that a release was given.

MR. FEAMAN: Respectfully, I think the stipulation was there was a settlement. The terms of the settlement are not before this court.

THE COURT: No. There was a settlement and a release was executed. The terms of the

release was not put before the Court. The terms of the settlement wasn't put before the Court.

I'm going to ask you to move on to the next question.

MR. ROSE: Your Honor, Your Honor's recollection of the record is 100 percent correct. I did not accept the dismissal.

MR. FEAMAN: Move to strike.

THE COURT: Sustained.

BY MR. ROSE:

Q. You're adverse to the estate, correct?

A. Yes.

Q. You're seeking to take all of the money or more than all of the money that is in the estate and the trusts, right, if you win your lawsuit?

A. I can't speak to what is there. I'm going to take what I'm due. I have no idea what's there.

Q. Now, you were one of the proponents of Brian O'Connell being appointed as the successor personal representative; do you recall that?

A. I don't know that I would characterize myself as a proponent. I don't know enough about people or lawyers and what they do and how they do it.

Q. You were at the hearing where Mr. O'Connell was appointed PR, correct?
A. I was.
Q. And your counsel brought Mr. O'Connell to the hearing?
A. He did.
Q. And Mr. O'Connell was appointed personal representative?
A. Yes.
Q. And if, in his business judgment and his legal judgment that what he's proposing to happen with Ted as the administrator is in the best interest of the estate, do you feel that he is mistaken?
A. Based on what I have heard, I think it's a mistake.
Q. You have had multiple chances to settle your claim, correct?
MR. FEAMAN: Objection. Outside the scope, whether he has settled. It's also confidential.
THE COURT: Sustained.
BY MR. ROSE:
Q. You attended mediation in July, correct, July 25th?

A. Yes.
Q. No settlement was reached and an impasse was declared, correct?
A. Yes.
Q. Okay. So what is left to do with your case now is to get it tried, right?
MR. FEAMAN: Objection. No predicate. No foundation.
THE COURT: Overruled-. The Court can take judicial notice the case is still going on or we wouldn't be here, correct? If the case isn't settled, it's still going on.
BY MR. ROSE:
Q. Is there any reason why you couldn't negotiate a settlement with Mr. O'Connell at any time you wanted to while Mr. Bernstein and his counsel prepared to defend the case and get it ready for trial and get it set for the estate to be victorious?
A. I was led to believe that the estate's assets were deminimus, which may at that point require the trust to support any judgment or settlement that I would have with the estate.
Based upon Mr. O'Connell's statements when he was brought in, he didn't believe that Ted

Bernstein was officially qualified to be the trustee of the trust. Therefore, I essentially may have been negotiating for a settlement with a party who didn't have the capacity to provide a settlement. So what I have been asking for is just a hearing to clarify whether Ted is qualified based on the language of the trust or he isn't.

Q. So it's your testimony even Mr. O'Connell is not qualified to discuss settlement with you?

A. I'm not sure that it's the settlement discussion as much as what happens if there is a settlement agreed to and the money needs to come from another source other than the estate.

Q. But is there any reason you can't have discussions with Mr. O'Connell while we get ready to defeat your claim in court?

A. Sort of the -- I'll leave that to my attorneys to figure it out.

MR. ROSE: Nothing further.

THE COURT: Mr. Eliot.

CROSS EXAMINATION

BY MR. ELIOT BERNSTEIN:

Q. Hi, Bill. Did you sue Ted in the lawsuit?

A. He was a defendant, yes.

Q. What did Ted do according to your lawsuit?

A. There was misrepresentation of, you know, what was going on with my money and why I wasn't being paid.

Q. Was there anything with your stock that you talked with Ted about that didn't sit well with you, according to your complaint?

A. Yes.

Q. Could you explain that to the court.

A. I was a 10 percent stockholder of the company and Ted approached me in December of 2011 and told me that there had been some discussion with the accounting firm that the firm used that might result in an income tax liability to me for money that would not be paid to me. In other words, from other prior years of taxes that may have been challenged. I don't know the details because I didn't interface with the accounting firm.

He said if I wrote a letter to him ceding my shares of stock back to the company, he would hold it and it had to be dated in 2011 and if the tax liability happened, then I wouldn't be responsible for owing money for taxes on money that I never received. So he said he would hold it and if that issue didn't arise, then it would just be torn up and thrown in the garbage.

Q. And so in your complaint you alleged that Ted basically swindled you out of that stock?

A. I don't know that I used the word swindled but I believe --

Q. Fraud?

A. I believe that it was a misrepresentation of the determination of why I would have just one day signed the stock back to the company for no other reason.

Q. Okay. Did Ted cash the alleged checks you claim were fraudulently cashed?

A. I don't know who cashed them, Eliot, but they weren't cashed by me.

Q. Were you aware of any problems leading up to your lawsuit with Simon and Ted, between those two?

MR. ROSE: Objection. Relevance and scope.

MR. FEAMAN: Overly broad.

THE COURT: Sustained.

BY MR. ELIOT BERNSTEIN:

Q. If Ted represented the lawsuit for the estate, would Ted make a claim that he was responsible for damages done to you in the lawsuit? Would he sue himself or --

A. Doesn't seem like that would be a logical thing for him to do.

Q. Because that is the definition of an adverse interest. You are not going to pursue yourself or sue yourself. Okay. Mr. Stansbury --

MR. ROSE: Objection. Move to strike.

THE COURT: Sustained.

MR. ELIOT BERNSTEIN: Do what?

THE COURT: The little commentary at the end. You can't make your little comments.

BY MR. ELIOT BERNSTEIN:

Q. Yes. Okay. All right. Have you seen that letter before?

THE COURT: Have you given everyone a copy of whatever it is you're showing him?

MR. ELIOT BERNSTEIN: Oh, do we have copies of that? That might take me a minute to find.

How many copies are there of that letter? One? Yes. One. Can I make a copy? Do you have a copier, by any chance?

THE COURT: I don't have an assistant this week. Trust me, I have my own issues.

MR. ELIOT BERNSTEIN: I'll ask questions from my own letter. Can you hand that back to

him to see if he knows that letter. It's a June 20th... I'll give it to them.

THE WITNESS: Have I seen it before, is that your question?

BY MR. ELIOT BERNSTEIN:

Q. Yes.

A. Yes.

MR. FEAMAN: May I approach the witness and look at the letter the witness has?

THE COURT: Mr. Rose, if you want to as well.

MR. ROSE: I think it's an exhibit to the complaint. It's already in evidence. Mr. Feaman wrote the letter. He has surely seen it before.

MR. FEAMAN: Thank you.

BY MR. ELIOT BERNSTEIN:

Q. Good to go. I'll just ask him... Sorry, Bill. This is a June 20th, 2012 letter. It's certified mail and it's marked personal and confidential and it's to Ted Bernstein and it was authored by your attorney, Mr. Feaman.

MR. ROSE: I think he misstates the addressee of the letter though.

MR. ELIOT BERNSTEIN: Okay. Can you hand

it back to him?
BY MR. ELIOT BERNSTEIN:
Q. Who is it addressed to?
A. Mr. Ted Bernstein, President, LIC Holdings, Inc., 950 Peninsula Circle, Boca Raton, Florida 33487.
Q. Anybody else?
THE COURT: Mr. Eliot, just to explain the objection, when you say Ted, if it's as president, you just have to say that.
MR. ELIOT BERNSTEIN: If it's what?
THE COURT: As president of the company. That was the objection.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: Next question?
BY MR. ELIOT BERNSTEIN:
Q. Nobody else?
A. No one else is listed on this.
Q. Okay. Fine. I'll take it back.
So in this letter -- prior to your lawsuit, you write a letter to Ted Bernstein that describes issues and concerns to Ted Bernstein of Ted Bernstein's acts against you. In efforts to stage this whole thing off at the pass, I guess, you wrote a letter timely requesting that these

egregious acts be resolved and you contacted Ted. Would you say that Ted Bernstein is responsible for any teeny tiny amount of damages done to you? Is that why you sued him?

A. Yes.

Q. Okay. So there would be, in your view, a -- if Ted represented the estates and trusts that you sued, there would be a possibility that those estates and trusts were represented by a non adverse party would raise a claim stating, hey, we shouldn't pay all of the damages, Ted apportioned at least a certain part, correct?

MR. ROSE: Objection. Calls for legal conclusion.

THE COURT: Sustained.

I need you to wrap it up, Mr. Eliot. I haven't let Mr. Feaman ask questions yet. So one more question.

BY MR. ELIOT BERNSTEIN:

Q. To your knowledge, have you gotten discovery of all of the records of LIC Holdings and Arbitrage, International?

MR. ROSE: Objection. Relevance and beyond scope.

THE COURT: I got hung up on the name.

Let me hear the question again, if you would read back the question.

(Pending question read by reporter as follows:)

"Q. To your knowledge, have you gotten discovery of all of the records of LIC Holdings and Arbitrage, International?"

THE COURT: Sustained.

MR. ELIOT BERNSTEIN: Those are parties to the action.

THE COURT: It's not relevant to this proceeding. All right. So thank you very much, Mr. Eliot. Mr. Feaman.

MR. FEAMAN: No questions, Your Honor.

THE COURT: Thank you, sir. Redirect.

REDIRECT EXAMINATION

BY MR. ROSE:

Q. One question. Your stock claim is only against Ted Bernstein and the company; isn't that true? Let me hand you Count IV of the second amended complaint. Can you take a look at it and then after you have looked at it, I have a question for you.

A. How much of this am I reading?

Q. Just the title.

A. Fraud in the inducement...
Q. I want you to read that. Do you see that part there?
A. Do you want me to read it for myself or --
Q. Read it for yourself and take a look at it. Have you done that?
A. I did.
Q. Does that refresh your recollection that the only defendants in Count IV relating to the stock are Ted Bernstein and the company?
A. Yes.
Q. And you have released both of those entities in your settlement, right?
A. I guess.
Q. You are not suing Simon Bernstein's estate for anything having to do with stock?
A. No, I am not.
MR. ROSE: Okay.
MR. ELIOT BERNSTEIN: Can I get redirect?
THE COURT: No. We don't go back again. Thank you.
MR. ELIOT BERNSTEIN: Can I submit that as evidence to the Court?
THE COURT: Any objection to the letter? I think we have already got it in evidence

because it was attached to the complaint but --

MR. ROSE: No objection, Your Honor.

MR. FEAMAN: No objection.

THE COURT: This will be marked as Interested Party's Number 1, without objection, into evidence and Mr. Stansbury may step down.

(Interested Party's Exhibit No. 1, Letter dated 6-20-12)

THE WITNESS: Thank you, Your Honor.

(Witness stepped down)

THE COURT: Thank you. Give me one second to complete marking this.

Okay. Mr. Rose, next witness.

MR. ROSE: At the risk of turning this into a circus, I'll call Ted Bernstein.

THE COURT: Are you guys going to hand me some portions of Mr. O'Connell's deposition at some point because you said that you have agreed? I was hoping I would actually have a hard copy of that testimony.

MR. ROSE: Not his deposition. I don't care about the deposition. The testimony he gave.

THE COURT: The testimony from the last hearing?

MR. ROSE: I can provide that. I can read it in closing. Actually, the same pages we cited in our final arguments. His statement is in the best interest.

THE COURT: I would still like a written copy. I can make copies of that if you have it. That would be awesome. Mr. Ted.

Thereupon,

TED S. BERNSTEIN,

a witness, being by the Court duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROSE:

Q. State your name for the record.

A. Ted Bernstein.

Q. Now, you do not currently have a fiduciary role in the Estate of Simon Bernstein; is that correct?

A. Correct.

MR. FEAMAN: Objection. Calls for a legal conclusion.

THE COURT: Overruled.

BY MR. ROSE:

Q. Mr. O'Connell is the personal representative of the estate?

A. That's correct.
Q. Now, you are serving as the trustee of the Simon Bernstein Trust?
A. I am.
Q. And the beneficiaries of the Simon Bernstein Trust are 10 trusts created by your father's trust?
A. 10 subtrusts, yes.
Q. And the trustee -- who are the trustees of those subtrusts supposed to be?
A. The parents for the children.
Q. And other than Eliot, are the other parents serving as trustees?
A. They are.
Q. All right. Now, at some point in time Mr. O'Connell and yourself had discussions about how best to handle the Stansbury case; is that true?
A. Yes, we did.
Q. And can you tell -- well, we have heard what Mr. O'Connell has said about that. Do you disagree with his version of those events?
MR. FEAMAN: Objection. Improper question.
THE COURT: Sustained.
THE WITNESS: I agree with what Mr.

O'Connell said.

MR. FEAMAN: Move to strike.

THE COURT: Sustained.

BY MR. ROSE:

Q. In your own words, can you tell the judge what the arrangement should be?

A. Sure. His firm is unable to tend to the matter as quickly as everybody wanted it to be tended to so he asked if I would help him manage the litigation.

MR. FEAMAN: Objection. Hearsay.

THE COURT: Sustained on the last portion, the portion that is asked if he would help you. That's hearsay.

BY MR. ROSE:

Q. You reviewed the motion that has been filed to appoint you at administrator ad litem?

A. Yes, I have.

Q. Do you believe you would do a good job representing the interest of the estate against Mr. Stansbury?

A. I do believe I would do an excellent job, yes.

Q. Is there anyone else alive that knows more about the facts and could take that role than

yourself?

A. No, there is not.

Q. And you have agreed to serve for what compensation?

A. I agreed to do it for no cost.

Q. Why did you agree to do it for no cost?

A. Well, I don't think there is anybody else that knows the matter as well as I do. I think that I'm going to be involved in the case anyway and I believe that most of my time has been spent in preparing for, you know, what the case would involve so there is really no big extra amount of time on my part that would be required to do what is asked of me.

Q. Do you have an opinion as to which law firm should be defending the estate?

A. I do.

Q. Which law firm?

A. That would be your law firm.

Q. Why do you have that opinion?

A. Because nobody else can represent us in that case more effectively than your firm because you have already done what I consider to be a huge amount of work in that case. Any other firm would have to get up to speed and it's not a simple case;

this happened to be quite complex, and you're what I consider to be up to speed.

Q. Now, assuming that the guardian ad litem is representing the interest of Eliot's three children in the trust for which there currently is no serving trustee, is it accurate that all of the trustees of the 10 trusts under Simon's trust are in favor of this?

A. They are in favor of this, yes.

Q. Unanimously?

A. Yes, unanimously.

Q. Is it your belief that if the Court does not remove my law firm and does appoint you, it will result in any benefits to the estate?

A. Could you ask me that question again?

Q. If the judge does not disqualify or remove our firm and appoints you so that what Mr. O'Connell has asked for actually happens, will the estate benefit by having lower expenses?

A. Yes, it will.

Q. Will it benefit by having the Stansbury claim resolved faster?

MR. FEAMAN: Objection. Speculation.

THE WITNESS: Yes, it will.

THE COURT: The last objection is

sustained.
BY MR. ROSE:
Q. Did you see the motion Mr. Feaman filed last summer that is in evidence, when it was filed in July?
A. I'm sure I have seen it.
Q. Did it cause you concern to see that Mr. O'Connell wasn't available for months to schedule depositions?
A. Yes, it did.
Q. Is that one of the factors that led to the discussion of appointing you as administrator?
A. Yes; very much so.
Q. Are you generally available to assist in the defense?
A. Yes, I am.
Q. Are you willing to sit at trial, at counsel table and assist in the defense?
A. Yes, I am.
Q. Would the estate have the same opportunity to defend itself if you weren't sitting at counsel table during the trial?
MR. FEAMAN: Objection. Speculation.
THE COURT: Could I hear the question again?

(Pending question read by reporter as follows:

"Q. Would the estate have the same opportunity to defend itself if you weren't sitting at counsel table during the trial?"

THE COURT: Okay. I'm sorry. The objection?

MR. FEAMAN: Speculation.

THE COURT: Sustained.

BY MR. ROSE:

Q. If I was trying the case, would I want anybody other than you next to me to defend the case against Mr. Stansbury?

MR. FEAMAN: Objection. Calls for the state of mind of Mr. Rose.

THE COURT: Sustained. The Court is pretty clear on your state of mind. Not to worry. You can move forward.

BY MR. ROSE:

Q. In your role as the trustee of the Simon Trust, would you want anyone else other than you sitting at that table?

A. No, I wouldn't.

Q. Third time was the charm so...

Now, in Illinois there is a dispute over

an alleged 1995 irrevocable life insurance trust that was alleged to have been created by Simon Bernstein. That's one claim and the other claim is the estate; is that accurate?

A. Yes, it is accurate.

Q. And do you consider that you're personally adverse to the estate, trying to take money out of the estate?

MR. FEAMAN: Objection. His personal opinion as to whether he holds interests I don't think is proper or relevant.

THE COURT: Sustained.

BY MR. ROSE:

Q. What is your -- what do you believe -- well, strike that.

Do you believe that what is happening in Illinois is determining what your father's intent was with respect to his life insurance proceeds?

MR. FEAMAN: Objection to his commenting on his deceased father's intent.

THE COURT: Sustained.

MR. ROSE: I am not asking for his intent. I'm asking if that is the proceeding to determine --

THE COURT: At this point it's not the

State of Illinois decision anyway.
BY MR. ROSE:
Q. That's fine. Is there any way that what is happening in Illinois would, in your view, impact your ability to adequately represent the interest of the estate against Mr. Stansbury?
MR. FEAMAN: Objection.
THE COURT: Overruled.
THE WITNESS: No, I do not believe that there is anything to be benefitted by it. They are doing the best job they can.
THE COURT: Would you either push the mic forward or move it closer to you?
BY MR. ROSE:
Q. If you're appointed administrator ad litem, would you in any way interfere with Mr. O'Connell's ability to settle the case?
A. No, I would not.
Q. Now, any settlement would still have to be approved by the Court so you might have a say in the approval process?
MR. FEAMAN: Objection. Leading.
THE COURT: Sustained.
BY MR. ROSE:
Q. Other than any role you play in an

approval process, would you in any way interfere or impede Mr. Stanbury's ability to communicate with Mr. O'Connell or Mr. O'Connell's ability to communicate with Mr. Stansbury?

A. I would not.

MR. ROSE: I have nothing further.

THE COURT: Thank you. Mr. Eliot.

CROSS EXAMINATION

BY MR. ELIOT BERNSTEIN:

Q. Ted, did you settle with Stansbury individually in the Stansbury action?

A. I did.

Q. Did you settle Shirley's trust as trustee, settle her out of the Stansbury lawsuit?

A. It has been a while but I believe I did.

Q. Were you adverse to the beneficiaries of Shirley's trust when you did that?

A. I'm sorry. I don't understand what you mean.

Q. You don't understand what an adverse interest is?

A. I don't understand what the question was.

Q. Did you have an adverse interest with the beneficiaries of the estate when you settled Shirley's trust?

A. I don't believe that I ever had an adverse interest.

Q. Do you know what that is?

A. I think I understand what the word adverse means.

Q. Okay. So you don't know what an adverse interest is technically?

MR. ROSE: Objection. Asked and answered.

BY MR. ELIOT BERNSTEIN:

Q. You were sued by Mr. Stansbury you heard here and you're cognizant of -- and you heard Mr. Stansbury say that you had, according to his complaint, possible liability for the actions done to him; is that correct?

MR. ROSE: Objection. In light of the settlement he has no liability to Mr. Stansbury.

THE COURT: Sustained.

BY MR. ELIOT BERNSTEIN:

Q. Prior to the settlement, did you have liability in the Stansbury lawsuit?

MR. ROSE: Objection. Relevance and materiality as to timing. We are not asking him to be appointed back in when he was a

defendant.

THE COURT: Overruled.

THE WITNESS: I don't believe I had liability, no.

BY MR. ELIOT BERNSTEIN:

Q. Well, you were sued so wouldn't that represent a liability to you?

A. No.

Q. Okay. Let me ask you another question. While you were representing Shirley's trust to settle her out, could you have raised the claim that you were the responsible party for the acts against Mr. Stansbury?

MR. ROSE: Objection. Relevance and materiality.

THE COURT: Sustained.

BY MR. ELIOT BERNSTEIN:

Q. You settled Shirley's trust as the trustee. Did you make any investigation as to the apportionment of damages to the parties of the complaint?

MR. ROSE: Objection. Same, relevance and materiality.

THE COURT: Sustained.

BY MR. ELIOT BERNSTEIN:

Q. Have you done any investigation into the apportionment of damages to the parties you represented in the Stansbury lawsuit?

MR. ROSE: Objection. Same objection.

THE COURT: To the parties he represented?

MR. ELIOT BERNSTEIN: Yes. He represented Shirley's trust. They were sued, all these parties.

THE COURT: I asked because I didn't understand the question. That's why.

MR. ROSE: Objection. Relevance and materiality.

THE COURT: Sustained.

BY MR. ELIOT BERNSTEIN:

Q. Have you, Ted, or your counsel provided the Court with a full and complete inventory of all LIC and Arbitrage records from 2008 to present?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. ELIOT BERNSTEIN:

Q. In June of 2012, did you receive a demand letter addressed to you only from Peter Feaman on behalf of William Stansbury; yes or no?

MR. ROSE: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: Eliot, I honestly can't remember the details of these things but about that time I believe that I received a letter from Mr. Feaman.

BY MR. ELIOT BERNSTEIN:

Q. Do you recall the allegations in that letter?

A. Hardly.

Q. Do you recall the allegations against you and your office for missing and opening mail and forged checks?

A. I remember something about that, yes.

Q. When did you first read the will of Simon Bernstein, the 2012 will?

MR. ROSE: Objection. Relevance. Clearly beyond the scope.

THE COURT: Sustained.

BY MR. ELIOT BERNSTEIN:

Q. As a child of Simon Bernstein --

THE COURT: Last two questions.

BY MR. ELIOT BERNSTEIN:

Q. -- am I a beneficiary, am I a beneficiary of Simon Bernstein or am I a child of Simon Bernstein? Yes?

A. Pardon me?

Q. Am I a child of Simon Bernstein?
A. Are you his son, yes, you are.
Q. Are you familiar with any filings, letters or petitions made by your counsel on your behalf to the Court claiming I am not a beneficiary of anything?
MR. ROSE: Object to the form.
THE COURT: Sustained.
One more question, Mr. Eliot.
MR. ELIOT BERNSTEIN: Can I ask why I'm being limited? It's very important if he should become a fiduciary here because we are trying to establish that Ted Bernstein is misusing fiduciary roles.
THE COURT: Ask him a question about him. I told you one more question.
MR. ELIOT BERNSTEIN: I asked him if he is aware of pleadings he made to the Court.
THE COURT: Pleadings?
MR. ELIOT BERNSTEIN: That claim I am not a beneficiary which would materially affect --
THE COURT: All right. I'll allow it.
THE WITNESS: I'm sorry. Now, could you please ask me the question again?
(Pending question read by reporter as

follows:)

"Q. Are you familiar with any filings, letters or petitions made by your counsel on your behalf to the Court claiming I am not a beneficiary of anything?"

MR. ROSE: Objection. Relevancy. There is no issue that he did not have standing for the purpose of substantial personal property. I didn't ask him any questions about whether he had standing.

THE COURT: He's asking him on the stand though. Overruled.

THE WITNESS: I'm not familiar enough with the, whatever you characterize those things as, to know what is inside of them. Just about you being a beneficiary. That is my answer.

BY MR. ELIOT BERNSTEIN:

Q. Did you read the pleadings before the Court that are filed on your behalf as a fiduciary?

A. Yes, I did.

Q. Have you taken any direct, or have you found out through these proceedings that it was claimed that I was not a beneficiary with no standing by your counsel?

MR. ROSE: Objection. Relevancy, scope.

THE COURT: Overruled. Can you answer the question, please, Mr. Bernstein?

THE WITNESS: Sure. I believe there was some mention of documents filed that you were not a beneficiary and in some limited way you have been deemed as a beneficiary.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: Okay. That was the last question.

MR. ELIOT BERNSTEIN: Can I ask one last follow-up?

THE COURT: Okay. One last follow-up. That's it.

MR. ELIOT BERNSTEIN: That's a follow-up. I want to say I feel and put on the record that I'm being limited in my ability to question witnesses.

BY MR. ELIOT BERNSTEIN:

Q. Have you ever, since finding that out, have you corrected any of the filings that you filed or were filed on your behalf that claimed to any courts of law that I am not a beneficiary in Simon's estate?

MR. ROSE: Objection. I think it's an improper question. In the actual document he

is referring to, which is in evidence, at a later point --

THE COURT: You are asking him for information that is an attorney/client privilege so I'm going to sustain the objection. We're good. Last question. Thank you.

Mr. Feaman, you're next. Thank you very much.

MR. FEAMAN: Your Honor, I have this witness under subpoena so I'll ask the Court's permission to exceed the scope of direct and handle him as my witness now at one time.

THE COURT: Rather than call him up again as a separate witness?

MR. FEAMAN: Yes.

THE COURT: As long as everybody understands that you're actually doing your direct of your witness. But first I want to know, before you do that, do you have any other witnesses, Mr. Rose? No. Okay.

MR. ROSE: No, Your Honor.

THE COURT: The other thing, he would be entitled to redirect.

MR. ROSE: I have no objection, to speed

things up, if Mr. Feaman does the examination and I don't mind if he exceeds the direct, as long as he stays within the scope of the narrow issue we are deciding.

MR. FEAMAN: Now that I know he has no other witnesses, I have one or two, and I can call him to the stand.

THE COURT: Perfect.

CROSS EXAMINATION

BY MR. FEAMAN:

Q. Thank you. Good afternoon, sir.

A. Hello.

Q. Now, there was a chart here that was referred to in your direct examination by your counsel. Do you have that chart, Mr. Rose? This one?

Okay. Now, there is a reference that the trustees of the Simon trust were in an agreement with the trustees of the subtrust for the grandkids.

By the way, many of the grandkids are adults now; are they not?

A. Yes.

Q. The trustees of the subtrusts, I believe you testified as far as they exist, are in agreement

with you becoming the administrator ad litem, correct?

A. That's correct. That's what I testified to.

Q. Those other trustees, those are your other siblings other than Mr. Eliot, correct?

A. Yes.

Q. And all of those other siblings are also plaintiffs with you in the Chicago action; are they not?

A. I believe so.

Q. Okay. So as far as any potential conflict of interest that may exist that I know you deny, they are in the same position as you relative to being adverse to the estate in the Chicago action, Bernstein estate, correct, sir?

MR. ROSE: Object to the form. A, calls for legal conclusion. B, it's contrary to the terms of the trust that we have talked about, which Exhibit, paragraph 4J allows the fiduciary to serve as a fiduciary even though they are interested in some other aspects of the estate or trust.

THE COURT: I'm just deciding as to the appropriate question. I'm going to overrule

it. You can answer, if you can.

THE WITNESS: I'm sorry. Can you please ask me that question again or --

BY MR. FEAMAN:

Q. I'll ask it again. All of these other trustees of the subtrusts are your three other siblings, not including Mr. Eliot, because there is five of you, correct?

A. That's correct.

Q. So the four of you are all the trustees of the subtrusts, correct?

A. Yes.

Q. Other than Mr. Eliot. And the four of you are also plaintiffs in the Chicago litigation, correct?

A. Yes.

Q. And the plaintiffs in that Chicago litigation are adverse to the estate of Simon, of your dad, in that litigation; is that correct?

A. Not correct. I'm not saying yes or no. I feel like I'm being put in a box about this word adverse. So my understanding of that word I feel is a rock solid understanding of that word, but I feel like I'm being put in a box today about what you're trying to get me to say something about this

adversity. I don't think they are adverse. I don't think my siblings are adverse other than they are trying to collect the proceeds of a life insurance policy.

Q. Right. If they don't collect, the money is going to go to the estate, isn't it?

A. I'm not sure of that.

Q. Okay. Is that -- are you aware that's what the estate is seeking in that action?

A. Well, I know that's what they're seeking but you are asking me if I was aware if they were going to go there.

MR. FEAMAN: That's all I have on cross, Your Honor.

THE COURT: Direct. No, you don't get redirect because he called him as a witness.

MR. ROSE: I need one second to think.

THE COURT: Sure. How it works, the person calls the witness and everybody gets to cross and the person that calls the witness gets to question again.

MR. ELIOT BERNSTEIN: Do I get to question again on this stuff?

THE COURT: No. No. When Mr. Feaman asks his direct, you'll get an opportunity to do

whatever Mr. Feaman's questions are about.

MR. ELIOT BERNSTEIN: What does that mean, the direct?

THE COURT: The person that calls the witness is the direct.

MR. ELIOT BERNSTEIN: Mr. Feaman --

THE COURT: I'm sorry, sir. I want to finish and then I'll explain. Go ahead.

REDIRECT EXAMINATION

BY MR. ROSE:

Q. In seeking to uphold your father's testamentary documents in Florida, were you attempting to carry out what you believed to be his wishes?

A. Yes.

Q. Is that what you're doing in Illinois?

A. Yes.

Q. And whatever your father's wishes were is how the Illinois case will resolve?

MR. FEAMAN: Objection. Calls for speculation, legal conclusion.

THE COURT: Sustained.

BY MR. ROSE:

Q. Whatever the ruling is in Illinois as to what your father's wishes or intent were, will you

abide by that in your role, whatever roles you have in this estate?

A. Yes, I will.

MR. ROSE: Nothing further. We rest --

THE COURT: Okay. Let me quickly answer your question.

MR. ROSE: -- with the caveat that Mr. O'Connell's testimony from the last hearing is in evidence.

THE COURT: Which hasn't been given to me.

MR. ROSE: I will give it to you.

THE COURT: When you subpoena a witness or you call a witness or you represent a party -- and you can't because you are not a lawyer -- but when you call a witness to the witness stand, like Mr. Rose called his own client to the witness stand, he, because he is calling his own client, gets the first round of questions. Then you all get to ask questions and he gets the last round and then that's it.

Now, Mr. Feaman has subpoenaed Mr. Ted so now he is asking me to now call his subpoenaed witness so he will get the first round of questions and everyone will get to ask

questions and he will get the final hit. So does that make sense?

MR. ELIOT BERNSTEIN: Called him from the subpoena, right?

THE COURT: Yes. He subpoenaed him before the first hearing and now he wants to call him. We could have him technically walk back down and walk back up.

MR. ELIOT BERNSTEIN: Is there a play book on this direct, redirect or something that I can be reading maybe? Rules of civil procedure?

THE COURT: I don't want to be insulting.

Okay. You're still under oath. You're up, Mr. Feaman. I want to remind you, you have got until four and, Mr. Feaman, your motion is next so if we get to it, we get to it. If we don't get to it, we don't get to it.

MR. FEAMAN: Before I ask any questions, I move for a directed finding based upon my opening statement.

THE COURT: Denied. Go ahead.

MR. FEAMAN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. FEAMAN:

Q. Okay. So please state your name.
A. Ted Bernstein.
Q. And your relationship to Simon is his son, correct?
A. Yes.
MR. FEAMAN: And, Your Honor, I ask permission to lead because he is a hostile witness.
THE COURT: So granted.
BY MR. FEAMAN:
Q. The five adult children of Mr. Simon Bernstein, your father, are Eliot and who are the others?
A. You are asking me my siblings' names?
Q. Yes.
A. Pam Simon, Lisa Friedstein, Jill Iahtoni.
Q. Now, your father died in September of 2012, correct, sir?
A. That's right, yes.
THE COURT: September or December?
THE WITNESS: September.
BY MR. FEAMAN:
Q. September 2012. And the personal representatives appointed by your father of the estate were two gentlemen by the name of Robert

Spallina and Donald Tescher; is that correct?

MR. ROSE: Objection. Materiality and beyond the scope of issues for today. We have already got a personal representative.

MR. FEAMAN: I'm trying to lay a foundation and predicate for my questions that come later.

THE COURT: I need you to proffer where you're going with this.

MR. FEAMAN: Okay. And then I am going to then use information about their conduct as personal representative and Ted's involvement in their conduct as personal representative as grounds to impeach Mr. Ted's character, his honesty and his judgment because he is asking this Court to appoint him as a fiduciary. Therefore, I am delving into the, if you will, the prior bad acts of both Messrs. Tescher, Spallina and Mr. Bernstein with reference to the Simon Bernstein estate in order to impeach his character, judgment and honesty so that I can argue, in addition to the conflict, he otherwise should not be appointed by this Court to hold a fiduciary position in the Estate of Simon Bernstein.

THE COURT: And what authority are you -- I'm not saying this disrespectfully. I'm asking what authority are you relying on that allows you to do that?

MR. FEAMAN: What authority am I relying on?

THE COURT: To go to the further prior bad acts?

MR. FEAMAN: The Court is being asked to make an appointment of somebody to be fiduciary which entails positions of trust and honesty and the Court can perfectly delve into the proposed fiduciary's background in terms of honesty, trustworthiness, character and judgment. As it relates to the various estates that he is asking to be the fiduciary for and as it relates to his mother's estate, where he did act as a fiduciary because if he was dishonest in connection with his duties as a fiduciary in his mother's estate, that's relevant for the Court to consider in whether this gentleman should be appointed as a fiduciary in this lawsuit.

THE COURT: Do you have any proof of dishonesty; in other words, any charges, any

removals, anything of that nature, or is this just bantering and fighting amongst the parties?

MR. FEAMAN: I have --

THE COURT: Do you see what I'm saying? I know the other two were removed but he has not been removed to the best of the Court's knowledge.

MR. ROSE: No one was removed. Resigned. If you look at the final judgment dated December 16th when Judge Phillips heard the trial which included the validity of the trusts of Simon Bernstein, this Court specifically made a finding that he played no role in anything that those prior lawyers did.

MR. FEAMAN: That's not true. You're misrepresenting things on the record, Mr. Rose.

THE COURT: Wait. I don't want you arguing about what it says.

MR. FEAMAN: Thank you, Your Honor.

THE COURT: Give me one second, please. In case -- the Shirley trust --

MR. ROSE: The Shirley trust construction, we call it the trust construction case but it was the one about the validity --

THE COURT: That's 2012.

MR. ROSE: It's a 2014 case.

THE COURT: Apparently she died after him.

MR. ROSE: No. This is the trust construction. She does die after him in 2012. I'm sorry. She died first. I'm sorry. Yes.

THE COURT: All right. December 2015, correct?

MR. FEAMAN: Correct.

MR. ROSE: Correct. December 16th.

MR. FEAMAN: That was not a trial of the complete case, by the way, Your Honor. I might add, it was only as to, I believe, Count II or Count I, one or the other, involving the validity of the underlying estate documents, period.

THE COURT: The testamentary documents.

MR. FEAMAN: Correct.

THE COURT: I can read it. I just can't pronounce it. Ted S. Bernstein played no role in any questionable acts of the law firm Tescher & Spallina. Move on. I'm sustaining the objection. Next question, please.

BY MR. FEAMAN:

Q. Now, Mr. Spallina was your attorney before you introduced him to your father, correct?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. FEAMAN:

Q. Now, Tescher & Spallina, specifically Mr. Spallina, was also representing you personally before the lawsuit in Chicago was filed, correct?

MR. ROSE: Objection. Relevance.

MR. FEAMAN: This is going to relate to the Chicago action.

THE COURT: Overruled on that one.

THE WITNESS: Could you please ask me that question again?

BY MR. FEAMAN:

Q. Mr. Spallina was representing you personally and your siblings in negotiating with the insurance company before the lawsuit in Chicago first filed in state court and now in federal court was commenced, correct?

A. Well, I don't recall him representing me personally but it's going back years and years now so...

Q. Did he represent -- was he your attorney during that time period in connection with dealings

with the lead-up to the filing of the Chicago litigation?

MR. ROSE: Objection. In what capacity because he clearly was --

BY MR. FEAMAN:

Q. Any capacity?

A. Maybe counsel in his capacity as trustee of the --

MR. ROSE: The objection is --

THE COURT: Excuse me. I'm hearing his objection. Complete your objection.

MR. ROSE: My objection is I think he has got to clarify the question because it's not fair to ask him if he was his personal lawyer.

MR. FEAMAN: I'll clarify.

THE COURT: Thank you.

BY MR. FEAMAN:

Q. Did Mr. Spallina communicate in writing with the Heritage Union Life Insurance Company in connection with the life insurance policy that is at issue in the Chicago litigation?

MR. ROSE: Objection to that as relevancy.

THE COURT: Overruled.

THE WITNESS: I believe Mr. Spallina

corresponded with the insurance company.
BY MR. FEAMAN:
Q. And when he corresponded with the insurance company, was he doing that on behalf of you and your brothers and sisters, other than Mr. Eliot, or was he doing it on behalf of the Estate of Simon Bernstein?
A. I'm not sure. I can't tell you. I don't know.
Q. Do you recall that in connection with the 1995 life insurance trust, which is the subject matter of the Chicago litigation, that Mr. Spallina represented to Heritage Union Life Insurance Company that he was, in fact, the trustee of that 1995 life insurance trust?
MR. ROSE: Objection. Relevance.
THE COURT: Sustained.
BY MR. FEAMAN:
Q. Did anybody other than you ever, to your knowledge, ever represent to the Heritage Life Insurance Company that they were the trustee and not you?
MR. ROSE: Objection. Relevancy.
THE COURT: Sustained.
BY MR. FEAMAN:

Q. Were you aware that Mr. Spallina represented to Heritage that he was the trustee? Have you ever been aware of that?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. FEAMAN:

Q. Now, in the lawsuit in Chicago, you're representing to the Court that you're the trustee there, correct?

A. Yes.

Q. Did that change from November of 2012 to the time that the lawsuit was filed in April of 2013?

MR. ROSE: Objection. Relevance. We are not here to try the Illinois case.

THE COURT: Overruled. Back to the alleged conflict so let me hear the response, please.

THE WITNESS: Could you please ask me that question again or read that back?

(Pending question read by reporter as follows:)

"Q. Did that change from November of 2012 to the time that the lawsuit was filed in April of 2013?"

THE WITNESS: I think it changed because the lawsuit was filed in Illinois and Spallina's conversations with the insurance company were out of Florida. So yes, to answer your question, it changed. Something changed.

BY MR. FEAMAN:

Q. And did you become trustee in -- when did you become trustee?

MR. ROSE: Objection. Relevance.

THE COURT: Overruled.

THE WITNESS: I think I was always the trustee of the Illinois trust.

BY MR. FEAMAN:

Q. Do you know why Mr. Spallina would have represented to the life insurance company that he was the trustee?

MR. ROSE: Objection. Speculation.

THE COURT: Sustained.

BY MR. FEAMAN:

Q. Are you aware that Mr. Spallina asked the life insurance company to send the money into his trust account --

MR. ROSE: Objection. Hearsay.

BY MR. FEAMAN:

Q. -- in December of 2014?

MR. ROSE: Relevance.
BY MR. FEAMAN:
Q. December of 2012?
THE COURT: Sustained.
BY MR. FEAMAN:
Q. Do you recall when the personal representatives of your father's estate, Simon Bernstein's estate, withdrew?
MR. ROSE: Objection. Relevance.
THE COURT: What's the relevance?
MR. FEAMAN: I am laying a predicate that he had knowledge and I'm going to impeach him with some of his acts, Mr. Bernstein's acts as trustee of the Shirley Bernstein Trust. So, again, it goes -- I'm laying a predicate for impeachment of the witness.
THE COURT: Could you read the question back for me?
(Pending question read by reporter as follows:)
"Q. Do you recall when the personal representative of your father's estate, Simon Bernstein's estate, withdrew?"
THE COURT: I'll allow that question. Overruled.

THE WITNESS: Are you asking me for a specific date?

BY MR. FEAMAN:

Q. Yes. Month and year?

A. I don't know.

Q. Okay. Let me see if I can refresh your recollection.

MR. ROSE: January 2014 --

THE WITNESS: Sounds about right.

MR. ROSE: -- to speed things up.

BY MR. FEAMAN:

Q. Let me hand you what I have had premarked for identification as Stansbury's Exhibit 16, which appears to be a letter written by Donald Tescher dated January 14th, 2014 withdrawing. Does that refresh your recollection?

A. Yes, it does.

Q. And are you aware that under your mother's trust, the Shirley Bernstein Trust by which you became the trustee, that you were disinherited, along with your children?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

MR. ROSE: Also goes to the issue of the final judgment.

THE COURT: Sustained.
BY MR. FEAMAN:
Q. And do you recall when -- do you recall that the Shirley Bernstein Trust owned a condominium on the ocean in Boca Raton called the Aragon? Do you recall that?
MR. ROSE: Objection. Relevance.
THE COURT: Sustained.
BY MR. FEAMAN:
Q. Do you recall that the condominium was sold and you were given a legal opinion by your attorneys as to how to distribute -- without telling me what that opinion was -- as to how to distribute the proceeds of the sale of that condominium?
MR. ROSE: Objection. Relevance and, further, there is a motion pending to approve settlement of that case, if we could ever get there.
THE COURT: Sustained. I'll strike the last comment.
MR. ROSE: I'll withdraw it and I'll apologize.
BY MR. FEAMAN:
Q. Did you distribute the proceeds of the sale of the Aragon Condominium to your children?

MR. ROSE: Objection. Relevancy.
BY MR. FEAMAN:
Q. In part?
MR. ROSE: Objection.
THE COURT: Sustained.
BY MR. FEAMAN:
Q. Did your attorneys at that time ever advise you not to do that?
MR. ROSE: Objection. Calls for attorney/client privilege --
THE COURT: Sustained.
MR. ROSE: -- and also relevance.
THE COURT: Mr. Feaman, how many more witnesses do you have?
MR. FEAMAN: I have a portion of the transcript, of about two minutes, of the O'Connell deposition, and that's it.
THE COURT: Thank you. Can I ask you be done within five minutes so I can let everyone else get a chance, to conclude this matter?
MR. FEAMAN: Okay.
THE COURT: Thank you very much.
BY MR. FEAMAN:
Q. Now, let's get back to the Chicago litigation. You agree, do you not, that your

position in the lawsuit is such that if you were to prevail as a plaintiff, then the proceeds of the life insurance policy would go to you eventually, I guess you and your four siblings; is that correct?

A. Yes.

Q. That's what you're seeking, correct?

A. Yes.

Q. And you are aware that the estate has intervened in that case, correct, the Estate of Simon Bernstein?

A. Yes. I am aware of that, yes.

Q. Have you read any of the pleadings that have been filed by your attorney or the attorney for the estate in that case?

A. Yes. At some point I read them, yes.

Q. So you are aware then that the estate is making a claim in that action that the Estate of Simon Bernstein should be awarded the 1.7 million dollars and not you and your siblings, correct?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

BY MR. FEAMAN:

Q. Now, so the beneficiary of the estate of Simon Bernstein, should it prevail in the Chicago litigation, is the pour-over trust which is of Simon

Bernstein, correct?

MR. ROSE: Objection.

THE COURT: I'm sorry. I need that question read back before you even say the objection. I don't think I follow you.

BY MR. FEAMAN:

Q. Let me try to rephrase. The Estate of Simon Bernstein that would receive the 1.7 million if it prevailed, according to this, the beneficiary of the estate, the monetary beneficiary is the Simon Bernstein Trust that was created down here in Florida, correct?

A. Yes. You are asking me if the trust of Simon was the --

Q. Yes.

A. Yes.

Q. And assume for the moment that Mr. Stansbury is not successful or is unsuccessful in his lawsuit against the estate, then that 1.7 million dollars would, in fact, pass through the estate and go to the trust, correct?

A. I'm not sure that the money goes --

MR. ROSE: Objection. Calls for legal conclusion. He said he is not sure and the Court is well aware of the proceeds of the

estate.

THE COURT: I'll let him answer if he knows.

THE WITNESS: So I believe that what you're asking me is if the estate prevails, do the proceeds, I think you said automatically go into the trust, and if you did say that, then I understood what you're asking me and I'm not sure that is what happens.

BY MR. FEAMAN:

Q. I don't think I used the word automatically. I think what I said was that after the payment of all claims, creditors, the money, the 1.7 million dollars would then pass from the estate to the Simon Bernstein Trust; is that correct?

A. That is my understanding, after those payments.

Q. So that would not go to you in the Chicago litigation, correct, or would not go to you as plaintiffs in the Chicago litigation; it would go to the trust, correct?

A. That's correct.

Q. Okay. And none of those adult children who are plaintiffs in the Chicago litigation are beneficiaries of the trust, are they?

A. No, they are not.
Q. And, in fact, it's all of their kids that are beneficiaries of the trust through the subtrusts, correct?
A. Yes.
MR. ROSE: Objection to the form.
THE COURT: Overruled. Mr. Feaman, last question.
BY MR. FEAMAN:
Q. So if the money goes to the 10 grandchildren of Mr. Simon Bernstein that is being litigated in Chicago and not the five adult children, okay, and you are the successor trustee for the trust where the money goes to the grandchildren and yet at the same time you are the plaintiff in the Chicago action, don't you see that as a conflict?
A. No.
Q. Let me ask one more. Are you watching out for you as a plaintiff in the Chicago litigation or are you watching out for the 10 grandchildren of your father as successor trustee of the trust that is the beneficiary of the estate down here in Florida?
MR. ROSE: Objection. Argumentative.

THE COURT: Sustained. It doesn't have parameters.

Okay. Mr. Eliot.

CROSS EXAMINATION

BY MR. ELIOT BERNSTEIN:

Q. Ted, your counsel stated that there is 10 subtrusts that are the beneficiaries of Simon and Shirley for the grandchildren; is that correct? Is that what you believe?

A. Yes. That's what he said.

Q. Are you serving as a subtrustee of your childrens' trust?

A. Yes, I am.

Q. Okay. Did you sue the subtrust in your Shirley trust lawsuit?

MR. ROSE: Objection.

MR. ELIOT BERNSTEIN: This is very important, Your Honor.

THE COURT: I get to hear his objection. Don't tell me how important it is.

MR. ROSE: First of all, it's a matter of public record. He is required in our lawsuit, which you looked at, 3698 of the complaint, we had to sue every single person that could potentially be a beneficiary.

THE COURT: You can answer the question. Overruled. Answer, if you can.

THE WITNESS: Yes.

BY MR. ELIOT BERNSTEIN:

Q. Okay. So can I show you -- and there is your complaint, Mr. Rose, so if you need a copy, let me know.

THE COURT: In which case for the record?

MR. ELIOT BERNSTEIN: The 3698 complaint that was served, the amended complaint.

BY MR. ELIOT BERNSTEIN:

Q. Ted, on that complaint --

THE BAILIFF: Sir, behind the podium.

BY MR. ELIOT BERNSTEIN:

Q. Sorry. -- you sued Alexandra Bernstein. Do you know who that is?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained. Move on.

BY MR. ELIOT BERNSTEIN:

Q. Okay. Did you sue your children's subtrusts as beneficiaries?

A. Was that the last question that you asked me? Yes.

Q. You did. Can you point out in the caption where you sued them?

A. Can I point out in the caption where I sued the defendants?

Q. The subtrusts for your children. Mr. Rose just said you had to sue all of the potential beneficiaries.

MR. ROSE: Objection. Docket speaks for itself, if you read the caption. This is just improper questioning.

MR. ELIOT BERNSTEIN: I can't see where he sued the subtrusts so I'm asking him if maybe he could show me.

THE COURT: I'm wondering how it relates to this hearing.

MR. ELIOT BERNSTEIN: Oh, it relates.

THE COURT: That's not good enough.

MR. ELIOT BERNSTEIN: Let me explain. What is being argued here is that these beneficiaries exist that all of this affects, all of these hearings, obviously, and what I'm establishing is the groundwork that the 10 subtrusts don't factually exist.

THE COURT: Move on.

BY MR. ELIOT BERNSTEIN:

Q. Okay. Ted, in your lawsuit you sued a Simon Bernstein Trust dated 9-13-12; is that

correct? Do you see that there?

A. I see that there.

Q. Okay. Are you aware of your father on 9-13-12, the day he died, between the hours of 12 and two a.m., when he was code blue, that he formulated any trust on that date?

MR. ROSE: Objection. It's an improper question on a couple of grounds, but if I can help the Court, the trust creates 10 subtrusts on the date of his death so he didn't create anything new. It's based upon the 7-25-12 trust that the Court has already validated.

THE COURT: I got it.

BY MR. ELIOT BERNSTEIN:

Q. You didn't sue the 7-25 trust; you signed a Simon Bernstein Trust dated on the day he died. Do you have a trust in your possession of Simon Bernstein's dated 9-13-12?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. ELIOT BERNSTEIN:

Q. Well, you --

THE COURT: No. I made the ruling. Next question, please.

MR. ELIOT BERNSTEIN: I'm getting to the

next question.

THE COURT: Excellent.

BY MR. ELIOT BERNSTEIN:

Q. You sued me as trustee of the Simon Bernstein Trust dated 9-13-12; are you aware of that? Is that what it says in that caption?

A. Yes. That's what it says.

Q. Okay. So am I the trustee of the Simon Bernstein Trust dated 9-13-12, that you are aware of?

MR. ROSE: Objection. May I be heard because --

THE COURT: Sure.

MR. ROSE: -- he would be the trustee under the terms of the trust agreement if he had accepted his role.

THE COURT: I know.

MR. ROSE: On the basis to accept his role, we have a guardian. It's cumulative and there is no point in asking the question.

THE COURT: Sustained.

BY MR. ELIOT BERNSTEIN:

Q. Did you sue yourself as trustee of your childrens' trust under the 9-13-12 trust?

MR. ROSE: Objection. Cumulative,

relevance.

THE COURT: Sustained.

BY MR. ELIOT BERNSTEIN:

Q. Okay. Has there been a construction hearing to determine the beneficiaries of the Simon or Shirley Trust that you're representing?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. ELIOT BERNSTEIN:

Q. Did you file a pleading in the Illinois Court stating that I wasn't a beneficiary of the Simon Bernstein Estate?

A. I don't think so.

Q. Okay. Are you aware of a ruling by Judge John Robert Blakey of Illinois that states that based on your pleading claiming that I wasn't a beneficiary of Simon's estate, that I was being removed from that federal lawsuit?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. ELIOT BERNSTEIN:

Q. Were you the fiduciary of Shirley's estate and trust when your counsel filed fraudulent documents with the court?

MR. ROSE: Objection.

THE COURT: Okay. That will be the last question after this one. Overruled. Excuse me. Sustained.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: Last question.

BY MR. ELIOT BERNSTEIN:

Q. Were fraudulent documents submitted to the court while you were a fiduciary?

MR. ROSE: Objection. Relevance, materiality, beyond the scope of the examination.

MR. ELIOT BERNSTEIN: Well, definitely due to the fact whether he qualifies or not to become a fiduciary.

THE COURT: It's an inappropriate question. Sustained. All right. Thank you. Mr. Rose.

MR. ELIOT BERNSTEIN: Can I state on the record that I have been denied my access to the witness.

THE COURT: You may. Go ahead, Mr. Rose.

MR. ELIOT BERNSTEIN: I will.

CROSS EXAMINATION

BY MR. ROSE:

Q. Assuming the Illinois lawsuit results in

the money coming into the estate, that would leave a lot of money available to pay Mr. Stansbury's claim; would it not?

A. Yes, it would.

Q. All the more reason to have Mr. O'Connell as the personal representative represented by the people that give you the best chance of winning that case, right?

A. That's right.

MR. ROSE: Nothing further.

MR. FEAMAN: No redirect.

THE COURT: You may step down. Thank you.

(Witness stepped down)

THE COURT: All right. Now, at this time Mr. O'Connell's testimony from the last hearing, is it being submitted in its entirety to the Court?

MR. ROSE: I'm only going to put a few passages in. I'm going to read them. I can hand them to the Court.

THE COURT: I'll mark them into evidence if Mr. Feaman is of the same mindset and he can hand me the pages. Did you have any pages?

MR. ELIOT BERNSTEIN: I would like to

submit the full thing.

THE COURT: Do you have the full thing of his testimony? If you have all of his testimony, I'll take all of it.

MR. ROSE: I have underlined the parts I wanted to put in evidence so I think it would be easier to read. I could read for the first two or three minutes and you would get everything you needed and then you wouldn't have to read the entire transcript.

THE COURT: If you do that again, Mr. Eliot, I will have you leave. You continue to laugh and snarf and I do not tolerate that in my courtroom. I don't allow anyone to do it to you.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: Do you have the pages prepared here today that you wish to submit, Mr. Eliot? This is the time.

MR. ELIOT BERNSTEIN: No. I'll submit them afterwards.

THE COURT: If you have them here today, this is the time when we submit evidence.

(Trustee's Exhibit No. 2, Brian O'Connell Excerpts of 3-2-17 Hearing Testimony)

THE COURT: Mr. Feaman, do you have what you wish to submit?

MR. FEAMAN: I do. For the record, if Your Honor wants to take notes, it's Mr. O'Connell's deposition taken this past Monday, on March 13th. And as it relates to the appointment of Mr. Ted Bernstein as administrator ad litem, we are doing this in the interest of time rather than calling the witness and having -- I was going to call Mr. Royer and have him read --

THE COURT: I think I'm confused. Did you all agree on the deposition or his testimony at the prior hearing?

MR. FEAMAN: I said he could put in whatever he wanted from the prior hearing. I'm not seeking to put in anything from the prior hearing of Mr. O'Connell, but if he wants to, I said I have no objection.

MR. ROSE: Prior hearing?

THE COURT: Yes, prior hearing first.

MR. ROSE: Do you want me to read it quickly? It's not many passages.

THE COURT: No. I actually want them in my hand, to be honest with you. Just identify

it for the record.

MR. ROSE: I have page 1, which just is the cover page. I'll take out the appearances of counsel. So there's designations on pages 14, 15, 16, 22, 23, 24, 25, 26, 27, 28 and 31, which I have circled or underlined.

THE COURT: Now you can read it. Now go ahead and read it. So I'll take the hard copy but go ahead and read it.

MR. ROSE: I'll read it first. Okay.

THE COURT: Take your time.

MR. ROSE:

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

"A. Yes. But I want to state my position precisely, which is as now has been pled that Ted Bernstein should be the administrator ad litem to defend that litigation. And then if he chooses, which I expect he would, employ Mr. Rose and Mr. Rose would operate as his counsel."

Picking up on line 15 -- page 15, line 14:

"A. Here's why, yes, because of events.

You have an apple and an orange with respect to Illinois. Mr. Rose and Ted Bernstein is not going to have any -- doesn't have any involvement in the prosecution by the estate of its position to those insurance proceedings. That's not on the table."

"THE COURT: Say it again, Ted has no involvement.

"THE WITNESS: Ted Bernstein and Mr. Rose have no involvement in connection with the estate's position in the Illinois litigation, Your Honor. I am not seeking that. If someone asked me that, I would say absolutely no.

Page 22, line 15:

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

"A. Right.

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

"A. Correct.

"Q. And notwithstanding that, you still believe that it's in the best interests of the estate as a whole to have Ted to be administrator ad litem and me" -- Alan Rose was asking the question -- "to represent the estate given our prior knowledge and involvement in the case, right?

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

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

"A. Yes."

Page 24, line 5:

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

"A. Approximately, yes."

MR. ROSE: That's referring to Mr. Stansbury.

Page 25:

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

A. I have knowledge from my counsel."

26, line 5:

"Q. Would you--"

MR. FEAMAN: Objection as to relevancy as to the administrator ad litem issue. Mr. Stansbury , whether he owes money or not, supposedly Chicago counsel might go to the discharge issue but not to the administrator ad litem with regard to Ted Bernstein.

MR. ROSE: I believe if you're in contempt of a, or in violation of a court order, the court has the power to disregard your filings and your objections if you violate a court order which as Mr. --

MR. FEAMAN: There is no finding of violation of a court order.

THE COURT: I need the question again.

MR. ROSE: I'll withdraw the question for the purposes of this hearing.

THE COURT: Thank you. Mark through it, if you would, and identify what page and line that was.

MR. ROSE: 24, 5 through 9 and 25, 22 through 25, would you like me to remove them?

THE COURT: Excellent. If you provide the Court the hard copy that has been read into evidence, it will just be for my records.

MR. ROSE: I agree.

Page 26:

"Q. Would you agree with me that you have spent almost no money defending the estate so far as the Stansbury litigation?

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

"Q. Very minimal? Minimal?

"A. Not a significant amount.

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

"A. Yes."

Page 27:

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

"A. Yes."

Line 9:

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

"A. No, not personal knowledge."

MR. ROSE: I want to withdraw page 28 because it's not -- it goes to the last hearing.

On page 31:

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

"A. For the reasons stated previously, yes.

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

"A. For the defense of the Stansbury civil action, yes.

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

"A. Correct."

MR. ROSE: And that's it. Nothing further.

THE COURT: Thank you.

MR. ROSE: I'll tender to the Court the hard copy.

THE COURT: Thank you. These are just for my records.

MR. FEAMAN: May I approach Your Honor?

THE COURT: You may.

MR. FEAMAN: The excerpts that I'm going to identify on the record and copies for you of Mr. O'Connell's deposition deal with the exhibit marked at the deposition.

THE COURT: Hold on one second. Again, this is just a copy for my reference of what you will be reading into the record?

MR. FEAMAN: Yes, Your Honor.

THE COURT: And this I'll receive into evidence which is just as the exhibit to those pages. It is the Objection to Accounting of

the Simon Bernstein Trust. So that will be on Stansbury's 1. What's going on?

(Stansbury's Exhibit No. 1, Objection to Accounting)

MR. ELIOT BERNSTEIN: Can I enter that into evidence?

THE COURT: After I'm complete with him.

MR. ROSE: Might I see a copy of the transcript that he is going to rely upon?

MR. FEAMAN: It's on your desk. There is a copy right there.

MR. ROSE: Thank you, sir. Appreciate it.

THE COURT: You may proceed.

MR. FEAMAN: Thank you. For Your Honor's --

THE COURT: I'm sorry. We have an emergency I need to sign.

MR. FEAMAN: This will be quick.

THE COURT: No. I have to sign the emergency.

MR. FEAMAN: Okay.

THE COURT: Thank you. You may proceed.

MR. FEAMAN: We are submitting for the record page 20 of the deposition taken of Brian O'Connell on March 13th, page 22, line 14

through page 27, line 1. And then within that I want to read a subpart into the record.

THE COURT: Okay.

MR. FEAMAN: Specifically page 25, line 18:

"Handing you what's been marked as Exhibit 3, can you identify that for the record, please, Mr. O'Connell?

"A. That's an objection that I filed as the personal representative of the Estate of Simon Bernstein to an accounting that was prepared and served by Ted Bernstein as trustee of the Simon Bernstein Trust.

"Q. All right. And that's your signature on page 3?

"A. Yes.

"Q. On Exhibit 3? Or is that Joy Foglietta? Is that yours or is that Joy's initials for you?

"A. They have all been hers."

Line 11:

"Q. Will you stipulate that Joy signed on your behalf with your full knowledge and consent?"

MR. FEAMAN: Joy Fogligetta, Your Honor,

is another lawyer.

"A. That's correct.

"Q. These objections to the accounting, was there ever a hearing on these objections?

"A. No.

"Q. These objections, are they still pending?

"A. Still pending.

"Q. Do you know if there was a revised accounting ever done in response to the objection that you filed on behalf of the estate?

"A. I am not sure."

Thank you.

MR. ROSE: Just briefly, page --

THE COURT: Go ahead.

MR. ROSE: -- page 94, line 16:

"Q. Now, do you know anybody alive, other than Bill Stansbury, who has more knowledge of the facts and circumstances surrounding the independent action of Ted Bernstein?"

MR. FEAMAN: Objection. Repetitive, cumulative.

THE COURT: I think it has to be taken from a different vein from than was asked of

Mr. Bernstein but this is the PR. So overruled. Thank you.

MR. ROSE:

"A. Not that I can think of. It would be the two of them would seem to have the most knowledge of their dispute with one another most personal knowledge at least.

"Q. Now, if the Court did not want to appoint Ted Bernstein as administrator ad litem, would you still want the court to appoint someone else as administrator ad litem?

"A. I haven't given that any consideration. But probably in the interests of trying to move the case along I would have to have sort of an internal discussion to see who could advance that defense the quickest, in-house, getting an ad litem involved, getting another law firm involved. So those are the things I am giving you the conditions I would have to weigh if that happened but we would do something to keep the case going."

95, line 5:

"Q. Anything Ted Bernstein would be doing, attending a deposition or reviewing

documents or meeting with witnessess, he would not be charging?"

"A. That's my understanding of the setup.

"Q. And that would result in lower costs to the estate?

"A. It should.

"Q. Which would not only be in the best interest of the beneficiaries but also really in the best interest of Mr. Stansbury because it would lower the amount of money that would be drained from the estate to defend his claim?

"A. True."

MR. ROSE: No further questions.

MR. FEAMAN: All right. My turn, Your Honor. Page 98, line 13:

THE COURT: 98, 13.

MR. FEAMAN: Yes. Question by Mr. Feaman:

"All right. Now, in response to a question asked by Mr. Rose, you said that you, Mr. O'Connell, would be handling any settlement discussions arising out of the independent action by Mr. Stansbury against the estate, correct?

"A. Correct. Because that's what you

have and I have actually done that.

"Q. But if the case got rolling and discovery was taken, depositions were taken, documents were produced, all of which has not taken place yet, you would have to speak to Mr. Rose and Ted Bernstein to get their opinion on how the case is going, wouldn't you?

"A. Well, I'd speak to them and I'd take a look at the discovery or motions. I know there's a motion for summary judgment that was pending, for example. So I would speak and then take a look at the record. I would do both.

"Q. And how many lawyers do you presently have in your law firm, sir?

"A. Approximately 32.

"Q. Okay. And of those how many are commercial or business litigators?

"A. Primarily? Because some people --

"Q. Primarily?

"A. There's some overlap.

"Q. Yes, of course.

"A. Even in our own department. So there's -- I'd say principally two for sure.

"Q. Okay.

"A. But that's primarily what they do.

"Q. Do you think that they are, in your opinion, competent and capable of defending the estate in connection with Mr. Stansbury's claims in his independent action?"

THE COURT: There is an objection by you. I just overruled it but you can continue.

MR. FEAMAN: Page 100, line 4:

"Q. You can answer."

Line 5:

"A. Yes, I think they have the skill set to do that. It's the other instances that I don't want to repeat because they are already sort of in our pleading as to why we chose this course of action."

MR. FEAMAN: Nothing further.

THE COURT: Mr. Eliot, what do you want to submit?

MR. ELIOT BERNSTEIN: I wanted to submit the deposition of Mr. O'Connell in full. I hate to be --

THE COURT: I have to mark that -- hold on -- because it's going into evidence. Objections?

MR. ELIOT BERNSTEIN: And then --

THE COURT: Hold on. Objections?

MR. ROSE: To the whole deposition coming in?

THE COURT: Yes.

MR. ROSE: I don't think it's appropriate to just enter a deposition in evidence but to speed things up...

MR. ELIOT BERNSTEIN: I will be relying on parts of it too.

THE COURT: No. If you're putting in the whole thing, there is no need to be relying on parts.

MR. ELIOT BERNSTEIN: Okay. I got what you're saying. Okay. Great.

THE COURT: Mr. Feaman.

MR. FEAMAN: No objection.

MR. ELIOT BERNSTEIN: Your Honor --

THE COURT: Wait. I'm still waiting for Mr. Rose.

MR. ROSE: If Your Honor is willing to read the whole transcript, to save time --

THE COURT: I'll read it.

MR. ROSE: Then I would allow you to read it, preserving our objections for the record.

THE COURT: To any further hearings. I

got it.

MR. ROSE: To the form objections that are stated in there. I can trust Your Honor to rule on those as you read it.

THE COURT: Okay. Give me a second, Mr. Eliot. I have to mark everything appropriately. This is Interested Party's Number 2. Yes.

(Interested Party's Exhibit No. 2, Brian O'Connell deposition 3-13-17)

MR. ELIOT BERNSTEIN: I'm sorry. We are six minutes over and I am going to be six minutes late to a commitment that my kids are relying on. And I believe you only scheduled two hours again and I base my life and childrens' life on those two hours. So I have to fly but I want to make sure that I get a chance to call witnesses at some point to this hearing.

THE COURT: Now is the time.

MR. ELIOT BERNSTEIN: I don't have time. You scheduled two hours.

THE COURT: Who are you going to call and did you subpoena witnesses to be here today?

MR. ELIOT BERNSTEIN: I was going to call

Diana Lewis.

THE COURT: Has she been subpoenaed for today? Answer my question.

MR. ELIOT BERNSTEIN: No.

THE COURT: So she wouldn't be --

MR. ELIOT BERNSTEIN: Well, they have called other witnesses that weren't subpoenaed and you allowed that.

THE COURT: They called parties.

MR. ELIOT BERNSTEIN: What?

THE COURT: They called parties.

MR. ELIOT BERNSTEIN: She is a party.

THE COURT: She is not considered a party.

MR. ELIOT BERNSTEIN: She is not a trustee.

THE HONORABLE DIANA LEWIS: I'm a guardian.

THE COURT: She is a guardian of the trust of the children. How long was your --

MR. ELIOT BERNSTEIN: Probably 15, 20 minutes. And then I have Ted Bernstein that I was going to call and Alan Rose perhaps. Probably 30, 40 minutes more at least.

THE COURT: You didn't tell me that until right now.

MR. ELIOT BERNSTEIN: You gave two hours.

THE COURT: Let's finish it. Go ahead and --

MR. ELIOT BERNSTEIN: I have got to leave.

THE COURT: This is the second time you have done that but I'm willing to today. I made it clear we are going to conclude this hearing. If you want to call Diana Lewis today she is here. We can conclude this. You said 20 minutes.

MR. ELIOT BERNSTEIN: I don't have time.

THE COURT: By 5:00.

MR. ELIOT BERNSTEIN: Your order said two hours.

THE COURT: Wait, Mr. Bernstein. We are not going to play this game because I want to conclude this hearing. When you're telling me there is other commitments, everyone in here has other commitments. I want to conclude this hearing because this has been set for this time, this particular motion as well, is my recollection. So I don't want to misstate. At the last hearing I set this one. We had two matters set. I want to conclude this today. Last time I continued it because you told me

you had other commitments.

MR. ELIOT BERNSTEIN: And I do again. I'm sorry. But, listen, you can go on without me.

THE COURT: Wait but I want to be very clear. I'll stay and let you call your witnesses that are here.

MR. ELIOT BERNSTEIN: You scheduled it for two hours. I told you at the hearing that it would take longer probably and you said no. So now we are at the point where everybody used all of the time. I hardly had any time.

THE COURT: You had equal time throughout every witness.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: As long as you understand the Court is willing to stay. Are all of the other attorneys willing to stay?

MR. ROSE: Yes.

MR. FEAMAN: Yes.

THE COURT: I want you to know I'll stay for you.

MR. ELIOT BERNSTEIN: We should have scheduled a proper time for the hearing.

THE COURT: I do appreciate your position.

MR. ELIOT BERNSTEIN: Okay.

THE COURT: The Court will then be ruling.

MR. ELIOT BERNSTEIN: Thank you, everyone.

THE COURT: As you understand, Mr. Feaman, we didn't get to your other hearing. I don't have a JA today. I'm going to put it on the table. I can't give you a date because when I touch my calendar, I do bad things. I'll issue another order, okay. I'll get these two orders out. The Court is very aware that you all want orders. I haven't had it that long so bear with me. In fact --

MR. ROSE: Can we do that hearing now, discharge administrator ad litem? It's to discharge his funding obligations --

THE COURT: I am not going to do that because I would have concluded, giving Mr. Eliot time on the other one. I'm not going to do the other one outside of his presence. I wanted to finish this one which I made clear from the beginning of this hearing.

Thank you very much. We're in recess.

THE BAILIFF: Court's in recess.

MR. FEAMAN: Could we do a two minute closing?

THE COURT: I can do that.

MR. FEAMAN: I'm serious about two minutes. I'm not going to go to five.

THE COURT: I can do that, absolutely.

Mr. Rose, do you want to start with closing?

MR. ROSE: Sure. I will be very brief. It's the same argument we made in our written final argument, you know, these are proceedings to administer an estate. I think, as I said in my written final argument, I think your choice is fairly simple and binding one way or the other.

Are you going to let O'Connell run the estate the way he thinks is best? You have heard testimony of O'Connell and Bernstein as to what is best for the estate, to reduce costs, speed things up, and it's what Mr. O'Connell wants to do.

You have seen that Mr. Stansbury even moved the Court to speed up the case because Mr. O'Connell wasn't available. He's a busy trial lawyer. It's in evidence. He blocked

off months at a time because he had other cases. So in order to move the cases along -- and you can't close this estate until we try to understand Mr. Stansbury's claim. So we respectfully request that you allow Mr. O'Connell's plan that we support to go into effect.

This idea of a conflict of interest is really a red herring. Clearly everyone has a conflicting interest. Mr. Stansbury is aligned with the estate in Illinois because he wants the money to come in and he wants to take it out at the other end.

But you should not allow the person who is suing the estate for two and a half million dollars to get to choose who sits at the table to defend him. He wants a less qualified, less experienced attorney, or a less knowledgable attorney. And Mr. O'Connell's testimony is that he has two commercial litigators in his firm. That is not a lot of commercial litigators in a firm. We are a litigation boutique with 14 lawyers but only do commercial litigation.

And you heard from Mr. Bernstein. He is

trying to do what is in the best interest of his family, who are the beneficiaries, to protect them from Mr. Stansbury and we would like you to allow that plan to go into effect.

THE COURT: Mr. Eliot.

MR. ELIOT BERNSTEIN: I object to everything. I have got to go. I object that the hearing is going on without me.

THE COURT: It's not. If you don't want to do a closing, Mr. Feaman.

MR. ELIOT BERNSTEIN: No. I was denied time to do this by the Court.

THE COURT: Again, we'll stay until five. Call your witnesses.

MR. ELIOT BERNSTEIN: No. It's okay.

(Mr. Eliot Bernstein left the courtroom)

THE COURT: Okay. Mr. Feaman.

MR. FEAMAN: In order to try to crystallize for the Court why there is a conflict that precludes Mr. Ted Bernstein from becoming the administrator ad litem -- and, by the way, it's not that Mr. Stansbury wants to tell the Court who it should be. First of all, there doesn't have to be an administrator ad litem.

Mr. O'Connell never said he's not available to sit at counsel table coming up. There has been no testimony on the record prospectively, only retrospectively that somehow he can't attend. No testimony that he couldn't. There is no lawyer from his office but the lawyer is a different thing.

So to crystallize the conflict, let's reverse the order of things. Let's say that Mr. Ted was appointed administrator ad litem first before the Chicago action existed and he is representing the estate in connection with Mr. Stansbury's action against the estate. Okay. He is also the successor trustee to the pour-over trust. Okay. No argument there.

Now, let's say that Mr. Ted Bernstein then decides that he is going to bring an action to fight over this 1.7 million dollars that the estate says that's our money. Mr. Ted Bernstein says no, that's my money. And so then all of a sudden he's now becoming plaintiff up there.

The personal representative or anybody, any beneficiaries, interested person of the estate could now easily say now, wait a minute,

Mr. Personal Representative, you need to take a look at this because where once Mr. Ted Bernstein had no conflict, now he is fighting over this 1.7 million dollars. He's clearly adverse to the estate. How can he hold a fiduciary position as administrator ad litem on behalf of the estate because now it's changed. Now he is adverse.

So I think it crystallizes if you reverse the chronological order of things to show that, gee, now he clearly holds a conflict of interest and he should step down as the administrator ad litem. It makes no difference what order it comes in but it does crystallize the fact that Mr. Ted Bernstein and that has nothing to do with Mr. Rose. But just, Mr. Ted Bernstein, you're trying to keep 1.7 million dollars out of the hands of the estate. On paper that is a conflict. Under the law that I mentioned in opening statement and under the statute that a person holding fiduciary duty should not, that position should not be blessed by this Court. Thank you.

MR. ROSE: Just if you look at his cases, they are situations where you're actually suing

the estate. We are not suing the estate. We are both parties in an interpleader trying to determine what did Simon Bernstein intend to happen to his life insurance proceeds. That case is going to happen whatever happens.

Mr. O'Connell is correct, it's apples and oranges, and you have got to look at what's in the best interest of these estates to get the case done quickly, cheaply and efficiently. And I don't know how you're going to, you know, not think it's in the best interest to have the guy that knows the facts sitting at the table for free defending the estate and there is no one that has suggested he's going to do a bad job or not going to do it wholeheartedly.

I believe we -- obviously, it's your decision. We think that if you go the path of letting them set this course, that I don't know where the estate goes from here because the case was floundering.

THE COURT: All right. We got it. Thank you, everyone, very much. Court is in recess.

(At 4:20 p.m., Court stood in recess)

C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, JOYCE A. HALVERSON, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record.

Dated this 23rd day of March 2017.

Joyce A. Halverson

JOYCE A. HALVERSON
Court Reporter

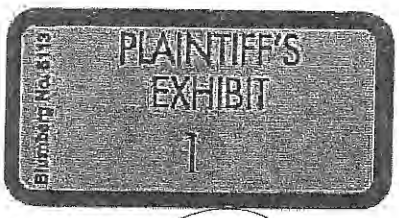
2014 CP 003698

# WILL OF

# SHIRLEY BERNSTEIN

*Prepared by:*

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com




TESCHER & SPALLINA, P.A.

P1 12-15-15

CONFORMED COPY

WILL OF

SHIRLEY BERNSTEIN

The original of this Will is being held in the safe deposit box of the ~~law firm of Tescher & Spallina,~~ P.A.

I, SHIRLEY BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. My spouse is SIMON L. BERNSTEIN ("*SIMON*"). My children are TED S. BERNSTEIN ("*TED*"), PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

## ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to SIMON, if SIMON survives me, my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if SIMON does not survive me, I give this property to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical, and if neither SIMON nor any child of mine survives me, this property shall pass with the residue of my estate.

## ARTICLE II. RESIDENCES

I give to SIMON, if SIMON survives me, my entire interest in any real property used by us as a permanent or seasonal residence, subject to any mortgage or other lien. If SIMON does not survive me, such interest shall pass with the residue of my estate.

## ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate to the Trustee then serving under my revocable Trust Agreement dated today, as may be amended and restated from time to time (the "*Existing Trust*"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

## ARTICLE IV. PERSONAL REPRESENTATIVES

1. Appointment and Bond. I appoint SIMON and TED, one at a time and successively in that order, as my Personal Representative (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by-law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. Powers of Personal Representatives. My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. Distributions or Divisions. To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

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

d. Borrowing. To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.



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

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

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "***Business Entities***"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

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

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

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right



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to employ any beneficiary or fiduciary in any of the foregoing capacities;

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

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

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

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

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

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

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

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

m. Ancillary Administration. To appoint or nominate, and replace with or without



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cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Articles I and II of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs.

5. Reimbursement for Debts and Expenses. My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. Expenses of Handling Tangible Personal Property. All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. Dealing with Estate. Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.



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8. Spouse. The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

*[remainder of page intentionally left blank]*



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I have published and signed this instrument as my Will at Boca Raton, Florida, on the 20 day of May, 2008.

/s/ Shirley Bernstein
SHIRLEY BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testatrix to be the Testatrix's Will in our presence, and at the Testatrix's request and in the Testatrix's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this _____ day of _____, 2008.

/s/ Robert L. Spallina [Witness Signature] residing at 7387 Wisteria Ave [Witness Address]

Parkland, FL 33076 [Witness Address]

/s/ Diana Banks [Witness Signature] residing at 23415 Boca Trace Dr. [Witness Address]

Boca Raton, FL 33433 [Witness Address]



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State Of Florida

SS.

County Of Palm Beach

I, SHIRLEY BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

/s/ Shirley Bernstein
SHIRLEY BERNSTEIN, Testatrix

We, Robert L. Spallina and Diana Banks, have been sworn by the officer signing below, and declare to that officer on our oaths that the Testatrix declared the instrument to be the Testatrix's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testatrix and of each other.

/s/ Robert L. Spallina
Witness

/s/ Diana Banks
Witness

Acknowledged and subscribed before me, by the Testatrix, SHIRLEY BERNSTEIN, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and Diana Banks, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and subscribed by me in the presence of SHIRLEY BERNSTEIN and the subscribing witnesses, all on this 20 day of May, 2008.

Kimberly Moran
Commission # DD766470
Expires: APR. 28, 2012

/s/ Kimberly Moran
Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

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# SHIRLEY BERNSTEIN

# TRUST AGREEMENT

*Prepared by:*

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

2014CP003698




TESCHER & SPALLINA, P.A.

SHIRLEY BERNSTEIN

TRUST AGREEMENT

This Trust Agreement is dated this 20 day of MAY, 2008, and is between SHIRLEY BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN, of Palm Beach County, and SHIRLEY BERNSTEIN's successors, as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

## ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for his Welfare. Any income not so paid shall be added to principal.

C. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars ($5,000), or five percent

(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

D. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

## ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Specific Cash Devise. The Trustee shall set aside in a separate trust the sum of Two Hundred Thousand ($200,000.00) Dollars for MATTHEW LOGAN, and said separate trust shall be administered as provided in Subparagraph II.F below. If MATTHEW LOGAN does not survive me this devise shall lapse.

C. Marital Deduction Gift. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "*Family Trust*" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.



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2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "*Marital Trust*."

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

D. During Spouse's Life. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

E. Disposition of Trusts Upon Death of Survivor of My Spouse and Me. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, *per stirpes*. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by my spouse as grantor on even date herewith (the "*Family Trusts*" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "*beneficiary*," with their separate trusts to be administered as provided in Subparagraph II.E. below.

F. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or

2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

G. Termination of Small Trust. If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than $50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

H. Contingent Gift. If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

I. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be



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liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

J. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

K. Florida Homestead Possessory Rights. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

## ARTICLE III. GENERAL

A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.

C. Substance Abuse.



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1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate



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takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child,*" "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.



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2. Code. "*Code*" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "*Disabled*" or being under "*Disability*" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "*education*" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "*My spouse*" is SIMON L. BERNSTEIN ("*SIMON*").

6. Needs and Welfare Distributions. Payments to be made for a person's "*Needs*" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "*Welfare*" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

8. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

9. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.



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H. Presumption of Survivorship. If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Mandatory Notice Required by Florida Law. The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

L. Release of Medical Information.

1. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or

at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

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

## ARTICLE IV. FIDUCIARIES

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

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.



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

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

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

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and

personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

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

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

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

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

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

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



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

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

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

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

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

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

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

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

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to



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exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

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

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

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

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

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

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

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

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under



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a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

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

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

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

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

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such

allocation between the date of valuation for federal estate tax purposes and the date or dates of said allocation and selection.

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

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

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

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

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

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

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, SIMON and TED, one at a time and successively in that order, shall serve as successor Trustee. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.



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2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances:

a. Trustee of the Marital Trust. SIMON and TED, one at a time and successively in that order, shall serve as Trustee of the Marital Trust. While serving as Trustee, my spouse may designate a co-Trustee to serve with my spouse and my spouse may remove and/or replace such co-Trustee from time to time.

b. Trustee of the Family Trust. SIMON and TED, one at a time and successively in that order, shall serve as Trustee of the Family Trust. While serving as Trustee, my spouse may designate a co-Trustee that is not a Related or Subordinate Party to serve with my spouse and my spouse may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

c. Trustee of Separate Trusts for My Children. Each child of mine shall serve as sole Trustee of his or her separate trust. While serving alone as Trustee, a child of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such child and such child may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

d. Trustee of Separate Trusts for My Lineal Descendants Other Than My Children. In regard to a separate trust held for a lineal descendant of mine other than a child of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon reaching age twenty-five (25) years.

e. Trustee of Separate Trust for MATTHEW LOGAN. In regard to a separate trust held MATTHEW LOGAN, his mother, DEBORAH BERNSTEIN (*"DEBORAH"*), shall serve as Trustee until MATTHEW attains age 25 years, at which time he shall serve as a co-Trustee with DEBORAH of such separate trust.

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

a. The remaining Trustees, if any; otherwise,



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b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 25 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, with the successor Trustee to be determined in accordance with the foregoing provisions.

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

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

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

G. Liability and Indemnification of Trustee.

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

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

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

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

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



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J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

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

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

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



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## ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts.

1. Family Trust. I direct (a) that the Trustee shall divide any trust other than the Marital Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions of this Trust Agreement relating to the trust that is being divided) so that the generation-skipping tax inclusion ratio of one such trust is zero.

2. Marital Trust. I direct that, if possible, (a) the Trustee shall divide the Marital Trust into two separate Marital Trusts (each subject to the provisions hereof concerning the Marital Trust) so that through allocation of my GST exemption remaining unallocated at my death and not otherwise allocated to transfers occurring at or by reason of my death (including allocations to the Family Trust), if any, the generation-skipping tax inclusion ratio of one such Marital Trust is zero (the GST Marital Trust), (b) my Personal Representative to exercise the election provided by Code Section 2652(a)(3) as to the GST Marital Trust, and (c) that upon the death of my spouse the total amount recoverable by my spouse's estate from the property of the Marital Trusts under Code Section 2207A shall first be recoverable in full from the non-GST Marital Trust to the extent thereof.

3. Misc. I direct that (a) upon the death of the survivor of me and my spouse, any property then directed to be paid or distributed which constitutes a direct skip shall be paid first from property then exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) to the extent thereof, (b) property exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) and not directed to be paid or distributed in a manner which constitutes a direct skip shall be divided and distributed as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and lineal descendants, in such estates, interests, and proportions as such beneficiary may, by a will specifically referring to this general power appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.



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Notwithstanding any other provision of this Trust Agreement, for purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. In regard to the division or severance of a trust hereunder, including the Marital Trust, such division or severance shall be made in a manner that all resulting trusts are recognized for purposes of Chapter 13 of the Code, including without limitation complying with the requirements of Treas.Regs. §26.2654-1(b). Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this Article which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. **Individual Retirement Accounts**. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to



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a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,

2. my funeral expenses without regard to legal limitations,

3. the expenses of administering my estate,

4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and



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5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the property disposed of pursuant to the prior paragraphs captioned "Disposition of Tangible Personal Property", "Specific Cash Devise" nor from the Marital Trust.

E. Marital Trust. I intend the maximum obtainable reduction of federal estate tax due by reason of my death by use of the federal estate tax marital deduction, and qualification of all property of the Marital Trust for the marital deduction. This Agreement shall be construed and all powers shall be exercised consistent with such intent. For example, the Trustee shall not allocate any receipt to principal or any disbursement to income if such allocation understates the net income of the Marital Trust under Florida law; and upon the written demand of my spouse, the Trustee shall convert unproductive or underproductive property of said trust into productive property within a reasonable time notwithstanding any other provision hereunder. The foregoing not withstanding, if my spouse survives me but dies within six months after my death, the Marital Trust provided in Subparagraph II.B will be reduced to that amount, if any, required to obtain for my estate an estate tax marital deduction resulting in the lowest combined estate taxes in my estate and my spouse's estate, on the assumption that my spouse died after me on the date of my death, that my spouse's estate is valued on the same date and in the same manner as my estate is valued for federal estate tax purposes, and that elections in my spouse's estate were made that would be consistent with minimizing taxes. The purpose of this provision is to equalize, insofar as possible, our estates for federal estate tax purposes, based on the above assumptions.

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise..



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manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal residence so that such right shall constitute a possessory right in such real property within the meaning of Florida Statute Section 196.041.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

SHIRLEY BERNSTEIN

This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:

Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

Print Name: TRACI KRATISH
Address: 16068 GLENCREST AVENUE
DELRAY BEACH, FL 33446

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SHIRLEY BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission # DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

[Seal with Commission Expiration Date]

Kimberly Moran
Signature - Notary Public-State of Florida

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

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ATTACHMENT

The following property has been delivered in trust under this Agreement:

One Dollar ($1.00) Cash

During my life, the Trustee has no duty to maintain, invest, review, insure, account for, or any other responsibility with respect to trust property other than income producing property, or any duty to pay premiums on life insurance payable to the trust, and shall receive no fee for its services as Trustee based on any trust property other than income producing property.

SHIRLEY BERNSTEIN, Settlor and Trustee



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# ELIOT BERNSTEIN

# FAMILY TRUST

*Prepared by*:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

**ELIOT BERNSTEIN**

**FAMILY TRUST**

THIS IRREVOCABLE TRUST AGREEMENT is made and entered into this 20 day of MAY, 2008, by and between SIMON L. BERNSTEIN, a resident of Palm Beach County, Florida, as grantor, hereinafter referred to in the first person, and SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN as co-trustees (referred to as the ***"Trustee,"*** which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee), and ROBERT L. SPALLINA as the independent trustee (referred to as the ***"Independent Trustee,"*** which term more particularly refers to all individuals and entities serving as independent trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor independent trustee). I have delivered to the Trustee certain property as set forth in the Attachment annexed hereto, receipt of which is hereby acknowledged by the Trustee. Such property, and any additions to such property, shall be held in trust as provided in this Agreement.

## ARTICLE I. TRUST ADMINISTRATION

**A.** **Additions, Substitutions and Trust Irrevocable**. I or any other person may cause additional property to be added hereunder at any time during life or at death by will, insurance or death benefit beneficiary designation or otherwise. I shall have no right or power, either alone or in conjunction with any other person, to alter, amend, revoke or terminate any of the terms of this Agreement in any manner whatever. Unless and until surrendered by me in a writing delivered to the Trustee, I retain the power, to be exercised in an individual and nonfiduciary capacity (*i.e.*, without any fiduciary duty to any beneficiary with respect to its exercise or nonexercise) and without requiring the consent or approval of any person, to from time to time reacquire trust principal by substituting other property of equivalent value for said principal. Notwithstanding the foregoing, said right of substitution shall not apply to any insurance policies on my life owned by this Trust that would cause me to have any incidents of ownership as that term is defined under Section 2042 of the Code and the Regulations thereunder. I shall have the right at any time or times by an instrument, in writing, delivered to the Trustee to relinquish the right of substitution provided for herein.

**B.** **Rights of Withdrawal**. In any calendar year during my life in which property is contributed to the Trust by gift, each Withdrawal Beneficiary with respect to such contribution, acting personally or through his or her legal or natural guardian or attorney-in-fact, is hereby granted the absolute right, with respect to each such contribution, by written instrument or instruments delivered to the Trustee prior to the termination of such right, to withdraw from the principal of the Trust, from time

to time, an amount having an aggregate value (as of the date or dates of withdrawal) equal to such Withdrawal Beneficiary's Withdrawal Amount with respect to such contribution. Any such right to withdraw shall terminate at the earliest time and then to the extent that any such termination will not result in a taxable gift made by the individual holding the right, provided, no part of any right to withdraw shall terminate less than 60 days after the contribution to the Trust to which such right relates.

1. For purposes of this Subparagraph I.B, a Withdrawal Beneficiary with respect to a contribution to the Trust shall mean each person designated by the contributor to the Trustee in writing contemporaneously with such contribution, provided, in the event the contributor fails to make any such designation with respect to a contribution, my then living lineal descendants and their spouses shall be the Withdrawal Beneficiary with respect to such contribution.

2. For purposes of this Subparagraph I.B, each Withdrawal Beneficiary's Withdrawal Amount with respect to a contribution shall be such amount designated by the contributor to the Trustee in writing contemporaneously with the contributor's designation of such person as a Withdrawal Beneficiary, provided, if the contributor of such contribution fails to designate a Withdrawal Amount with respect to any Withdrawal Beneficiary, then each Withdrawal Beneficiary's Withdrawal Amount with respect to such contribution shall be an amount equal to a fraction (defined below) multiplied by the lesser of (i) the value of such contribution (at the time of such contribution), or (ii) the sum of the amounts of all federal gift tax exclusions then available to the contributor with respect to all Withdrawal Beneficiaries with respect to such contribution. The numerator of said fraction shall be the amount of any federal gift tax exclusion available to such contributor with respect to such Withdrawal Beneficiary (at the time of such contribution) and the denominator shall be the sum of the amounts of all federal gift tax exclusions then available to such contributor with respect to all such Withdrawal Beneficiaries. One-half of a contribution made by a married person shall be treated as a second separate contribution made by his or her spouse, provided, if such married person's spouse is then one of such Withdrawal Beneficiaries, only one-half of the excess of such contribution (at the time of such contribution) over the amount of the federal gift tax exclusion then available to such contributor with respect to his or her spouse shall be so treated.

3. Regardless of anything in this Subparagraph I.B to the contrary, each contributor of a contribution to this Trust shall have the right with respect to such contribution by a written instrument delivered to the Trustee at the time of such contribution (i) to exclude any person who would otherwise have a right of withdrawal from exercising such power; (ii) to increase or decrease the amount subject to any right of withdrawal except that the amount subject to all withdrawal rights shall not exceed the amount of the contribution; and/or (iii) to change the period during which any right of withdrawal may be exercised.

4. The Trustee shall inform any Withdrawal Beneficiary of the existence of such right of withdrawal within ten days after it comes into existence but not later than the last day of the calendar year in which it comes into existence. Any such Withdrawal Beneficiary or his or her guardian may, after receiving such notice at least once, waive further notices by an instrument in writing delivered to the Trustee.

**C. Trusts for ELIOT BERNSTEIN and my Lineal Descendants.** The Trust shall be administered as follows for its beneficiaries:

1. Initial Beneficiary. My son, ELIOT BERNSTEIN, shall be the first principal beneficiary of the Trust.

2. Net Income and Principal Distributions.

a. The Trustee shall pay to or apply for the benefit of a principal beneficiary and the lineal descendants of a principal beneficiary dependent on such principal beneficiary for support, so much of the net income and then principal of his or her separate Trust as the Independent Trustee determines in its sole, absolute and unreviewable discretion, provided, however, that while a principal beneficiary is serving as Trustee hereunder, he or she may make distributions to or for the benefit of himself or herself for such beneficiary's Needs without any authorization from the Independent Trustee. Having in mind the extent to which funds will be available for expenditure for the benefit of such beneficiaries, the Independent Trustee is authorized to expend such amounts as it, in its sole, absolute and unreviewable discretion, shall determine to maintain the then current lifestyle of such beneficiaries, including, but not limited to, complete authority to provide for their personal care and comfort in any manner whatsoever. Net income that is not distributed shall be added to principal on an annual basis.

b. The Independent Trustee is specifically authorized in its sole, absolute and unreviewable discretion to acquire, hold and maintain one or more residences (whether held as real property, condominium or cooperative apartment) for the use and benefit of the principal beneficiary and his or her cohabitating spouse and lineal descendants, and to sell or otherwise dispose of such residences when not desired for such use and benefit. The Independent Trustee is authorized to pay all carrying charges of such residences, including, but not limited to, any taxes, assessments and maintenance thereon, and all expenses of the repair, renovation, improvement and operation thereof, including the employment of domestic servants and other expenses incident to the running of a household for the benefit of such beneficiaries.

c. In exercising the discretions conferred in this Subparagraph, the Independent Trustee should give due consideration to the advisability of using the principal beneficiary's own assets and resources in order to reduce the amount of the principal beneficiary's taxable estate, thereby minimizing the amount of the principal beneficiary's future taxes. Further, it is my intent that this Trust be used to enhance the principal beneficiaries' quality of life, including (without limitation) travel, purchase of a home, cultural appreciation and enjoyment (music, arts, etc.), and education. In addition, I would like this Trust to provide a source of funds in the event that a principal beneficiary, through accident or misfortune, does not have sufficient sources of income to provide for his or her own support. I expect my lineal descendants to support themselves independently and to be productive members of their communities and not to become dependent upon distributions from the Trusts to the extent that they lose their ambition and incentive. When a beneficiary is able to be gainfully employed

and is not actively engaged in raising his or her children, the Independent Trustee should give due consideration in exercising its discretion to not using Trust assets to replace the beneficiary's own efforts to work and accumulate financial security. However, it is not my intent to force a parent to work outside the home when he or she has determined that it is important to stay at home to raise a family. In addition, I do not intend that the Independent Trustee place undue emphasis on the amount a beneficiary earns if he or she is actively engaged in a worthwhile pursuit, including working as an unpaid volunteer for charitable purposes. In prioritizing distributions between the principal beneficiary and his or her lineal descendants, it is my intent that my first priority is the principal beneficiary. In addition to the foregoing guidance, I request, but do not require, that my lineal descendants take adequate precautions for the protection of our family's wealth and property from marital discord through the use of prenuptial agreements or other similar planning and devices. I also request, but do not require, that my lineal descendants pursue higher education, to the best of their abilities and individual circumstances. For some descendants this may mean the completion of a college education, the receipt of a masters or a doctorate, or a professional degree, and for others this may mean training in their chosen vocation. It is not my goal that the Independent Trustee reward professional students, nor punish those lineal descendants for whom life or individual circumstances indicate that the pursuit of higher education is not practical or advantageous, but only to encourage my lineal descendants to take full advantage of all educational opportunities open to them and not rush their entry into the workplace. I do not intend by these expressions of intent to bind the Independent Trustee or alter the absolute discretion it has been granted hereunder or create enforceable obligations to any beneficiary, but merely to provide general guidance to the Independent Trustee in the exercise of its discretions.

3. Death of a Principal Beneficiary. If a principal beneficiary dies with assets remaining in his or her separate Trust, upon his or her death he or she may appoint all or part of his or her Trust, in trust, to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such principal beneficiary and such principal beneficiary's creditors, estate, and creditors of such principal beneficiary's estate), provided that any such appointment to a surviving spouse of a principal beneficiary shall be limited to a life estate in all or a lesser portion of such principal beneficiary's separate Trust, and such spouse's separate trust shall be administered as provided in Subparagraph I.D. below. Any part of his or her Trust such principal beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons with such persons to become the principal beneficiary thereunder;

a. for his or her lineal descendants then living, *per stirpes*; or

b. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse, SHIRLEY BERNSTEIN.

Such separate Trusts shall be administered as provided for trusts under this Subparagraph I.C., or added to Trusts established for such principal beneficiaries that are already in existence under Subparagraph I.C.

**D.** **Administration of Separate Trust for Spouse**. The Independent Trustee shall pay to the spouse of a principal beneficiary, so much of the net income and principal of his or her separate trust as is proper for such spouse's Needs. Net income that is not distributed shall be added to principal on an annual basis. Upon the death of a spouse of a principal beneficiary, the remaining assets of his or her separate trust shall be divided among and held in separate Trusts for his or her lineal descendants then living, *per stirpes*, who are also lineal descendants of the predeceased principal beneficiary who established this Trust for his or her spouse pursuant to the power of appointment granted to said principal beneficiary under Subparagraph I.C. above. Each lineal descendant for whom a separate trust is established shall become the principal beneficiary of such separate Trusts and such separate trusts shall be administered as provided under Subparagraph I.C., or added to Trusts established for such principal beneficiaries that are already in existence under Subparagraph I.C.

**E.** **Termination of Small Trust**. If at any time after my death in the opinion of the Trustee a separate Trust holds assets of a value of less than $50,000.00 and is too small to justify the expense of its retention, and termination of such Trust is in the best interests of its current principal beneficiary, the Independent Trustee in its discretion may terminate such Trust and pay it to said principal beneficiary.

**F.** **Contingent Gift**. If at any time property of a Trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of Florida then in effect.

**G.** **Maximum Duration**. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

## ARTICLE II. GENERAL

**A.** **Disability**. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for such a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt by such payee is a complete release to the Trustee.

**B. Substance Abuse.**

1. In General. If the Independent Trustee reasonably believes that a beneficiary of any trust (which for purposes of this Subparagraph II.B.1 includes the lineal descendants of a principal beneficiary who are eligible to receive distributions from that trust):

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Independent Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights (if any), and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees and Independent Trustees will be suspended. In that event, the following provisions of this Subparagraph II.B will apply.

2. Testing. The Independent Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Independent Trustee of the results of all such examinations. The Independent Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Independent Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Independent Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Independent Trustee. If the beneficiary consents to the treatment, the Independent Trustee may, in its absolute and unfettered discretion, pay the costs of treatment including directly to the provider of those services.

4. Resumption of Distributions. The Independent Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Independent Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Exoneration. No Independent Trustee (nor any doctor retained by the

Independent Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Independent Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph II.B. The Independent Trustee (and any doctor retained by the Independent Trustee) is to be indemnified from the Trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph II.B, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute amounts to a beneficiary.

6. Tax Savings Provision. Despite the provisions of this Subparagraph II.B, the Independent Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Independent Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

**C. Income on Death of Beneficiary**. Subject to the following Subparagraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any principal beneficiary, all accrued or undistributed income of such deceased principal beneficiary's Trust shall pass with the principal of his or her Trust but shall remain income for trust accounting purposes.

**D. Definitions**. In this Agreement,

1. Children, Lineal Descendants. The terms "***child,***" "***children***" and "***lineal descendant***" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from birth by a married couple through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children shall only include TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and my lineal descendants shall include only said named individuals and their respective lineal descendants.

2. Code. "***Code***" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "***Disabled***" or being under "***Disability***" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a

Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Needs Distributions. Payments to be made for a person's ***"Needs"*** means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

5. Per Stirpes. In a division "***per stirpes***" each generation shall be represented and counted whether or not it has a living member.

6. Related or Subordinate Party. A "***Related or Subordinate Party***" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

7. Spouse. A person's "***spouse***" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees and distribution recipients upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The Trust will be administered as if that person had died upon the happening of the terminating event described above.

8. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

**E.** **Powers of Appointment**. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

**F.** **Limitations on Powers of Trustee**. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual) to support such beneficiary; and no Trustee shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein.

**G.** **Presumption of Survivorship**. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

**H.** **Protective Provision**. No beneficiary of any Trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of the beneficiary in this Trust and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the Trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

**I.** **Governing Law**. This Agreement is governed by the law of the State of Florida.

**J.** **Mandatory Notice Required by Florida Law.** The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

**K. Release of Medical Information.**

1. Disability of Beneficiary. Upon the written request of the Independent Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees including Independent Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all such Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee, including myself and an Independent Trustee, that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

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

## ARTICLE III. FIDUCIARIES

**A. Powers of the Trustee**. The Trustee has the powers now or hereafter provided by law and the following powers exercisable without court approval, provided, however, that the Trustee shall

exercise all powers in a fiduciary capacity:

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the ***"estate"***); to grant and exercise options to buy or sell; to make purchases from my estate, any trust established by me during my lifetime, for full and adequate consideration and to make loans to my estate for adequate and reasonable interest and security, and the Trustee is expressly authorized to purchase stock and securities for adequate and full consideration owned by my estate, any trust established by me during my lifetime, whether such stock and securities are issued by closely held corporations or publicly traded corporations; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

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

reduce any income distributions otherwise required hereunder for a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

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

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

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

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

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

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

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

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "***Business Entities***"). I vest the Trustee with the following powers and authority in regard to Business Entities:

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

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

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

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

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

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

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

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

or employee of the Business Entities, a fiduciary, or to any beneficiary; and

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

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. The Trustee (or the Independent Trustee if I am serving as Trustee or if a Related or Subordinate Party is serving as Trustee) is authorized to purchase one or more life insurance policies on my life, the life of any beneficiary described herein, or any spouse or lineal ascendant or lineal descendant of myself or such beneficiaries. The following provisions shall apply with respect to any insurance policies constituting an asset of any trust herein created:

a. General Powers. The Trustee shall have the power to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as part of the principal of the trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no Trustee other than a sole Trustee may exercise any incidents of ownership with respect to policies of insurance insuring the Trustee's own life.

b. Payment of Premiums. The Trustee shall be under no obligation to pay the premiums which may become due and payable under the provisions of any policy of insurance subject to this trust, or to make certain that such premiums are paid by myself or any other person, or to notify any persons of the nonpayment of such premiums, and it shall be under no responsibility or liability of any kind in case such premiums are not paid, except that it shall apply any dividends received by it on such policy to the payment of premiums thereon. Upon notice at any time during the continuance of this trust that the premiums due upon such policies are in default, or that premiums to become due will not be paid, either by myself or by any other person, the Trustee, within its sole discretion, may apply any cash values attributable to such policy to the purchase of paid-up insurance or of extended term insurance, or may borrow upon such policy for the payment of premiums due thereon or may accept the cash values of such policy upon its forfeiture. If facts shall occur, under the terms of the policy which shall enable a waiver of the payment of future premiums, the Trustee, upon receipt of written notice of such facts, shall promptly notify the insurance company which has issued such policy, and shall take any and all steps necessary to make such waiver of premium provision effective.

c. Collection of Proceeds. Upon the death of an insured the proceeds of the insurance policies insuring that life which are then subject to this trust shall be collected by the Trustee. The Trustee shall have full authority to take any action with regard to the collection that it deems best and to pay any expenses thereof out of the trust estate. However, it shall not be required to enter into or maintain any litigation to enforce payment of such policies until it shall have been indemnified to its satisfaction against all expenses and liabilities to which it might, in its judgment, be subjected by any such action on its part. The Trustee shall have full authority to make any compromise or settlement with respect to any such policies and to give to all insurance companies the necessary and proper releases and acquittances in full discharge of all their liabilities under such policies. Only the net proceeds of insurance policies subject to this trust shall be collected by the Trustee.

d. Liability of Insurance Company. No insurance company, whose policies shall be subject to this trust and who shall make payment of the proceeds thereof to the Trustee, shall be required to inquire into or take notice of any of the terms or conditions of this trust or to see to the application or disposition of the proceeds of such policies. The receipt of the Trustee to any such insurance company shall be effectual to release and discharge it for any payment so made and shall be binding upon every beneficiary of the trusts herein created.

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

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

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

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

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

the times specified herein.

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

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

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

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

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

23. Fiduciary Outside Domiciliary State. In the event no Trustee shall be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are given to the appointing Trustee with respect to the trust. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required of any Trustee or agent acting under the provisions of this paragraph. No periodic court or statutory accounting shall be required of such appointed Trustee.

24. Additions. To receive and accept additions to the Trusts in cash or in kind from

donors, Personal Representatives, administrators, Trustees or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

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

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

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

28. Tax Reimbursement. To pay, from time to time in the Independent Trustee's sole and absolute discretion, to me or the Personal Representatives of my estate, on a cumulative basis as may be necessary, such amounts as I or my Personal Representatives shall certify as is necessary to discharge my tax liability (whether federal, state or otherwise) in respect of income realized by the Trust and not distributed to me; provided, however, this authority shall only be exercised by the Independent Trustee hereunder, and I shall not make or participate in making any discretionary distribution pursuant to this Subparagraph. The Independent Trustee shall have no obligation to reimburse me for any income taxes imposed on me by law and paid by me on Trust income or gains.

If I am serving as Trustee hereunder or if a Related or Subordinate Party is serving as Trustee hereunder, any powers and discretions provided under this Subparagraph III.A. to the Trustee that would result in gross estate inclusion of assets of this Trust under Code §§ 2036, 2038, or 2042, or successor provisions thereto, shall not be exercisable by me or such related or subordinate Trustee, and shall be exercisable only by the other Trustees who are not related or subordinate to me, or if none, by the Independent Trustee.

**B. Resignation or Removal**. The Trustee may resign with or without cause, by giving written notice, specifying the effective date of such resignation to his or her successor Trustee and to the current income beneficiaries, at the time of giving notice. I (or my spouse if she is serving as sole Trustee) reserve the right to remove a Trustee or co-Trustee from office, with or without cause, by giving written notice, specifying the effective date of such resignation to the removed Trustee, to his or her successor Trustee, and to the current income beneficiaries. Upon the resignation or removal of a Trustee, such Trustee shall be entitled to reimbursement from the Trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor. For purposes of this Subparagraph, the Trustee shall include the Independent Trustee.

**C. Appointment of Successor Trustee.**

1. Appointment. Upon a Trustee's resignation (including the Independent Trustee), or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee (including the Independent Trustee), I (or my spouse if she is serving as sole Trustee) may appoint any person or persons as successor Trustee, co-Trustee or Independent Trustee, and in the case of the Independent Trustee it shall not be a Related or Subordinate Party, nor a person related or subordinate to me within the meaning of Code Section 672(c), the Treasury Regulations issued thereunder, and successor provisions thereto. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve. There shall always be a Trustee and an Independent Trustee serving hereunder, provided that the same person or entity may serve in both capacities.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph III.C, subsequent to the death of the survivor of my spouse and me, I specifically appoint the following person or persons as Trustee of the following Trusts:

a. Trustee of Separate Trusts for My Lineal Descendants. With regard to a separate trust held for a lineal descendant of mine hereunder under which such lineal descendant is the principal beneficiary, each such lineal descendant of mine shall serve as co-Trustee with the then serving Trustee upon attaining age thirty (30) years, and each such lineal descendant shall serve as sole Trustee upon attaining age thirty-five (35) years, provided, however, that there shall always be an Independent Trustee serving of such separate trust. While serving as sole Trustee, a lineal descendant of mine may designate an co-Trustee to serve with such lineal descendant and each such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

b. Trustee of Separate Trust for a Spouse of a Lineal Descendant of Mine. A corporate fiduciary shall serve as Trustee and Independent Trustee of any separate trust held for the benefit of a spouse of a lineal descendant of mine. Such corporate fiduciary shall be an entity with trust powers under state law and no less than One Billion ($1,000,000,000.00) Dollars under trust management (itself and its affiliates).

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

a. The remaining Trustees, if any; otherwise,

b. The principal beneficiary or the spouse of a principal beneficiary for whom a separate trust is held.

The appointment shall be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will.

4. Power to Remove Trustee. Subsequent to the death of the survivor of my spouse and me, the age 35 or older principal beneficiary of a Trust, or the spouse of a principal beneficiary for whom a separate trust is held, shall have the power to unanimously remove a Trustee, co-Trustee or Independent Trustee of such Trust at any time with or without cause other than a successor Trustee or Independent Trustee appointed by me or my spouse at death under our last Wills, with the successor Trustee or Independent Trustee to be determined in accordance with the foregoing provisions.

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

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

**F. Liability and Indemnification of Trustee**.

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

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under the preceding paragraph, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for

indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, Personal Representatives, legal successors and assigns of a Trustee.

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

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

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

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

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

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

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

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

## ARTICLE IV. INDEPENDENT TRUSTEE

A. **In General**. The Independent Trustee shall have only those duties, obligations, and powers hereunder expressly provided to it, and the Trustee shall not participate in any affirmative duties

provided to the Independent Trustee. Otherwise, the provisions hereunder applicable to the Trustee shall be applicable also to the Independent Trustee except where the context differentiates between a Trustee and an Independent Trustee, including without limitation provisions relating to liability and indemnification of trustees. In the event of any conflict between the powers granted hereunder to both the Trustee and the Independent Trustee, the powers of the Independent Trustee shall have priority over the Trustee. Thus, for example, if the Independent Trustee determines to invest in a Closely Held Interest, such investment is permissible notwithstanding that it reduces the assets available for other investments by the Trustee.

**B.** **Who May Serve**. Notwithstanding any other provisions of this Trust Agreement to the contrary, including without limitation powers in myself or others to appoint additional or successor Trustees or Independent Trustees, at no time shall a person or entity serve as an Independent Trustee hereunder if such person or entity is a Related or Subordinate Party or is related or subordinate to me within the meaning of Code Section 672(c), the Treasury Regulations issued thereunder, and successor provisions thereto, nor shall I be eligible to serve.

**C.** **Limited Power of Amendment.**

1. Amendment Power. In the case of each separate Trust at any time in existence hereunder, such Trust's then Independent Trustee, other than any (i) who has ever made a gift transfer to such trust, or (ii) who is prohibited by the provisions of Subparagraph IV.C.2 below from participating in the amendment involved, from time to time may, notwithstanding any other provision of this instrument, amend or restate this instrument, including its dispositive, administrative and other provisions of all kinds, in order to permit the Trustees hereunder (including the Independent Trustee):

a. To address tax and/or other circumstantial changes that may affect such Trust and/or its beneficiaries,

b. To take advantage of changed trust drafting approaches to address potential trust problems, and/or

c. To remove from the governing trust instrument any provisions which have become "deadwood" (i.e., no longer operative in the ongoing administration of such trust due to changed circumstances)

with respect to (i) such Trust, and (ii) all trusts that are subsequently to come into existence under this instrument to hold part or all of the assets of such Trust, in whatever way or ways, such Independent Trustee, in the exercise of its sole discretion, may deem appropriate in the best interests, as interpreted by such Independent Trustee alone, of the principal beneficiary of such Trust(s) and of each such principal beneficiary's family as a whole. Such Independent Trustee shall be guided by what, in the sole judgment of such Independent Trustee alone, would apparently be my original intent hereunder in the light of the changed circumstances. This power of amendment shall include, by way of example and not limitation, the power to:

d. Grant, reduce or eliminate general (as defined in Code Section 2041) and special powers of appointment with respect to part or all of any trust property (such powers may be made subject to any conditions or consents and limited to such objects as may be described in the grant or reduction of each power);

e. Add mandatory distribution or set aside provisions for one or more beneficiaries or permissible distributees;

f. Divide a Trust into separate trusts or merge separate trusts together;

g. Provide for the creation of one or more separate subaccounts (equivalent to a separate trust) in any Trust hereunder with respect to which such subaccounts are more restrictive or other administrative or dispositive provisions are made applicable in order to permit some or all of the properties or interests that may at any time be held in or allocable to that Trust to be segregated and transferred to that subaccount to achieve some tax or other benefit that would otherwise not be available to such property or interest or to the principal beneficiary or one or more of the other current beneficiaries of that Trust (such as, by way of example and not limitation, to permit (i) such property, interest or beneficiary to qualify for some governmental or tax benefit, generation-skipping transfer tax exemption or Code Section 2032A election, or (ii) a disclaimer to be made; and

h. Restrict in any way, revocably or irrevocably, the future exercise of any power held by any beneficiaries, myself, and/or a Trustee (including Independent Trustee) hereunder.

2. Limitations on Amendment Power. Notwithstanding the foregoing, however, under no circumstances shall any such amendment:

a. Extend the period of any such trust's existence beyond the already applicable rule against perpetuities limitation period specified in Subparagraph I.G;

b. Diminish in any way (that is not controlled by the beneficiary) any enforceable right any beneficiary may already have (under the then terms of this instrument) to receive the income of any trust, currently or at any time in the future (but, to the extent an amendment benefits or grants a power to a current beneficiary of any trust, it may diminish the rights of one or more beneficiaries to receive in the future the income of that trust or of any trust subsequently to come into existence to hold part or all of the assets of that trust);

c. Reduce in any way the restrictions and limitations on or liabilities of (i) myself hereunder, including without limitation Subparagraph I.A or as a fiduciary as set forth in Subparagraph III.F, or (ii) this Article IV. This shall not be interpreted to limit the ability of the Independent Trustee to increase such restrictions, limitations and liabilities;

d. Result in any direct or indirect financial benefit to anyone who is not presently or in the future a lineal descendant of mine or the spouse of lineal descendant of mine while

married to a lineal descendant of mine;

e. Make any change that would have the effect of disqualifying any such trust insofar as such trust, prior to such amendment, otherwise qualified for and was in fact already taking advantage of, while such advantage otherwise will continue, (i) any exemption from a surviving spouse's elective right or from any creditor's right to levy on any beneficiary's interest in any such trust, or (ii) any substantial deduction, credit, exclusion or other tax benefit (such as any charitable deduction, any annual gift tax exclusion, Code Section 2032A election, a generation-skipping tax exemption, the opportunity to be a stockholder in an S corporation without adversely affecting the S election of such corporation, a significant grandfathered status under some changed law, and so on).

3. Method of Amendment. Any such amendment shall be by written instrument, executed by such amending Independent Trustee with all the formalities of a deed, setting forth the trust or trusts hereunder to which the amendment applies and the effective date of such amendment.

## ARTICLE V. ADDITIONAL TAX MATTERS

**A. GST Trusts**. I direct (a) that the Trustee shall divide any Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such Trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in Trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a Trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such Trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares.

I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the Trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. For purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation

(occurring between the valuation date and the date of distribution) in all of the assets from which such distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. The valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

**B.** **Individual Retirement Accounts**. In the event that this Trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this Trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this Trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such

additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

**C.** **Subchapter S Stock**. Regardless of anything herein to the contrary, in the event that the principal of a Trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a Trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such Trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee[s] shall (a) hold such stock as a substantially separate and independent share of such Trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

**D.** **Taxes**. The Trustee shall pay to the Personal Representative of my estate from the principal of the Trust, but not from the portion of any asset or the proceeds thereof which would not otherwise be includible in my gross estate for estate tax purposes, such as the proceeds of insurance policies that are not includible in my estate, such amounts as the Personal Representative certifies, in writing, are required for the payment of estate, inheritance, succession and transfer taxes, including any interest or penalty thereon, which are payable by said Personal Representative by reason of my death and are attributable to assets held in this Trust (*i.e.*, to the extent that such taxes are increased by the taxability of such Trust assets). The Trustee may rely upon the correctness of such certifications and is exonerated from all liability for making payments in reliance thereon. Notwithstanding any distribution requirement herein, subsequent to my death the Trustee is authorized to retain in trust any amounts designated to be distributed until the earlier of the issuance of an estate tax closing letter from the Internal Revenue Service in regard to my estate or the closing of the federal estate tax statute of limitations for estate taxes arising by reason of my death.

**E.** **Taxpayer Identification Number**. By executing this Trust Agreement, the Trustee authorizes Tescher & Spallina, P.A. to apply for a taxpayer identification number from the Internal Revenue Service for the Trust.

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

**GRANTOR and CO-TRUSTEE:**

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:

Print Name: Diana Banks
Address: 23415 Boca Trace Dr
Boca Raton FL 33433

Print Name: TRACI KRATISH
Address: 16068 GLENCREST AVE
DELRAY BEACH, FL 33446

STATE OF FLORIDA
SS.
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SIMON L. BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission #DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

Signature - Notary Public

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

**CO-TRUSTEE:**

SHIRLEY BERNSTEIN

This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 1st day of May, 2008:

Print Name: Diana Banks
Address: 23415 Boca Trace Dr
Boca Raton Fl 33433

Print Name: TRACI KRATISH
Address: 16068 GLENCREST AVE
DELRAY BEACH, FL 33446

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SHIRLEY BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission # DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

[Seal With Commission Expiration Date]

Kimberly Moran
Signature - Notary Public

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

**INDEPENDENT TRUSTEE:**

ROBERT L. SPALLINA

This instrument was signed by ROBERT L. SPALLINA in our presence, and at the request of and in the presence of ROBERT L. SPALLINA and each other, we subscribe our names as witnesses on this 20th day of May, 2008:

Print Name: Diana Banks
Address: 23415 Boca Trace Dr
Boca Raton, FL 33433

Print Name: TRACI KRATISH
Address: 16068 GLENCREST AVE
DELRAY BEACH, FL 33446

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by ROBERT L. SPALLINA.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission # DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

Signature - Notary Public

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____

Type of Identification Produced _____

F:\WPDATA\drt\Bernstein, Shirley & Simon\Children's Trusts\Eliot Bernstein Family Trust.wpd [05 11:22 20 08]

**TRUST**

**ATTACHMENT**

| ITEM NO. | DESCRIPTION | AMOUNT |
|---|---|---|
| 1 | Cash | $1.00 |

# WILL OF

# SIMON L. BERNSTEIN

COPY
SOUTH COUNTY BRANCH OFFICE
ORIGINAL RECEIVED
OCT - 2 2012
SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

*Prepared by:*

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

2014CP003698

PLAINTIFF'S EXHIBIT 4

12-15-15

LAW OFFICES
TESCHER & SPALLINA, P.A.

# WILL OF

# SIMON L. BERNSTEIN

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. I am a widower, but in the event that I marry subsequent to the execution of this Will, I specifically make no provision for my spouse. My children are TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

## ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if no child of mine survives me, this property shall pass with the residue of my estate.

## ARTICLE II. EXERCISE OF POWER OF APPOINTMENT

Under Subparagraph E.1. of Article II. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "***Shirley Trust***"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and the Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining trust assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

## ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate, including my homestead, to the Trustee then serving under my revocable Trust Agreement dated May 20, 2008, as amended and restated from time to time and on even date herewith (the "***Existing Trust***"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in Article II., above, and in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under

the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

## ARTICLE IV. PERSONAL REPRESENTATIVES

1. **Appointment and Bond**. I appoint ROBERT L. SPALLINA and DONALD R. TESCHER to serve together as my co-Personal Representatives, or either of them alone as Personal Representative if either of them is unable to serve (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. **Powers of Personal Representatives**. My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. Distributions or Divisions. To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

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

d. Borrowing. To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the



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estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

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

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

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "***Business Entities***"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

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

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the



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operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

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

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

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

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

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

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

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

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.



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k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

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

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. **Survivorship.** A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. **Death Costs.** My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Article I of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs. If the amount of the above-described taxes, and interest and penalties arising by reason of my death (without regard to where payable from under the terms of this paragraph or applicable law) is increased because of the power of appointment granted to me under Subparagraph II.E.1. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, I hereby appoint to my probate estate from the property subject to such power (to the extent allowable under such power) the amount of such increase (calculating such increase at the highest applicable marginal rates) and exercise such power to this extent only, and notwithstanding the other provisions of this paragraph further direct my fiduciary to make payment of such increase in taxes,



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interest and penalties to the appropriate taxing authorities from the appointed property or the proceeds thereof. Any trustee holding such appointive property may pay to my fiduciary the amount which my fiduciary certifies as due under this paragraph and is not responsible for the correctness or application of amounts so paid.

5. **Reimbursement for Debts and Expenses**. My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. **Expenses of Handling Tangible Personal Property**. All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. **Dealing with Estate**. Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse**. The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. **Other Beneficiary Designations**. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

*[remainder of page intentionally left blank]*



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I have published and signed this instrument as my Will at Boca Raton, Florida, on the 25 day of July, 2012.

SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 27 day of July, 2012.

[Witness Signature] residing at ROBERT L. SPALLINA
7387 WISTERIA AVENUE
PARKLAND, FL 33076
[Witness Address]

[Witness Signature] residing at Kimberly Moran
6362 Las Flores Drive
Boca Raton, FL 33433
[Witness Address]



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State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

SIMON L. BERNSTEIN, Testator

We, Robert L. Spallina and Kimberly Moran, have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

Witness

Kimberly Moran

Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and Kimberly Moran, who is personally known to me or who has produced _____ (*state type of identification*) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 25 day of July, 2012.

[Seal with Commission Expiration Date]

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

Signature - Notary Public-State of Florida

Lindsay Baxley

Print, type or stamp name of Notary Public



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# SIMON L. BERNSTEIN

# TRUST AGREEMENT

*Prepared by*:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

**SIMON L. BERNSTEIN**

**TRUST AGREEMENT**

This Trust Agreement is dated this 20th day of May, 2008, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "***Trustee***," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

## ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved**. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. **Payments During My Life**. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for her Welfare. Any income not so paid shall be added to principal.

C. **Gifts**. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars ($5,000), or five percent

(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

**D. Upon My Death**. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

## ARTICLE II. AFTER MY DEATH

**A. Disposition of Tangible Personal Property**. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

**B. Marital Deduction Gift**. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "***Family Trust***" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.

2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "***Marital Trust***."

Notwithstanding the foregoing, prior to the funding of the Family Trust and the Marital Trust under this Subparagraph II.B., or only the Family Trust if my spouse does not survive me, the Trustees of this Trust

or the Personal Representatives of my estate as the case may be, shall finalize the sale of my shares in LIC HOLDINGS, INC., a Florida corporation or its successor in interest ("***LIC HOLDINGS***"), owned by me or this Trust at the time of my death, pursuant to that certain buy-sell agreement entered into by and between my son, TED S. BERNSTEIN, and me. Upon the sale of such shares, the Trustee shall fund the trust(s) provided for hereunder.

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

**C. During Spouse's Life**. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

**D. Disposition of Trusts Upon Death of Survivor of My Spouse and Me**. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, *per stirpes*. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by me as grantor on even date herewith (the "***Family Trusts***" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts

for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "***beneficiary***," with their separate trusts to be administered as provided in Subparagraph II.E. below.

**E.** **Trusts for Beneficiaries**. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or

2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

**F.** **Termination of Small Trust**. If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than $50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

**G.** **Contingent Gift**. If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

**H.** **Protective Provision**. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

**I.** **Maximum Duration**. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

**J.** **Florida Homestead Possessory Rights**. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

## ARTICLE III. GENERAL

**A.** **Disability**. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

**B.** **Timing of Income Distributions**. The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse**.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to

the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

**D. Income on Death of Beneficiary**. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

**E. Definitions**. In this Agreement,

1. Children, Lineal Descendants. The terms "***child***," "***children***" and "***lineal descendant***" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("***TED***") and PAMELA B. SIMON ("***PAM***"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

2. Code. "***Code***" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "***Disabled***" or being under "***Disability***" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "***education***" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "***My spouse***" is SHIRLEY BERNSTEIN ("***SHIRLEY***").

6. Needs and Welfare Distributions. Payments to be made for a person's ***"Needs"*** means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's ***"Welfare"*** means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "***per stirpes***" each generation shall be represented and counted whether or not it has a living member.

8. Related or Subordinate Party. A "***Related or Subordinate Party***" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

9. Spouse. A person's "***spouse***" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

**F. Powers of Appointment**. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

**G. Limitations on Powers of Trustee**. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

**H.** **Presumption of Survivorship**. If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

**I.** **Governing Law**. This Agreement is governed by the law of the State of Florida.

**J.** **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

**K.** **Mandatory Notice Required by Florida Law.** The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

**L.** **Release of Medical Information**.

1. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or

at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

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

## ARTICLE IV. FIDUCIARIES

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

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "***estate***"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

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

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

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

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and

personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

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

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

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

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

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "***Business Entities***"). I vest the Trustee with the following powers and authority in regard to Business Entities:

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

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

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

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

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

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

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

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

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

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to

exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

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

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

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

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

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

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

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

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under

a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

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

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

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

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

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such

allocation between the date of valuation for federal estate tax purposes and the date or dates of said allocation and selection.

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

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

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

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

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

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

**C. Appointment of Successor Trustee.**

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, SHIRLEY and WILLIAM E. STANSBURY (***"BILL"***), or either of them alone if the other is unable to serve, shall serve as successor co-Trustees or Trustee as the case may be. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a

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

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances:

a. Trustee of the Marital Trust. SHIRLEY shall serve as Trustee of the Marital Trust. While serving as Trustee, my spouse may designate a co-Trustee to serve with my spouse and my spouse may remove and/or replace such co-Trustee from time to time.

b. Trustee of the Family Trust. SHIRLEY shall serve as Trustee of the Family Trust. While serving as Trustee, my spouse may designate a co-Trustee that is not a Related or Subordinate Party to serve with my spouse and my spouse may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

c. Trustee of Separate Trusts for My Children. Each child of mine shall serve as sole Trustee of his or her separate trust. While serving alone as Trustee, a child of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such child and such child may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

d. Trustee of Separate Trusts for My Lineal Descendants Other Than My Children. In regard to a separate trust held for a lineal descendant of mine other than a child of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon reaching age twenty-five (25).

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

a. The remaining Trustees, if any; otherwise,

b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two

witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 25 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, with the successor Trustee to be determined in accordance with the foregoing provisions.

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

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

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

**G. Liability and Indemnification of Trustee.**

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

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from

the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

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

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

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

**J.** **Interested Trustee**. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without

liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

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

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

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

## ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

**A.** **GST Trusts**.

1. **Family Trust**. I direct (a) that the Trustee shall divide any trust other than the Marital Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions of this Trust Agreement relating to the trust that is being divided) so that the generation-skipping tax inclusion ratio of one such trust is zero.

2. **Marital Trust**. I direct that, if possible, (a) the Trustee shall divide the Marital Trust into two separate Marital Trusts (each subject to the provisions hereof concerning the Marital Trust) so that through allocation of my GST exemption remaining unallocated at my death and not otherwise allocated to transfers occurring at or by reason of my death (including allocations to the Family Trust), if any, the generation-skipping tax inclusion ratio of one such Marital Trust is zero (the GST Marital Trust), (b) my Personal Representative to exercise the election provided by Code Section 2652(a)(3) as to the GST Marital Trust, and (c) that upon the death of my spouse the total amount recoverable by my spouse's estate from the property of the Marital Trusts under Code Section 2207A shall first be recoverable in full from the non-GST Marital Trust to the extent thereof.

3. **Misc**. I direct that (a) upon the death of the survivor of me and my spouse, any property then directed to be paid or distributed which constitutes a direct skip shall be paid first from property then exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) to the extent thereof, (b) property exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) and not directed to be paid or distributed in a manner which constitutes a direct skip shall be divided and distributed as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and lineal descendants, in such estates, interests, and proportions as such beneficiary may, by a will specifically referring to this general power appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available. Notwithstanding any other provision of this Trust Agreement, for purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such

distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. In regard to the division or severance of a trust hereunder, including the Marital Trust, such division or severance shall be made in a manner that all resulting trusts are recognized for purposes of Chapter 13 of the Code, including without limitation complying with the requirements of Treas.Regs. §26.2654-1(b). Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this Article which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

**B.** **Individual Retirement Accounts**. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

**C.** **Gift Transfers Made From Trust During My Lifetime**. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

**D.** **Death Costs**. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,

2. my funeral expenses without regard to legal limitations,

3. the expenses of administering my estate,

4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and

5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property" nor from the Marital Trust.

E. **Marital Trust**. I intend the maximum obtainable reduction of federal estate tax due by reason of my death by use of the federal estate tax marital deduction, and qualification of all property of the Marital Trust for the marital deduction. This Agreement shall be construed and all powers shall be exercised consistent with such intent. For example, the Trustee shall not allocate any receipt to principal or any disbursement to income if such allocation understates the net income of the Marital Trust under Florida law; and upon the written demand of my spouse, the Trustee shall convert unproductive or underproductive property of said trust into productive property within a reasonable time notwithstanding any other provision hereunder. The foregoing not withstanding, if my spouse survives me but dies within six months after my death, the Marital Trust provided in Subparagraph II.B will be reduced to that amount, if any, required to obtain for my estate an estate tax marital deduction resulting in the lowest combined estate taxes in my estate and my spouse's estate, on the assumption that my spouse died after me on the date of my death, that my spouse's estate is valued on the same date and in the same manner as my estate is valued for federal estate tax purposes, and that elections in my spouse's estate were made that would be consistent with minimizing taxes. The purpose of this provision is to equalize, insofar as possible, our estates for federal estate tax purposes, based on the above assumptions.

F. **Subchapter S Stock**. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. **Residence as Homestead**. Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal residence so that such right shall constitute a possessory right in such real property within the meaning of Florida Statute Section 196.041.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

**SETTLOR and TRUSTEE:**

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:

Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

Print Name: TRACI KRATISH
Address: 16068 GLENCREST AVE
DELRAY BEACH, FL 33446

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SIMON L. BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission #DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

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**ATTACHMENT**

The following property has been delivered in trust under this Agreement:

One Dollar ($1.00) Cash

During my life, the Trustee has no duty to maintain, invest, review, insure, account for, or any other responsibility with respect to trust property other than income producing property, or any duty to pay premiums on life insurance payable to the trust, and shall receive no fee for its services as Trustee based on any trust property other than income producing property.

SIMON L. BERNSTEIN, Settlor and Trustee

# SIMON L. BERNSTEIN

# AMENDED AND RESTATED TRUST AGREEMENT

*Prepared by:*

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

2014CP003698

PLAINTIFF'S EXHIBIT 5

P5 12-15-15

LAW OFFICES
TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "***Trustee***," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "***Trust Agreement,***" which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

## ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

## ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "*beneficiary*" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or

2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. Termination of Small Trust. If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than $50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. Contingent Gift. If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

## ARTICLE III. GENERAL



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A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.

C. Substance Abuse.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself)of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an

in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child,*" "*children,*" "*grandchild,*" "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is

raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "*Code*" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "*Disabled*" or being under "*Disability*" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "*education*" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's *"Needs"* means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's *"Welfare"* means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to

such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such

Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. **Presumption of Survivorship**. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. **Governing Law**. This Agreement is governed by the law of the State of Florida.

J. **Other Beneficiary Designations**. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. **Release of Medical Information.**

1. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested

beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph I.A hereof, provided I otherwise have legal capacity to do so.

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

## ARTICLE IV. FIDUCIARIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Appointment of Successor Trustee.

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

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

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

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

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

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

a. The remaining Trustees, if any; otherwise,

b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

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

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

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

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

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

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

G. Liability and Indemnification of Trustee.

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

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

designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1, shall thereafter not exceed the greater of Five Thousand Dollars ($5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. **Death Costs.** If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,

2. my funeral expenses without regard to legal limitations,

3. the expenses of administering my estate,

4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and

5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 25 day of July, 2012:

Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

Print Name: Kimberly Moran
Address: Kimberly Moran
6362 Las Flores Drive
Boca Raton, FL 33433

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

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

Signature - Notary Public-State of Florida

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

Lindsay Baxley
Print, type or stamp name of Notary Public

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____



Evidence20151215Hearing074StansburyCopy20160110

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

CASE NO. 502012CP004391XXXXNB-IH
Probate – Judge John L. Phillips

IN RE:

ESTATE OF SIMON L. BERNSTEIN.
_____/

**TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE**

Ted S. Bernstein, as Successor Personal Representative of the Estate of Shirley Bernstein, as Successor Trustee of the Shirley Bernstein Trust, and as Successor Trustee of the Simon Bernstein Trust which is the residuary beneficiary of the Estate, files this Omnibus Case Status Report and Requests a Case Management Conference in all pending matters, in advance of the one-hour Status Conference set for Tuesday, September 15, 2015, at 9:30a.m.

**Introduction**

The overarching issue in these cases is Eliot Bernstein. He is not named as a beneficiary of anything; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel. (See, by way of example only, Exhibit A) His demands have caused the former curator and now the PR to incur far in excess of $100,000 in unnecessary fees, pursuing his agenda not their own. With regard to Judge Colin's final action before recusing himself, Eliot's delay of the Trust's sale of real estate is going on six months, and already his objections and "appeal" to the Florida Supreme Court have cost the Trust more than $125,000. These sums are not insignificant in this case – these are relatively small trusts and estates which likely will have between $1 million to $2 million left to distribute in the end. Even less with every billable hour incurred, especially if things continue on their current path.

For reasons which will become apparent to the Court, although these matters should be fully concluded by now – Shirley died first, nearly five years ago, and Simon followed nearly three years ago – it feels like we still are closer to the starting line than the finish line. The sole reason for the lack of progress is their disinherited son, Eliot Bernstein.

If the Court were to appoint a guardian ad litem ("Guardian") for Eliot's three kids, who are beneficiaries of both trusts, everything else could be resolved quickly and easily between the remaining parties. Instead, while Eliot continues to turn the courtroom into his private circus and continues his online attacks, the limited assets in these estates and trusts continue to dwindle. This has been going on far too long, and now that this Court is overseeing these matters,[1] Eliot must be stopped before it is too late to salvage anything for the beneficiaries.

By way of brief background, in 2008, Simon and Shirley created their estate plan and executed mirror image documents. Their plan was simple and typical of a long-term marriage – the surviving spouse would receive everything for life, and the limited right to decide who to benefit when he or she died. The residuary of each Estate passed to a Revocable Trust. The surviving spouse was the sole successor trustee and beneficiary for life, and was granted a limited power of appointment. Simon, as the survivor, had the sole and absolute right to do whatever he pleased with his own assets, and also possessed a limited power to appoint the assets remaining in the Shirley Trust to any of Shirley's lineal descendant or their spouse.

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[1] *In Re: Estate of Simon L. Bernstein, Case #502012CP004391XXXXNB;*
*In Re: Estate of Shirley Bernstein, Case #502011CP000653XXXXNB;*
*Eliot Bernstein, etc., et al. v. Theodore Stuart Bernstein, etc., et al., Case #502015CP001162XXXXNB;*
*Ted Bernstein, etc., et al. v. Alexandra Bernstein, et al., Case #502014CP003698XXXXNB;*
*Oppenheimer Trust Co. v. Eliot Bernstein, et al., Case #502014CP002815XXXXNB.*

When Shirley died, Simon was PR, successor Trustee, and sole beneficiary of her estate and trust. He apparently did as he pleased with her estate and her assets, and shared virtually no information about Shirley's assets or finances with any of his children. The Shirley Estate was opened in early 2011, and by early 2012 Simon wanted to close it. He had taken all of her assets, as was his right, and he requested that each of his children sign a waiver of accounting etc. to close the estate. It is undisputed that each child signed a Waiver – Eliot was the first to sign. Shirley's estate would have been closed long ago except Judge Colin required Waivers to be notarized and the six Waivers in this case (one by Simon and one by each of the five children) were not notarized. So the Waivers were rejected by the Court, and Simon had died before the last Waiver was signed. Rather than move the Court to overlook the notary requirement, someone in the office of Simon's counsel falsely traced the original signatures onto a new Waiver document and falsely put a notary stamp. The irony here is that while the Court had rejected all six of the original, ***authentic*** Waivers; the Court accepted the false ones and closed the Estate.[2]

Shirley had appointed her eldest child, Ted, to succeed Simon after his death. Soon thereafter, Eliot learned that his parents left behind only a small fortune – then estimated at less than $4 million, to be split among ten grandchildren. Eliot had been expecting for himself a sizeable share of what he believed would be $100 million; instead he got nothing and his children stood to inherit a tiny fraction of what Eliot expected and hoped for. After learning of his poor fortune, Eliot embarked on a mission to destroy everyone involved with this, starting with his father's lawyers and his older brother Ted, acting as a fiduciary appointed by his mother, and anyone else who stands in his way.

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[2] The only persons to benefit from closing Shirley's estate were the beneficiaries. The lawyers whose employee falsely notarized the document stood to *gain nothing*, and stood only to lose legal fees to be earned administering and closing the estate. But they clearly and inexcusably erred.

The starting point for Eliot, beyond simply complaining that someone must have stolen the rest of his parents' $100 million, was the notary of the Waiver form. Although Eliot signed the Waiver, he knew it had not been notarized, so he complained about this issue. The Shirley Estate was reopened; the Will specified that Ted Bernstein[3] be the successor PR; and Ted has been trying to re-close the estate ever since; so far with no luck.

Eliot now is the self-proclaimed detector of fraud and fabricated documents, and is crusading against what he perceives to be corruption in the court system. His circus will continue until either (i) the money runs out and all the professionals go home; or (ii) the Court stops him by appointing a guardian ad litem and requiring him to cease, desist, and remove the harassing internet nonsense about judges, PRs, Trustees and their lawyers.

Ted has tried to sell the Trust's real estate and distribute monies to the intended beneficiaries. He has been thwarted at every turn, and viciously attacked on the internet as well, solely by Eliot. Every aspect of this case is on display at http://tedbernsteinreport.blogspot.com/ or http://tedbernsteininsurance.blogspot.com/, with Ted being accused of "massive fraud, forgery and alleged murder." Eliot leaves no one out of his trashing internet harassment, including Judge Colin. It is difficult to find any professional (lawyer or accountant) willing to submit to such abuse by agreeing to work on these matters. That appears to be Eliot's plan, which must be stopped.

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[3] Ted is the oldest of Simon's and Shirley's five children; lives in Palm Beach County; worked essentially as equal partner with Simon in businesses from the early 2000s through Simon's death. The other family members are three daughters who live in Chicago. Since the death of his father in September, 2012, Ted has faithfully carried out his duties as Trustee. Ted is not a beneficiary of any of these trusts and estates, and stands to gain nothing personally. Indeed, none of the five children are beneficiaries, as all of their parents' wealth was left to ten grandchildren.

The Court may be wondering "Who is Eliot Bernstein?" and "Why is he doing this?" It is an important question, as Eliot is the proverbial elephant in this room. Eliot appears to be disillusioned and disappointed due to his apparent belief that he would inherit tens of millions when his parent's died, but in the end their fortune was modest and they left none of it to him: "[Eliot] . . . shall be deemed to have predeceased me as I have adequately provided for [him] during my lifetime."[4] Eliot now apparently is without income or assets, or at least claims to be in numerous indigency filings he makes with courts to avoid paying filing fees. But while his parents were alive he lived the life of Riley[5] – he lived and continues to live expense free in a home his parents bought and renovated for him; his parents paid him over $100,000 annually in health insurance and living expenses[6]; and his parents while alive apparently paid more than $75,000 per year to send Eliot's three boys to a Boca Raton private school.

Eliot, now flat-broke with no visible means of supporting himself, has decided to avenge the loss of his inheritance by punishing everyone associated with these trusts and estates, even suing his father's estate for Eliot's living expenses after his father died. He has been prolific in filing motions, complaints, responses and objections in these proceedings. The net result of his legal filings has

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[4] Simon L. Bernstein Amended and Restated Trust Agreement dated 7/25/2012 at 6.

[5] "The expression, 'Living the life of Riley' suggests an ideal contented life, possibly living on someone else's money, time or work. Rather than a negative freeloading or golddigging aspect, it implies that someone is kept or advantaged." en.wikipedia.org/wiki/The_Life_of_Riley

[6] Pursuant to a written contract entered on or about August 15, 2007, Simon and Shirley agreed to make advances to Eliot of a portion of his inheritance, in the amount of $100,000 per year. As preconditions for this arrangement, Eliot could not "harass or threaten to sue or initiate litigation with anyone in the family at any time" and had to allow his parents the opportunity to visit their grandchildren at least four times a year. In June 2008, the parents also purchased a home for him in Boca Raton, titled in the name of an LLC, and encumbered by a $365,000 second mortgage which is one of the largest assets in the estate.

been nothing but a loss for the grandchildren – after three years of him searching, there are no additional assets to be found. All of his considerable efforts simply have delayed the progress of the case and ***dramatically*** increased the expense in these modest trusts and estates.

For the past three years, Eliot has questioned and viciously challenged virtually every action taken by the fiduciaries, has continued to harass and threaten (including repeatedly threatening persons involved in this estate or end up in prison), and when none of that worked, has taken to the internet blogosphere to trash and tarnish the reputations of everyone involved. This is a tragedy of significant proportion to the ten grandchildren of Simon and Shirley Bernstein, the sole beneficiaries of their wealth. The fiduciaries and beneficiaries of Simon and Shirley Bernstein are trapped in Eliot's game, being played at no cost to him but at a very high price to the beneficiaries. Three of these ten grandchildren are Eliot's kids, but he acts as if he rather burn all of the remaining money than let his kids settle for 30% of what remains.

**Status of Significant Current and Pending Motions:**

SHIRLEY ESTATE:

Motion to Re-Close Estate
Eliot's Objections to Estate Inventory and Accounting

SHIRLEY TRUST

Count II of Complaint to Determine Validity/Authenticity of Trusts and Wills
Count I of Complaint for Construction of Trust
Petition to Remove Ted S. Bernstein as Trustee
Eliot's Counterclaim against numerous lawyers and others (currently stayed)
Professional/Fiduciary Fees and Potential Claims vs. Former Counsel
Distribute Assets to Beneficiaries of Trust
Motion to Compel Trust Accounting

SIMON ESTATE

Resolve claim of claimant, William Stansbury
Resolve claim of claimant, Eliot Bernstein
Resolve interpleader litigation in Illinois relating to Life Insurance
Objections to Accounting and Potential Claims vs. Former PR/Counsel
Discharge PR and Distribute Assets to Trust

SIMON TRUST

Petition to Remove Ted S. Bernstein as Trustee
Professional/Fiduciary Fees
Distribute Assets to 10 Grandchildren as Beneficiaries of Trust

Matters to be Filed if Needed

The above is a short list of items that could be accomplished quickly and easily if Eliot were not involved. Now is the time to appoint a Guardian. And, once there is a Guardian in place and up to speed, the Court can decide what else needs to be done to close the administration, while some funds still remain available. Left to Eliot's devices, the pursuit of his agenda and conspiracy theories will end only when the money runs out. The choice is very clear: Is Eliot or the court-appointed fiduciaries going to run this estate?[7] If there is a Guardian appointed, almost all of the above-listed "pending issues" can be avoided because a Guardian likely would be willing to mediate and likely settle the controversies given the amounts in dispute. Eliot has no interest in letting anything go or in negotiating, advising on several occasions that he does not negotiate with "terrorists."

Importantly, in addition to considering whether to appoint a Guardian as a suitable representative for Eliot's children, the Trustee believes the Court immediately should impose a

[7] In a related case, Oppenheimer moved for appointment of a Guardian. It is a compelling Motion. Judge Colin deferred. It is anticipated that some of the beneficiaries here will be filing a similar motion, as will the Trustee. Now, or at some point in near future, this Court needs to consider such an appointment, before it is too late.

confidentiality order on these proceedings to prevent further internet bombardment and harassment of professionals, fiduciaries, and this Court. This case involves minor grandchildren and young adult grandchildren ***who are the sole beneficiaries of Simon and Shirley Bernstein*** – there should be nothing on the internet about this private civil matter. And, if it is not stopped, a Guardian no doubt will become the next victim, as might this Court in the event it should ever rule against Eliot on a significant matter. Also, the beneficiaries believe that Eliot's threats are causing the successor PR, Brian O'Connell, to take steps which cause unnecessary expense, solely to appease Eliot.

For example, Eliot, who claims he cannot afford a lawyer, has engaged a systematic effort to make it difficult for Ted to retain professionals. Eliot somehow got the Clerk of the Court to add onto the docket sheet the word "Respondent" after the names of all lawyers in these cases. After doing that, Eliot advised that the undersigned is a party to the case and should hire his own lawyer and withdraw due to the conflict of interest. When the harassment did not work, he moved to disqualify counsel, which was heard and denied at an evidentiary hearing on July 11, 2014. Next, he filed a Counterclaim against the undersigned personally and professionally, and against my law firm for legal malpractice, even though he is not our client and has no standing to do so.[8] This was done not to assert a legitimate claim, but solely in an attempt to force our withdrawal. It seems that when a lawyer appears to take adverse positions to Eliot, Eliot demands that the lawyer cease representing the party and withdraw due to serious conflicts of interest:

> [I] "remind you again that you and your client Ted are defendants who have been formally served process in related matters to these and your continued representation

[8] Judge Colin stayed Eliot's counterclaims and, eventually, entered an Order prohibiting Eliot from filing any paper without first sending it to the Court for review. For the sake of apparent fairness, the Court imposed the same requirement on all parties, that no new motions or claims be filed without first being submitted to Judge Colin for review.

> without counsel appears to be conflicted and more"; "in your capacity as defendant . . . do you have counsel yet that I may contact"; "will you be representing yourself pro se"; "I have you served formally already as a partner in your firm and wondered as the firm is also sued if you have their counsel's name and yet will the partners, et al. be representing themselves or have individual counsel"; "please take a lesson from all of Ted's former counsel . . . and resign as his counsel in these continued frauds and frauds on the Courts (state and federal) for irreconcilable differences as they did, as it appears you are only compounding problems for yourself, the beneficiaries, the Courts and others."

In an e-mail Mr. Bernstein further advised the undersigned: "you were involved ground floor in the schemes and advancing me taking fraudulent distributions and more since . . . I will notify the Florida Bar in your ongoing complaint with their offices . . . and other state and federal authorities."

The attacks are most vicious against Ted Bernstein, who was left behind in charge of the business he and Simon started together, and who became the fiduciary under the terms of Shirley's will and trust. Anyone who "googles" Ted Bernstein hits blogs run by Eliot and his colleague. Insurance is a trust business; many of Ted's clients are law firms representing clients in estate and wealth planning. All one need do is Google the name Ted Bernstein and on the front page is the Ted Bernstein report (http://tedbernsteinreport.blogspot.com/), accusing Ted of "massive fraud and forgery."

Ted has tried to ignore the onslaught of Eliot's cyber attacks. Judge Colin was aware of them, but did not fully appreciate the magnitude or effectiveness of this information in harming Ted. Although Judge Colin too was a target of the attacks, as a sitting jurist not running a business built on trust relationships, he may not have appreciated the severity of these issues. Indeed, at a recent hearing, Judge Colin wondered who in the world would see any of this nonsense on the internet. What this Court needs to understand as we move forward is that, in this day and age, everyone about

to engage in a significant transaction "googles" the other side, and regardless of the fact that no one might randomly stumble on this false information, everyone who googles Ted Bernstein finds this nonsense almost instantly. It is having a very harmful and negative effect on Ted Bernstein's ability to conduct his business affairs, and destroyed any chance of trying to sustain the companies Ted and Simon started.

Before agreeing to serve in this case, there was no negative press on Ted or internet "blogs" tarnishing his reputation. No one who agrees to serve as a fiduciary should be forced to put up with any such attacks, nor to be pressured to deviate from the decedent's wishes by either giving in to Eliot's demands or resigning from this important duty. And, the only family member who opposes Ted serving is Eliot – the others simply want this administration process to conclude.

These attacks branch out to each new person who steps in Eliot's way, and are expected to shortly include Brian O'Connell, PR, once he too is forced to take action adverse to Eliot. Ted has had difficulty retaining an accountant to help in these estates, because no amount of fee is worth being attacked online or sued simply for performing professional services. Ted already has attempted to curtail these attacks, but now will be filing formal motions to appoint a guardian ad litem and to stop the internet harassment of professionals. The Court needs to be aware of this critical issue as the case moves forward, and we believe should address these issues first.

As a final point on the Shirley Bernstein Trust, this Court needs to be aware of what is occurring right now. When Ted became successor trustee after his father's death, there were two primary assets in the Trusts: (i) an oceanfront condo; and (ii) a single family residence which was his parents' homestead. The condo was sold in an arm's length sale, through a highly-reputable real estate broker. Eliot continues to threaten some litigation to clawback the property, and refused to

accept for his children the partial interim distribution the Trustee elected to make to each of the ten beneficiaries. In mid-March 2015, the Trustee finally obtained a contract to sell the remaining property, a single family home in a country club community. The house was on the market for over 1,000 days. The offer accepted was the first in excess of a million dollars and was by far the highest and best offer ever received for the property. The buyer wanted to pay $1.1 million, all cash, and close quickly, because the country club equity membership fee was increasing by $30,000. Because it is a large home in a country club, the monthly carrying costs are very high. Eliot objected to the sale, and Judge Colin agreed to delay the sale so Eliot could obtain an independent appraisal or provide competent evidence to support his claim that the house was being sold in a fire sale fashion. At the evidentiary hearing in May, Eliot produced no witnesses and no admissible evidence. Judge Colin entered a final order approving the sale on May 6, 2015, and the closing was set for June 10th. The delay between March 31st and June 10th cost the Trust at least $75,000.

Eliot did not timely appeal the sale order, but on June 10, 2015, the date of the projected closing, filed a Petition for All Writs with the Florida Supreme Court. The transaction still cannot close until that Petition is resolved. To date, and despite the fact that he produced no evidence to support his assertion that the property was being sold too cheaply, and despite the fact that he is not a beneficiary of the trust, Eliot's obstinance and disregard has cost the Trust far more than $125,000 and counting in actual cash lost due to extra sale expenses, carrying costs, repair costs, and the legal fees incurred solely to get a simple real estate transaction closed. And there remains no end in sight.

Despite the best efforts of the Trustee and counsel, the need to react to Eliot has been driving this case, dictating its pace and dictating which issues get heard, to the exclusion of all of the other beneficiaries and their best interests. There are two simple but significant issues which must be

addressed before we can make any progress in the Shirley Bernstein side of the equation. First, the Court must consider how to re-close Shirley's Estate which has no assets. (There are prior Waivers signed by all potential beneficiaries, including Eliot Bernstein, and in the past five-plus years, nothing new has been found.) In particular, because Simon outlived Shirley and was thus alive at the time of her bequests to him, Eliot is not a beneficiary of Shirley's estate. The belts and suspenders of getting a waiver from him, which he admittedly signed, should not overshadow the fact that the empty estate simply should be closed.

Second, because Eliot alone contests Simon's exercise of his power of appointment over the funds in the Shirley Bernstein Trust, and unless the matter can be resolved with a rational Guardian for Eliot's kids, some Trust Construction Action is needed. That action has been filed, as a one-count Complaint, and names as defendants all 14 potential beneficiaries. Eliot Bernstein is named solely because he is a potential beneficiary and is the parent and natural guardian of three of the other potential beneficiaries. This is not a personal attack on him; it simply is a legal issue which needs to be resolved by the Court through a trial. The trial affects everyone, not simply Eliot Bernstein. Those two issues must be resolved, and once they are, the Shirley Bernstein Trust can begin the process of final wind down and distribution once the remaining assets are liquidated. Those two things must happen and without them we will go nowhere, other than continuing to burn money fulfilling the visions, delusions and fantasies of Eliot Bernstein.

**Conclusion**

There is not enough room in this filing nor would one expect this Court to have the patience to learn the entire tragedy. The purpose of this summary is to focus the Court on where we started, and where we have been for the past three years. The Court must decide where we need to go to from here to close the administration of these estates and trusts, and distribute what little wealth will remain to Simon and Shirley's grandchildren. There is documentary evidence and testimony of witnesses with competent and relevant evidence to support the assertions set forth herein. In stark contrast, almost four years after Simon's death there are no documents, evidence or credible testimony to support the assertions of Eliot Bernstein. Eliot might be smart and clever, and skilled in maneuvering through the court systems. One would have to at least have some experience litigating to file papers as lengthy and often as he does. It is unclear if this is real or a game to him,[9] but what is absolutely clear is: **Eliot will not inherit any money, and his kids will not inherit enough to sustain his lifestyle.**

Although very sad, what is important here is that the Court put an end to Eliot's involvement in this case and order him to remove all of the blogs he and Crystal Cox have created that refer to these matters or the judiciary, fiduciaries or professionals involved. Eliot lacks standing because he is not a beneficiary of either Simon's or Shirley's trusts. He has demonstrated no desire to serve the best interest of his children. Now is the time for the Court to take back control from Eliot.

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[9] Through nearly three years of litigation here, Eliot has been given the benefit of the doubt many times, and it remains unclear how much of what he files he actually believes. For example, Eliot has asserted in recent court filings: his minivan was car bombed; his father was murdered; and he needs to be placed into the federal witness protection program as a whistle blower who has been exposing judicial corruption throughout the land. He has demanded emergency loans, despite the fact that he has turned down several distributions the Trustee tried to make for his kids' benefit.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: ☐ Facsimile **and** U.S. Mail; ☐ U.S. Mail; ■ E-mail Electronic Transmission; ☐ FedEx; ☐ Hand Delivery this 14th day of September, 2015.

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By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST - Case No. 502011CP000653XXXXNBIJ**

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and Eliot and Candice Bernstein,
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# Exhibit A

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# Florida Probate Fraud, Forgery and Corruption; Simon Berns Estate Case

Florida Estate and Probate Case, Forgery, and Alleged Murder, blog written upon information, knowledge and belief of Crystal L. Co Blogger.

Alan Rose | 7020 Lions Head Lane Boca Raton | Docket Northern Illinois Case | Simon Bernstein Trust Heritage Jackson National District Court | Shirley Bernstein Estate Docket | Simon Bernstein Estate Docket | 7020 Lions Head Lane Boca Raton | Shirley Bernstein | Simon Bernstein | Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case | Judge David E. French | Robert Spallina | Mark Manceri | Donald Tesch | Tescher and Spallina Law Firm | Mark Manceri | Petition to Freeze Estate Assets | Estate Fraud Docket | Insurance Proceed Scheme | Donald Tescher | Robert Spallina | Ted and Deborah Bernstein | Life Insurance Concepts Boca | Ted Bernstein Fraud

Sunday, August 2, 2015

## Why is Judge Martin Colin Still on the Bench with as much as the Department of Justice and the FBI clearly knows about him?

YEARS and YEARS of Corruption and Judge Martin Colin continues to Dish it out, WHY?

"Anonymous said...
The JQC does nothing! We have a corrupt sick Judge in Palm Beach County MARTIN COLIN. He abused his step son, had attys rep his now Betsy savitt and did NOT disclose any conflicts. ROOT, HANDLER, KARTAGENA appaer before him. READ THE BAEZ DECISION 4th DCA. JQC WAKE UP!!
August 3, 2008 at 11:26 AM

Anonymous said...
I agree Judge Martin Colin must be REMOVED. He is corrupt! Colin is a case fixer! Ignores the 4th DCA in BAEZ....

THE JQC SHOULD REMOVE COLIN NOW!!!
October 7, 2008 at 6:40 PM

Anonymous said...
CORRUPTION IS RAMPANT IN PALM BEACH COUNTY.... WINNET AND COLIN ARE SICK EVIL CORRUPT JUDGES AND SHOULD BE JAILED.. MARTIN COLIN IS A CRIMINAL....

THE FEDS ARE HOT ON THE ROBES OF COLIN..... AND HIS BOCA RATON BUDDIE HENRY HANDLER AND THE BOYS.. SCHUTZ, ROOT, JETTE...

CMON FEDS -- DO YOUR JOB!!!
October 16, 2008 at 8:54 AM

Anonymous said...
THE JQC is a "JOKE" The protect these corrupt Judges... Brooke Kennerly should be removed... Gov. Crist does NOT a clue and looks the other way.... Just Look at Palm Beach County judge Martin Colin, a corrupt judge.....
October 25, 2008 at 10:32 AM

Anonymous said...
Serial CORRUPT JUDGE MARTIN COLIN has be sent to the CIVIL Court - Judge Kroll removed Colin from the FAMILY COURT.

JUST THE START - HENRY HANDLER & CAROL A. KARTAGENER soon to be charged by the Florida Bar for many ETHICAL VIOLATIONS and other crimes.

Its about time, KARTAGENER was CAUGHT making perjurious statements to Judges Burton, Colin & Crow. One lie after another. KARTAGENER IS A HABITUAL & PATHOLICIAL LIAR!!!!! A sick a demented evil lady ---- Lacking Skills....
December 30, 2008 at 1:46 PM

To Read this WHOLE BLOC posts on the bottom right page. Don't let this Florida Insurance FRAUD and Forg YOU.

Posts

Alan B. Rose of Page Mr Fitzgerald & Rose Ll...
Eliot Bernstein Iviewit I Interview Dick Wo...
Alexandra aka Monica in Bernstein
Alan B. Rose is MADD as he ain't goin...
Hey Lindsay, you may w the ol' digital...
Alan B. Rose of Page Mr Fitzgerald & Rose Ge...
UNITED STATES DISRICT SOUTHERN DISTRICT OF
You know that Mark Tw "Truth is stranger...
John Pankauski, Pankau Alan B. Rose, ...
Who does Alan B. Rose Mrachek, Fitzgerald ...
Don Sanders, Jackson N seems to have m...
Oh and you Spineless, C Lawless, Free Spee...
Burke, Warren, Mackay Taking a Look
Alan B. Rose of Page Mr Fitzgerald & Rose se...
Folks, Alan Rose is a MA Hypocrite. ...
Alan B. Rose, Esq. seem suppressing speech...
Eliot Bernstein and iVie
Isn't Armonk, New York Lamont's neck of th...
Don Sanders, assistant National Life ...
Life Reassurance Corp. Bankers Life Insu...
Judge Amy J. St. Eve is Davis Polk & W...

Anonymous said...
THE "FEDS" WERE AT THE OFFICES OF WEISS & HANDLER....

JUSTICE SOON!!!"

Source
http://fraudonthecourt.blogspot.com/2008/07/july-11-2008-certified-mail-return.html

More on Judge Martin Colin's Reign of Corruptin
http://judgemartincolin.blogspot.com/

Posted by Crystal L. Cox at 11:31 AM No comments: G+1 Recommend this on Google

## Judge Martin Colin Gets CAUGHT over and over protecting Florida Corruption and Florida Probate Attorneys. Why are those attorneys still licensed and why is Judge Martin Colin still on the Bench BREAKING THE LAW and Violating Constitutional Rights?

SERIOUS Abuse of Power, Violations of Ethics, Aiding and Abetting Corruption, Protecting Attorneys and Violating the rights of Florida Citizens.

Judge Martin Colin has been CAUGHT and yet is still ruining lives with BOGUS, Lawless, Fraud on the Court Rulings.

Hey remember when Judge Martin Colin wanted the Millions in Heritage Life / Jackson National insurance money moved from Illinois Courts to his tiny lawless court. MILLIONS in life insurance in regard to a man that the Palm County Sheriff Office is SUPPOSED to be investigating the Murder of???

Corruption in FLORIDA is very Bad. And Judge Martin Colin seems to be in charge of protecting the most lawless schemes in Florida and aiding HUGE RICH law firms such as Tescher and Spallina and Alan Rose / Alan B. Rose of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. in West Palm Beach, Fla.

Judge Martin Colin has no issue with the deceased signing documents, nor attorneys forging documents, and has no respect for the law, rights or children, judicial cannons or well, anyone that is not possibly bribing him or giving him some other motive to BREAK THE LAW and Ruin Lives.

So why is the Palm County Sheriff NOT looking into murder allegations, forgery, fraud and more in the Simon Bernstein Estate Case? Well I suppose its because they are seriously CORRUPT. And Judge Colin seems to be their buddy.

**The PBSO has NO Respect for CIVIL Rights or the Law PERIOD.**

Check this Out:

"FBI Raid on PBSO: Deputies Routinely Violate Civil Rights of Minorities!

WEST PALM BEACH — This week's FBI activity at the Palm Beach County Sheriff's Office came after a push by Guatemalan-Maya Center lawyer Jack Scarola for the U. S. Department of Justice to investigate what he claims is the unfair treatment of minorities by sheriff's deputies.

Jack Scarola
Guatemalan-Maya Center lawyer Jack Scarola (via Facebook)
It's another Gossip Extra exclusive: Last month, Scarola wrote a lengthy letter to U. S. Attorney General Eric Holder that outlined a series of PBSO shootings and incidents of brutality against minorities, mostly Hispanics.

The letter also blasted Sheriff Ric Bradshaw's handling of such incidents, including the agency's "growing militarization" and the sheriff's message in television appearances that minority neighborhoods are akin to "war zones."

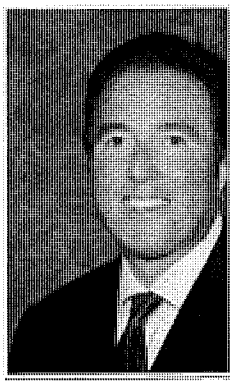
And to make sure that Holder got the message that PBSO's handling of such incidents didn't pass muster, Scarola forwarded his missive to members of the local delegation to the U.S. Congress, including U.S. Reps. Patrick Murphy, Alcee Hastings and Lois Frankel.

When asked if his effort caused Monday's arrival of the feds at PBSO headquarters on Gun Club Road, Scarola said: "There have been stranger coincidences."

"I'm not surprised," the high-profile lawyer said. "And I am pleased they're acting as requested. I contacted various government officials about this problem and I'm just pleased someone's taking action."

Cedarhurst, New York
WOW, a full days wages National Empl...
Pam and Ted CUT out of they seem to be...
Whatch all worried abou Fines, Judgement...
Not Getting Much Work ya? I sure ho...
303 East Wacker Drive S Chicago Illinois
STP Enterprises, Inc. - F
Jackson National Life Di Registere...
So Where Does Christop Ex Proskauer...
Carol Ann Kindred at He Life Insurance...
Heritage Union Life Insu is well awar...
So, who at Jackson Nati palms, all ...
So is Pamela Simon the in all this?...
Jackson National Life In Company has HUGE L...
oh and Don't Forget the CONDO and how...
More on Michael A. Well National Life Co...
Looks to me like Jackso Little SPOO...
So Funny, that Heritage Insurance Compa...
Heritage Union Life Insu is well awar...

Ted Bernstein



Life Insurance Concepts

Blog Posts

Is Google Really the Best Conduct a Fraud, ...
Welcome Back, How is t Investigation Goi...
Order for Discharge and Counsel Tesc...
Morgan Stanley Group N Tescher & Spalli...
Judge Martin Colin seen the Right Thi...
Why is Ted Bernstein NO to this Story? ...
Motion to Halt Hat Trick Believe this is ...
Hmmm.. Friend or Foe?

Scarola said the riots in Ferguson, Missouri, that followed the shooting death of a black man by a white police officer have placed a renewed emphasis on the use of lethal force by police on minorities.

But, Scarola says, the FBI's apparent investigation into PBSO is independent of what's happening near St. Louis.

"I believe that I wrote a persuasive letter," Scarola said.

Gossip Extra broke the story last night: **FBI agents were spotted at PBSO Monday to seize files pertaining to deputy-involved shootings and complaints.**

Among the documents taken by the G Men were files about the public's complaints against Lake Worth deputy Russell Brinson.

Minority leaders in Lake Worth have been asking that Brinson be fired after they found out he had a long string of use-of-force incidents, and most of them involving minorities.

Instead, the 40-year-old Brinson was re-assinged to Palm Beach International Airport security.

In his letter, Scarola mentioned one Brinson incident in which a Hispanic immigrant who tried to report a crime to Brinson was allegedly beaten down.

Scarola also reminded Holder of the principles of modern policing, including that the cooperation of the public with police is inversely proportional to police's use of physical force.

There is, Scarola's letter reads, a growing perception in Palm Beach County that (deputies) "are too quick to resort to the use of force — even deadly force — particularly when confronting members of the civilian population whose racial and ethnic appearance differs from their own."

Source
http://www.gossipextra.com/2014/11/26/fbi-raid-palm-beach-county-sheriff-civil-rights-violations-4196/

The Florida / Palm Beach County Sheriff DOES NOTHING to help solve murder cases, jewelry and real estate theft, massive attorney fraud, corruption and collusion in the Simon Bernstein Case. And Judge Martin Colin seems to be assisted by Palm County to violate the rights or the poor, minorities or anyone that Judge Colin does not WANT to be on top of the PILE. Maybe it's about who pays him the most. As I allege that Judge Martin Colin has taken bribes from Tescher and Spallina and possible Ted Bernstein's legal team including Alan B. Rose of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. in West Palm Beach, Florida.

"What will the FEDS do — They should start with SA Dave Aronberg & Alan Johnson — i.e., there relationship with the crooks at Weiss Handler & Cornwell, P.A. Fraud case fixing fraudulent documents Civil theft and legal Malpractice.

Legal Assistants sleeping with certain wealthy clients and be billed as well... Handler is operating a brothel for his clients.

Handler creates fraudulent and back dates legal DOCS. Does Handler BILL his client for his legal assistant to sleep with clients.... Mostly, yes, before Judge Martin Colin in South County.

Colin is on the handler "PAYROLL" FBI SAC Piro you have your work cut out for you.. Henry Handler and Howard Weiss should be indicted and jailed..... BTW Jack Scarola is well aware of Weiss Handler... Jack, perhaps you should write a letter to DOJ regarding WEISS HANDLER. This is CORRUPTION COUNTY!!!! As Judge Kastranakes!!!!! He indicted most of em..."

Source
http://www.gossipextra.com/2014/11/26/fbi-raid-palm-beach-county-sheriff-civil-rights-violations-4196/

Posted by Crystal L. Cox at 11:23 AM No comments: G+1 Recommend this on Google

Saturday, August 1, 2015

## WOW Judge Martin Colin protecting Corruption?? no say it ain't so... - and WOW the Palm County Sheriff Office involved?? Hmmm

"November 27, 2014 at 9:24 am

What will the FEDS do — They should start with SA Dave Aronberg & Alan Johnson — i.e., there relationship with the crooks at Weiss Handler & Cornwell, P.A. Fraud case fixing fraudulent documents Civil theft and legal Malpractice. Legal Assistants sleeping with certain wealthy clients and be billed as well... Handler is operating a brothel for his clients.

Alan B. Rose, Mrachek, I Rose, Konopka &...
Hello Marc Randazza, W PARTY, Hope yo...
Alan Rose Wants the Fir to Be Set Asid...
Hey Liars, Thugs, Thieve Murdering, Gre...
Hey Alan B. Rose, Mrach Rose, Konop...
Judge Martin Colin has a protecting the...
I keep waiting for Judge punish, o...
Whatch hiding FROM Bo
Hey Flushing New York . Raymond or possib...
Objection to Motion to Personal Repres...
Objection to Motion to Personal Repres...
I am getting me some "t that somethin...
Why is Heritage Union L Company Filin...
"Criminal Action throug Simulated Legal Pr...
Letter to Judge Martin Opposition to Ted...
What is Going on with J about not ...
Motion for Appointment Administrator...
Ted Petition for Appoin Successor Personal...
Alan Rose Esq., John J. Pankauski Law F...
Chicago Insurance and C Litigation Law Fi...
Morgan Stanley Group, and Tescher & ...
Wow, the Fraud Sure Se Piling Up. Is Ted ...
Full Docket Of Heritage Insurance Case ...
Heritage Lawsuit Illinois Response Regar...
Reported as a Murder, y checked is medic...
"The Document in Ques the Inheritance ...
Looks like the Tescher E Bernstein F...

Ted Bernstein, Tescher and Spa

- Florida Estate Forgery, F DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher and Spa

Handler creates fraudulent and back dates legal DOCS. Does Handler BILL his client for his legal assistant to sleep with clients.... Mostly, yes, before **Judge Martin Colin in South County**.

Colin is on the handler "PAYROLL" FBI SAC Piro you have your work cut out for you.. Henry Handler and Howard Weiss should be indicted and jailed..... BTW Jack Scarola is well aware of Weiss Handler... Jack, perhaps you should write a letter to DOJ regarding WEISS HANDLER. This is CORRUPTION COUNTY!!!! As Judge Kastranakes!!!!! He indicted most of em..."

Source
http://www.gossipextra.com/2014/11/26/fbi-raid-palm-beach-county-sheriff-civil-rights-violations-4196/

Posted by Crystal L. Cox at 8:04 PM No comments: G+1 Recommend this on Google

Monday, July 20, 2015

## Is Detective Andrew Panzer Investigating this fraud, forgery, theft and possible murder case or NOT?

Detective Andrew Panzer Letter from Eliot Bernstein January 2015
https://drive.google.com/file/d/0Bzn2NurXrSkiMHNpa29Zc2VmbEU/view

Why has Detect Andrew Panzer not arrested anyone? The FACTS sure look pretty clear. Why are these lawyers still creating victims and even still in business? The Palm County Sheriff has known for years and yet all these same players / attorneys are still in business and harming more people.

Below is lot's of details, in this Florida Supreme Court Filing
https://drive.google.com/file/d/0Bzn2NurXrSkiZFdpU3F3WjZQWnM/view?usp=sharing

Posted by Crystal L. Cox at 5:09 PM No comments: G+1 Recommend this on Google

Monday, June 29, 2015

## Why has the Palm County Sheriff office NOT arrested Robert Spallina and Donald Tescher? Why is Palm Beach County Sheriff's Office protecting Robert Spallina and Donald Tescher even in the face of admitted crimes. Has the PBSO Office been paid off or threatened? Has Andrew Panzer personally been paid off or threatened? Are these admitted crimes legal in Palm Beach County ? With detectives like Andrew Panzer it is easy to see where there is so much probate crime in Palm Beach County Florida.

The Simon Bernstein Estate Case and the Shirley Bernstein Estate Case out of Boca Raton Florida is still going on, three years later. Judges are not ruling per law, Detectives are looking the other way and high finance crimes are RAMPANT.

Below is an email yet AGAIN from Eliot Bernstein to Palm Beach County Sheriff's Office, Detective Andrew Panzer, who seems to have no interest in protecting the victims of crimes in Palm Beach county Florida.

"From: Eliot Ivan Bernstein [mailto:iviewit@gmail.com]
Sent: Monday, June 29, 2015 5:58 AM
To: Detective Andrew Panzer @ Palm Beach County Sheriff (PanzerA@pbso.org); Captain Carol Gregg @ Palm Beach County Sheriff (greggc@pbso.org)

Subject: Bernstein Cases - RE: CASES NO: 13097087 MORAN FORGERY AND FRAUDULENT NOTARIZATION; 13159967 JEWELRY THEFT, 14029489 TESCHER AND SPALLINA ET AL. SUPPLEMENTAL, 12121312 ALLEGED MURDER OF SIMON BERNSTEIN

Detective Panzer,

After our last several calls it is apparent that the PBSO investigations into the Bernstein case matters has been derailed, stymied and delayed and that instead of investigating these ongoing crimes you have begun doing research on **my federal RICO filed** and who I copy on emails to you as if this were more important than the crimes reported to your agency.

I am not sure why it matters to you at all why I copied Judge Scheindlin on these matters, especially where there are growing correlations between these new crimes committed to my prior RICO filed and those defendants.


- Florida Estate Forgery, F DOCKET

Blog Archive

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Judge Martin Colin G over and over prot
WOW Judge Martin C Corruption?? no ...
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► June (4)
► May (22)
► April (63)
► March (8)
► February (7)
► January (8)
► 2014 (248)
► 2013 (31)

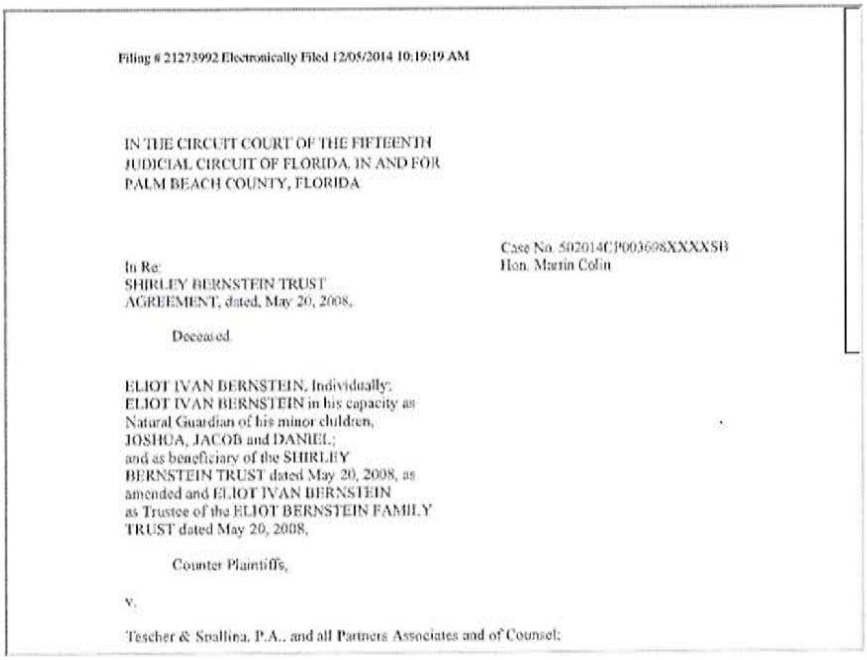
# Ted Bernstein Insurance

written upon knowledge and belief of Crystal L. Cox



Friday, December 5, 2014

## Petition to Remove Ted Bernstein and attorney Alan Rose along with him in Florida Estate Case riddled with fraud, alleged murder, forgery, bullying, abuse of court documents, dead guys signing legal documents and more.



Filing # 21273992 Electronically Filed 12/05/2014 10:19:19 AM

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

Case No. 502014CP003698XXXXSB
Hon. Martin Colin

In Re:
SHIRLEY BERNSTEIN TRUST
AGREEMENT, dated, May 20, 2008,

Deceased

ELIOT IVAN BERNSTEIN, Individually;
ELIOT IVAN BERNSTEIN in his capacity as
Natural Guardian of his minor children,
JOSHUA, JACOB and DANIEL;
and as beneficiary of the SHIRLEY
BERNSTEIN TRUST dated May 20, 2008, as
amended and ELIOT IVAN BERNSTEIN
as Trustee of the ELIOT BERNSTEIN FAMILY
TRUST dated May 20, 2008,

Counter Plaintiffs,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;

Click Below to Read the Petition to Remove Ted Bernstein
https://docs.google.com/file/d/0Bzn2NurXrSkiSEd2OGVqRmRxeUU/edit

More documents and information at
http://tedbernsteinreport.blogspot.com/

Posted by Crystal L. Cox at 12:13 PM No comments: G+1 Recommend this on Google

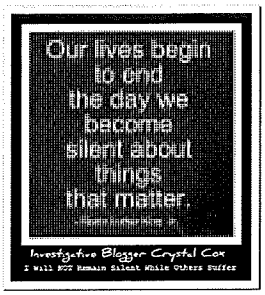
Friday, May 23, 2014

## Ted Bernstein, Alan B. Rose of Mrachek, Fitzgerald & Rose and John Pankauski and the case of Florida estate fraud, forgery and fraudulent documents. Ted Bernstein is HOPPING mad and wants access to EVERYTHING, Everywhere or ELSE you all are FIRED. See, if you will not aid and abet Ted Bernstein of Life Insurance Concepts, well then what's the use in him paying ya???

Ted Bernstein, Alan B. Rose of Mrachek, Fitzgerald & Rose and John Pankauski - John J. Pankauski - Pankauski Law Firm PLLC sure seem to be up to NO GOOD.

Ted Bernstein, Life Insurance Concepts, Alan B. Rose of Mrachek, Fitzgerald & Rose and John Pankauski - John J. Pankauski - Pankauski Law Firm PLLC sure seem to be up to NO GOOD.

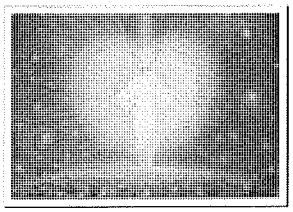
Ted Bernstein, Alan B. Rose of Mrachek, Fitzgerald & Rose and John Pankauski like to operate in the dark. The thing is God / Goddess, the Great Spirit has a way of bringing the dark to the light, in support of the "good guy" and of doing the right thing.




Poor Baby TEDDY does not want to spend another dime on attorneys who will not cover up his corruption, aid and abet him or defend his rights to break the law.

Below is an eMails that seems to suggest "Foul Play" and lawless, over the top aggressive, you be the judge. And also read this entire blog, and I would say that FLORIDA is not the best place to actually have your wishes carried out when you die. Especially not with this gang of seemingly corrupt THUGS.

oH and Ted Bernstein accusing Crystal Cox, me, of Extortion, but no BALLS to file a police report, what? If I have extorted your whiny, corrupt ASS then file a police report, ya spineless coward.



God / Goddess works in mysterious ways and this eMail is one of those ways in which the LIGHT is coming in and God is working for the Greater Good.

Thank You God <takes a bow> <hands firmly pressed>

*

"Alan - I want Eliot's deposition scheduled as soon as you can notice him. We can discuss the strategy once he is served. I want to go through each claim with you and/or John to determine the legal necessity to respond. If any reply is necessary, the record must be straight with respect to each.

This is a rambling, filled with contradictions that need to be exposed for what they are. If John does not want to tangle with Eliot, remove John immediately. I am sorry to be this blunt, but I do not want to address the John issue again.

If he is not 100% in support of me as trustee, including how I have protected myself with trust assets and will continue doing so as necessary, and being aggressive and forceful, if need be, with eliot, remove him as counsel.

I do not want to spend another unnecessary dollar with counsel that is not going to zealously defend me as trustee and protect trust assets.

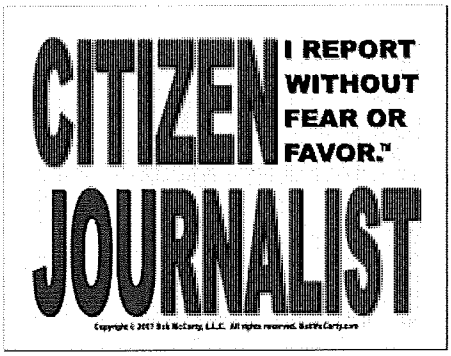
I cannot be more decisive re this and I say this with no animosity - simply for efficiency sake and my best interest.

Eliot is in default of production. Let's serve notice on him that he is in default.

I want Eliot to produce everything he has with respect to these cases, including:

Documents he refers to having that provide trusts for him and/or his children.

Agreements he has signed with my father and mother, together or separately.




All correspondence between him and my parents, together or separately concerning anything he has referenced in his ramblings through this one.

Anything and everything pertaining to iviewit, including his harassment of Jerry Lewin, Al Gortz of Proskauer and their firms.

I want court proceedings, lawsuits, all correspondence to him and from him including paper and electronic, including video tapes and electronic interviews.

History of incidents at st. Andrews school.

All correspondence with bill Stansbury. Everything related to Feaman / Stansbury

All bank accounts, credit cards, sources of income, loans and gifts.

All correspondence with anyone he has shared estate details.

All correspondence of every type with: walker, puzzio, SAHM, Diana banks, Scott banks, NACLERIO, Dietz, Gefen and every person on his email distribution list. If he doesn't comply, I want all of them deposed.

Everything in which he has mentioned my name including emails, phone calls, letters, complaints to whatever agencies he has made complaints including police, federal, state, regulatory.

Everything and anything he is doing that we are not yet aware of such as online web site attacks.

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

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.,

Defendants.
_____/

Probate Division
Case No.: 502014CP003698XXXXSB

**SUCCESSOR TRUSTEE'S MOTION FOR APPOINTMENT OF A GUARDIAN AD LITEM TO REPRESENT THE INTERESTS OF ELIOT BERNSTEIN'S CHILDREN; FOR A GAG ORDER TO PROTECT GUARDIAN AND OTHERS; AND TO STRIKE ELIOT'S FILINGS**

Successor Trustee, Ted S. Bernstein (the "Trustee"), moves the Court (i) to appoint a guardian ad litem to represent the interest of the children of Eliot Bernstein,, D.B., Ja.B. and Jo.B;, (ii) to impose a gag order preventing Eliot from harassing and intimidating the retained or appointed fiduciaries (including any newly-appointed Guardian ad Litem), as well as all professionals and the Court; and (iii) for an order striking all of Eliot's filings in this case for lack of standing, and states:

1. Plaintiff, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, seeks the appointment of a guardian ad litem to protect the interests of Eliot Bernstein's three children. By its ruling at the trial held on December 15th, the Court upheld the 2012 Will and Trust of Simon L. Bernstein and the 2008 Will and Trust of Shirley Bernstein. As a result of upholding these documents, the Court has determined that Eliot Bernstein, individually, is not a beneficiary of either Simon's or Shirley's Trusts or Estates. Instead, his three sons are among the beneficiaries of both Simon's and Shirley's Trusts, in amounts to be determined by further proceedings. Eliot lacks standing to continue his individual involvement in this case.

2. Based upon the events which have transpired and the pleadings and other papers filed by Eliot in this case, including statements in his Omnibus Petition to the Florida Supreme Court and his latest Motion to Disqualify this Court, the Trustee does not believe that Eliot is capable of adequately representing the interests of his children or willing to enable the Trustee to carry out Simon's and Shirley's wishes to benefit their grandchildren. Indeed, since the trial and the resulting Final Judgment, Eliot has increased his attacks on this Court and these proceedings.

3. Eliot shows no interest in seeing his parents' trusts and estates administered in an economic and efficient process to maximize the distribution among their grandchildren. Instead, he is on a never-ending crusade against injustice and corruption among judges, lawyers, fiduciaries, and others, including the Florida Supreme Court and the Florida Bar. In a recent filing, a *Motion for Rehearing En Banc* (Ex. A) of the dismissal of his "Petition for All Writs,"[1] he wrote:

---

[1] The Petition for All Writs sought prohibition against Judge Colin (who already recused himself in May) and an extraordinary writ to stop a routine, court-approved sale of Trust property. The sale would have closed March 31, 2015 but for Eliot's interference, and these delays will have cost the Trust far in excess of $150,000 by the time of the eventual closing.

> That the Florida judicial system has not only failed Bernstein twice in protecting his properties, life and liberty but it has played a significant role in the alleged criminal acts committed against Petitioner, his family and now perhaps has led to the death of his father . . . The recent criminal acts committed by Florida Bar attorneys and fiduciaries of the estates and trusts of Simon and Shirley Bernstein. These estate and trust crimes part of a fraudulent scheme and an attempt to rob and preclude Petitioner from inheritance, through Post Mortem crimes committed after the passing of his mother and father Shirley and Simon Bernstein through sophisticated complex legal frauds, *including multiple Frauds on the Court and Fraud by the Court itself* . . . .
>
> . . . many of the Florida Supreme Court Justices are named in all ongoing actions, including the instant matters involving the fraud on the court of Judge Martin Colin and Judge David French, where yet again we find members of the Florida Bar, two Florida judges and several more Florida attorneys at law involved in the criminal acts described herein and again using the Florida Courts to directly deprive Petitioner and his family of their rights and further retaliate against Petitioner to directly attempt to stop his pursuit of his Intellectual Property rights, his inheritancy and more.[2]

4. Further, because of Eliot's penchant to attack and try to exert pressure on fiduciaries, counsel and others who oppose his wishes, the Trustee believes it is necessary to enter an Order prohibiting Eliot and anyone acting in concert with Eliot from harassing the fiduciaries, counsel, and others, including any newly appointed Guardian ad Litem, and from disseminating or publishing by any manner or on any website any information about these matters. This internet cyber-bullying or cyber-terrorism has been ongoing for more than two years. (Composite Ex. C)

---

[2] These thought are similar to thoughts he expressed on an internet website, praising a "heroic" lawyer who is crusading "to whistle blow on the corruption of the Florida Courts and its members that she has witnessed firsthand committed by attorneys at law, guardians and the judges involved in her mother's guardianship in what can only be called an elder eugenics program designed to at once kill the victims entrapped and simultaneously deplete virtually their entire net worth from the family and covert it to the court appointed guardians and attorneys at law, while providing the courts with funding as well." (Ex. B)

Eliot ties that to his parents' trusts: "I have witnessed firsthand this same racket in the Florida Probate Courts as my family's estate and inheritance have been desecrated and robbed by Florida Attorneys at Law, . . . with the help of two Florida Probate Judges, David French and Martin Colin."

5. Eliot appears more interested in ruining lives and reputations by cyber-warfare than in seeing these proceedings come to a conclusion. Eliot has exhibited a pattern of irrational behavior, demonstrated by threats of criminal prosecution and slanderous statements made in an attempt to exert pressure on the fiduciaries. Eliot's behavior has reached such deplorable levels that he continues to malign and disparage all of the fiduciaries – counsel, the independent Successor PR of Simon's Estate, and everyone else who stands in his way – personally and professionally. Eliot disseminates inflammatory and defamatory information over the internet without any regard for the negative impact such information may have.

6. Two recent examples of Eliot's wasteful conduct already have costs the beneficiaries significant real dollars. Eliot opposed the sale of his parents' primary residence, which was on the market nearly four years before a serious offer was made. The all-cash, "as-is" offer was set to close on March 31st. Eliot persuaded Judge Colin to delay the sale – at significant expense to the Trust – so he could challenge the sale price as inadequate. After a six-week delay, Eliot presented no witnesses and no evidence, and the sale was approved in a final order. Eliot did not appeal the order, but filed his All Writs Petition to the Florida Supreme Court. The sale has yet to close due to Eliot's filings – including a Motion for Rehearing En Banc and a Notice of Appeal to the Florida Supreme Court. This already has cost the Trust far more than $100,000 of the value it would have realized in March. Similarly, after claiming his father's 2012 testamentary documents were the product of mental incapacity, undue influence or fraud, at trial Eliot produced no witnesses or testimony to corroborate those baseless accusations. He did not even testify himself on any of the issues he raised. The Trust incurred substantial legal fees and costs addressing Eliot's fantastical claims.

7. Eliot will never stop until a court stops him. Now is the time for such drastic measures, while there are still some assets left for his children and the other grandchildren to receive as distributions. In light of the Final Judgment dated December 16, 2015, upholding Simon's 2012 documents, Eliot is not a beneficiary of the Shirley Trust or the Simon Trust. As such, he lacks standing to participate as an individual. All of his individual filings should be stricken with prejudice. His filings in his capacity as guardian of his children should be conditionally stricken, without prejudice to the Guardian ad Litem seeking leave of court to pursue such claims and issues as the Guardian deems to be in the best interests of Eliot's children.

8. Finally, the Court should order Eliot Bernstein and others acting in concert with him to remove all internet postings about the judges, lawyers, fiduciaries and others involved in these matter, and preclude any further public or widespread dissemination of information about these proceedings. The Court should be aware that Simon's grandchildren are all starting their lives, and the "garbage" Eliot puts on the internet will be following along with these innocent grandchildren for the rest of their lives. As the fiduciary responsible to act in the best interests of the grandchildren, the Trustee requests that the Court enter a confidentiality or "gag" order to protect their interest.

WHEREFORE, the Trustee respectfully suggests that this Court: (i) appoint a Guardian Ad Litem for Eliot's three children;(ii) enter a confidentiality or "gag order" to protect the integrity of these proceedings and to safeguard the ability of fiduciaries, including a Guardian Ad Litem, to act independently and in the best interests of the beneficiaries; (iii) strike and/or dismiss all of Eliot's filings in this case as described above for lack of standing; and (iv) grant such other relief as the Court deems appropriate.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: ☐ Facsimile **and** U.S. Mail; ☐ U.S. Mail; ■ Email Electronic Transmission; ☐ FedEx; ☐ Hand Delivery this 4th day of January, 2016.

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By: /s/ Alan B. Rose
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RECEIVED, 12/15/2015 9:54 PM, Clerk, Fourth District Court of Appeal

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

CASE NO.: 4D15-3849
L.T. No.: 502011CP00653XXXXSB
502014CA014637XXXXMB
502014CP002815XXXXSB
502014CP003698XXXXSB
502015CP001162XXXXNB
502015CP002717XXXXNB

ELIOT BERNSTEIN v. ESTATE OF SIMON BERNSTEIN

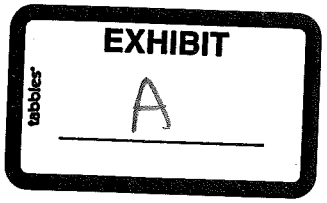
Appellant / Petitioner(s) Appellee / Respondent(s)

**Motion for Rehearing En Banc**

Eliot I. Bernstein, Petitioner-Appellant herein, respectfully shows this Court as follows:

1. I am the Petitioner Pro Se and file this Motion for a Rehearing En Banc of this Court's determination and dismissal of a prior petition for All Writs further seeking a Stay and Injunctive relief originally filed at the Florida Supreme Court on June 10, 2015, and re-filed on June 30, 2015 to conform with page requirements.
2. While acting pro se, I nonetheless express a belief that this case and issues are of exceptional importance under Florida Rules of Appellate Procedure 9.331.
3. The motion is further timely within Florida Rules of Appellate Procedure 9.330.
4. This Court originally issued a Decision on Nov. 30, 2015 Dismissing the All Writs Petition as "Moot" but in the caption of the Decision it only referenced the Writ of Prohibition making it unclear if the other portions of Petitioner's All Writs were Dismissed as well as





"moot" as Petitioner was seeking Mandamus relief against Florida Judge Martin Colin and other relief such as a Stay and Injunctive relief.

5. Petitioner initiated a procedural phone call to the 4th DCA on or about Nov. 30, 2015 the same day of the Decision to determine the procedure for such a Clarification and originally was told by the Clerk Staff from the 4th DCA the Dismissal applied to the entire petition.
6. Very shortly thereafter, in order to be clear on this Court's ruling, Petitioner made a subsequent call on that same day of Nov. 30, 2015 speaking to the same 4th DCA Clerk Staff to again seek procedural guidance on how to clarify this ruling and the 4th DCA Clerk stated "they told me" the Dismissal applied to all parts of the Petition referring to the original Decision of Nov. 30, 2015 which Denied the Writ of Prohibition as "Moot" and referenced Oct. 15, 2015 as the filing date of the Petition which was filed June 30, 2015 at the Florida Supreme Court.
7. The 4th DCA Clerk clarified that this filing date was the date the All Writs Petition was Transferred by the Florida Supreme Court.
8. Within 15 minutes to a half hour or less on Nov. 30, 2015, I received an Amended copy of this Decision which now referenced the filing date of July 1, 2015 and Denying the entire Petition as "moot".

**<u>This is a Case of Exceptional Importance</u>**

9. The Petition for All Writs brought up for the Florida Supreme Court the appropriateness of even ruling on the Petition for All Writs based upon a warned Conflict of Interest stemming from the following Petitioned in the All Writs:

"Eliot Ivan Bernstein has pursued in investigations since early 2000 to present, including a Petition to the White House[1], the White House Counsel's Office, the US Attorney General's Office, investigations to the SEC[2], FBI, and various State Attorney Generals, and actions with the USPTO, and other legal actions, including RICO and ANTITRUST civil litigation and criminal complaints several Florida Supreme Court Justices, The Florida Bar, several New York Supreme Court Justices, the New York Supreme Court Disciplinary Agencies 1st & 2nd, several large law firms and lawyers, political figures at the highest levels in both Florida and New York and others and this may cause any review of the following matters by any member of The Florida Bar, a subsidiary of the Florida Supreme Court, with any title in the organization, to prejudice the rights of Eliot Bernstein and his family and will be construed as a denial of due process that obstructs justice."

10. This Conflicts of Interest section went on to further expressly name the following:

Defendants in the RICO and other actions include:

- "STATE OF FLORIDA,
- OFFICE OF THE STATE COURTS ADMINISTRATOR, FLORIDA,
- **FLORIDA SUPREME COURT**,

---

1 http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090213%20FINAL%20SIGNED%20LETTER%20OBAMA%20TO%20ENJOIN%20US%20ATTORNEY%20FINGERED%20ORIGINAL%20MAIL%20l.pdf

2 http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf

- Jorge Labarga, in his official and individual capacities, [this lawsuit prior to his unbelievable rise to Chief Justice of the Florida Supreme Court after the Bush v. Gore election where he aided in the failure to recount the People's vote when he was a civil circuit judge and for his effort to derail Eliot's legal rights in the first lawsuit involving Eliot and others stolen Intellectual Properties that has led to this mess filed before his court. Proskauer v. Iviewit, Case #CASE NO. CA 01-04671 AB.]
- Charles T. Wells, in his official and individual capacities,
- Harry Lee Anstead, in his official and individual capacities,
  - R. Fred Lewis, in his official and individual capacities,
  - Peggy A. Quince, in his official and individual capacities,
  - Kenneth B. Bell, in his official and individual capacities,
  - THOMAS HALL, ESQ. in his official and individual capacities,
- **THE FLORIDA BAR**,
  - JOHN ANTHONY BOGGS, ESQ. in his official and individual capacities,
  - KELLY OVERSTREET JOHNSON, ESQ. in her official and individual capacities,
  - LORRAINE CHRISTINE HOFFMAN, ESQ. in her official and individual capacities,
  - ERIC TURNER, ESQ. in his official and individual capacities,
  - KENNETH MARVIN, ESQ. in his official and individual capacities,

- JOY A. BARTMON, ESQ. in her official and individual capacities,
- JERALD BEER, ESQ. in his official and individual capacities,
- BROAD & CASSEL, and, all of its Partners, Associates and Of Counsel, in their professional and individual capacities,
- JAMES J. WHEELER, ESQ. in his professional and individual capacities,

o DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION – FLORIDA,"

11. A simple review of the cited resource locator in the All Writs Petition at http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf would show any reviewing body or jurist that the underlying frauds at issue having been reported to the White House, White House Counsel's Office, US Attorney General's Office and various Federal Agencies such as the FBI implicate an ongoing Fraud upon the United States itself being fraud at the USPTO.

12. Even without reviewing the information at this resource locator, the plain text at the All Writs Petition further showed that the frauds had now elevated into Estate and Trust frauds within the State of Florida and the possible murder of Simon Bernstein and further implicating members of the Florida Supreme Court and Florida Bar as follows:

> "That the Florida judicial system has not only failed Bernstein twice in protecting his properties, life and liberty but it has played a significant role in the alleged criminal acts committed against Petitioner, his family and now perhaps has led to the death of his father, as alleged by Petitioner's brother Ted as a possible "murder." The recent criminal acts committed by Florida Bar attorneys and fiduciaries of the estates and trusts of Simon and Shirley Bernstein. These estate and trust crimes part of a fraudulent scheme and an attempt to rob and preclude Petitioner from inheritance, through Post Mortem crimes committed

after the passing of his mother and father Shirley and Simon Bernstein through sophisticated complex legal frauds, including multiple Frauds on the Court and Fraud by the Court itself, with irrefutable evidence of criminal acts by lawyers and law firms and now new allegations that Judges are involved on the attempt to fix and silence the crimes of other members of the Florida Bar and others.

That in the original instance of fraud that occurred against Petitioner and his family in the Courts, many of the Florida Supreme Court Justices named herein may recall that Bernstein in early 2000 began pursuing members of the Florida Bar from a case that began with Jorge Labarga and the international law firm Proskauer Rose intimately involved in thefts of technologies valued as "The Holy Grail" and "Priceless" by leading engineers and when Judge LaBarga was a circuit court judge in Palm Beach County and the complaints against the lawyers and judges involved made their way all the way up to the Supreme Court and why many of the Florida Supreme Court Justices are named in all ongoing actions, including the instant matters involving the fraud on the court of Judge Martin Colin and Judge David French, where yet again we find members of the Florida Bar, two Florida judges and several more Florida attorneys at law involved in the criminal acts described herein and again using the Florida Courts to directly deprive Petitioner and his family of their rights and further retaliate against Petitioner to directly attempt to stop his pursuit of his Intellectual Property rights, his inheritancy and more.

These matters are brought expressly to the forefront of this case so matters of conflicts of interest may be properly adjudicated even in the hearing of the instant petitions for writs and other relief and for consideration as to whether the entirety of these matters should be transferred to a jurisdiction outside the State of Florida and other proper relief. " See, Petition for All Writs.

13. The case is thus of not only exceptional importance but statewide importance as not only implicating related ongoing frauds upon the United States but the fundamental Due Process issue of whether the Florida Courts themselves can be an appropriate forum for the Petitioner given the current Florida Supreme Court Judge Jorge Labarga's involvement in the underlying frauds along with substantial members of the Florida Bar including Jerald Beer of the Ciklin, O'Connell law firm now in a case where possible murder has been alleged.

14. Thus the case should be heard En Banc as exceptional importance is shown.

15. Clearly neither the Florida Supreme Court nor this Court of the 4th DCA addressed the exceptional important issue of whether the fundamental due process can be served with the

Conflicts of Interest referenced in the petition and thus this part of the Petition was clearly overlooked and / or misapprehended.

16. Clearly the exceptional importance of the statewide due process conflict of interest issues are not moot and these matters were overlooked or misapprehended.

**Other Issues Overlooked, Misapprehended and Not Moot**

17. The Petition for All Writs further brought up mandamus against Judge Martin Colin to issue a Disqualification as a necessary and material fact witness and void all of his orders therein where clear fraud upon the Court has occurred and Judge Colin himself may be part of the machinery of the Court involved in the fraud.
18. While not stated in this Court's Decision, it was argued by Alan M. Rose on behalf of Ted Bernstein to this Court that due to Judge Colin's "recusal" which came within 24 hours of denying the mandatory Disqualification as a necessary and material fact witness rendered the Writ "moot".
19. However, this again must have been overlooked and misapprehended.
20. Judge Colin's sudden "recusal" does not change and did not change his status as a material fact witness in underlying fraud in his court which, quite interestingly, expressly involves Ted Bernstein who Alan Rose is representing.
21. Judge Colin remains a material fact witness and thus, this part of the Petition for All Writs was clearly not moot and mandamus should issue immediately so proper Disqualification Orders can be issued.
22. Further, the Petition brought up for review Judge Colin's "steering" and "poisoning" of the "Transfer" of the Case to the North Branch acts which were and are alleged to have been

beyond and outside his jurisdiction as one who mandatorily had to be disqualified under Florida law.

23. Once it is properly determined that Judge Colin should be mandatorily disqualified and subject to mandamus, all of these wrongful acts of Transfer without jurisdiction are clearly presently relevant to the case and must have been overlooked and or misapprehended by this Court and clearly were not and are not moot.

24. Further, the Petition for All Writs brought up for review under mandamus that Judge Colin's Orders issued as having been what should have been a Disqualified material fact witness at least as of Jan. 3, 2013 or by latest May of 2013 based upon when clear indisputable fraud had to have been discovered in his Court, that such Orders must be Voided.

25. In fact, the property referenced by Alan Rose to be sold was part of an illegal Order of Judge Colin grounded in fraud as a material fact witness and prohibiting this sale clearly is not moot and must have been overlooked and misapprehended.

26. This Court must have overlooked or misapprehended this part of the Petition as all of these Orders since either Jan. 3, 2013 or at least May 6, 2013 forward must now be Voided and clearly these Orders are presently impacting the Case and thus are not moot.

27. Still further, the Petitions sought specified Stay and injunctive relief none of which was or is moot and thus this Court must have overlooked and or misapprehended this part of the Petition as well.

28. Clearly the Petition for All Writs has substantial case law authority which should have been relied upon if the Petition had not been overlooked and / or misapprehended and Petitioner simply refers this Court back to the All Writs Petition for said authorities to stay in conformity of the rules preventing re-argument.

**WHEREFORE,** Petitioner respectfully prays for an Order granting En Banc rehearing relief and further issuing mandamus against Judge Colin as a material and fact witness, voiding of all Orders of Judge Colin since at least Jan. 3, 2013 or May 2013 to the present and further determination as to the impropriety of the interference in the orderly Transfer of this case to the North Branch thus transferring the case to a randomly selected independent neutral Judge unless the conflict of interest issues raised by any hearing within the State of Florida determine transfer outside the State and further that this Court should provide affirmative review of said Conflicts of interest in any further Order or Decision herein or alternatively certify the conflicts of interest and due process issue to the Florida Supreme Court as an exceptional issue of statewide and novel importance.

Dated: December 15, 2015 **/s/Eliot Ivan Bernstein**

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 15th day of December, 2015.

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By: /s/ Eliot Ivan Bernstein
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# Scanned Retina – A Resource for the People!

*For the adults in the room!*

## Eliot Ivan Bernstein: I have witnessed firsthand the injustice of Judge Michael Genden in his court: Retaliation against Barbara Stone!

Posted on August 8, 2015

On Aug 8, 2015, at 7:24 AM, Eliot Ivan Bernstein <iviewit@iviewit.tv> wrote:

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Hon. Kerry I. Evander, VICE-CHAIR
Alan B. Bookman, Esq.
Ms. Shirlee P. Bowne'
Michelle K. Cummings, Esq.
Mayanne Downs, Esq.
Mr. Harry R. Duncanson, CPA
Hon. Thomas B. Freeman
Hon. Krista Marx
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Hon. Michelle T. Morley
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Dear Hon. Kerry I. Evander, VICE-CH

My name is Eliot Ivan Bernstein and I ho has reviewed the Barbara Stone complaint attached herein against Judge Michael Genden and witnessed firstha on against Barbara who is desperately trying to save her mother's life and which danger is confirmed by medical n attorney at law with an unblemished career through her eventual retirement who has taken the heroic path as an att n of the Florida Courts and its members that she has witnessed firsthand committed by attorneys at law, guardi her's guardianship in what can only be called an elder eugenics program designed to at once kill the victims ent tually their entire net worth from the family and covert it to the court appointed guardians and attorneys at law, while ell. Helen Stone went into a guardianship for financial protection and quickly was transformed from a vibrant health wheelchair with a feeding tube in now an induced medical guardianship and who has been taken in for emergency lifesaving procedures due to the neglect she has suffered since imprisonment in the guardianship.

In attempting to expose this corrupt guardianship and those involved Barbara has done everything required under law and in response and retaliation her due process rights were removed and she was portrayed as a criminal and in fact criminally arrested by Judge Genden's bizarre orders for her efforts to protect her mother. She and her mother have been denied due process and the right to counsel and I witnessed in Federal Court before Magistrate Judge Hunt in Florida an attorney, Deborah Rochlin, Esq. state on the stand under oath that Judge Michael Genden had issued threats against her in Ex Parte communications that if she continued to represent the Stone family she would targeted for disciplinary actions and more, which caused her in fear of losing her livelihood to immediately withdraw from representing the Stones. However, in heroic fashion and duty bound to report the misconduct of attorneys at

EXHIBIT B

law and judges under Florida Rules of Professional Conduct, Ms. Rochlin did just that by signing a sworn affidavit stating that she was contacted by Judge Genden and a one Roy Lustig, Esq. and extorted and threatened. For this heroic act and following her duty to report misconduct, Judge Genden filed a bar complaint against Ms. Rochlin.

In Federal Court, it was exposed that Roy Lustig, Esq. has a pattern and practice of Fraud on the Court that was exposed by the Third DCA in a case involving Leo's Liquor and yet despite the courts recommendation for State Bar Sanctions and more, it appears Mr. Lustig walked protected by the State Bar of Florida and no action was taken despite his fraud on the court being proven by the court. In the hearing before Magistrate Judge Hunt however, Lustig made statements that appeared to claim that Barbara Stone, Esq. was not a lawyer and that she was some kind of fraud and this swayed and biased the opinion of Magistrate Judge Hunt so much so that he made his own efforts to discover if she were a lawyer and then in an opinion to Judge Zolch stated Barbara was a liar and not forthright with the Court. However, due to lack of diligence it appears that no one had checked her married name and thus both Judge Hunt and Lustig then had mud on the face. To resolve this problem it appears that despite Barbara having been a retired attorney at law with a blemish free career, the Florida Supreme Court through the aegis of its subsidiary The Florida Bar instantly moved to DISBAR Barbara Stone, Esq. on trumped up charges relating to her efforts to free her mother from the concentration camp she is in.

I have witnessed firsthand this same racket in the Florida Probate Courts as my family's estate and inheritance have been desecrated and robbed by Florida Attorneys at Law, including but not limited to, Robert L. Spallina, Esq., Donald R. Tescher, Esq. and Alan B. Rose, Esq. all with the help of two Florida Probate Judges, David French and Martin Colin. Attorneys Tescher and Spallina through their law firm Tescher & Spallina, PA have admitted to fraud on the court and fraud on the beneficiaries and have also admitted to submitting to the courts fraudulently notarized and forged signatures for six parties, including for my deceased father POST MORTEM and yet they have been allowed to continue to practice before the courts and the Florida Bar despite being fully aware of these crimes has done NOTHING to any of the attorneys involved, in fact, allowing Spallina to merely surrender his license without discipline despite his admitted felony criminal acts against my family, including three minor children who have been harmed by their actions. My brother on the day my father died alleged that he was murdered by poisoning and started a criminal complaint and autopsy that have also been mishandled once it was apparent that the person accused, his girlfriend was most likely innocent if he were murdered and now due to the financial crimes and fraud committed by the Attorneys at Law the potential accomplices to any murder may in fact be members of the Florida Bar who may have had a hand in any foul play due to the fact that they are the ones who have committed felony criminal acts and financial crimes against the estates and trusts beneficiaries for their own pecuniary gains. After a year a heavy metal test was finally performed and the results came back with 3 heavy metals elevated to reportable levels, including but not limited to, Arsenic and Cadmium. The attorney and judge self-regulating system of the Florida Bar and Judicial Qualifications Commission (which have no authority or jurisdiction to interfere in criminal complaints against their members) have become a joke and actually appear to be attorney protection agencies to protect the crimes being committed through the use of the courts by their members and steering and interfering with criminal charges made against members to Police and Sheriff agencies to derail the criminal investigations. Ms. Stone has also filed criminal charges against Michael Genden for his threats and extortion made upon her counsel and yet not a single law enforcement agency will investigate her criminal complaint filed in accordance with Florida Statutes. For Shame on our corrupted legal system that appears to start at the top and perverse the entire body of law in Florida and any lawyer standing up to this is instantly Witch hunted and Disbarred, effectively destroying their lives or forcing them to complicity in fear of their extorters.

My case is currently before the Supreme Court of Florida and can be found @

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20(

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20(

The crimes in these Probate cases have also caused multiple other actions to be filed both state and federally at great expense to the victims all due to criminal misconduct by Attorneys at Law and Judges. In fact, arrest has now been made of the Legal Assistant and Notary Public for Tescher & Spallina PA and similar arrest and investigation of the Attorneys at Law and Judges are underway but it appears that these may have been stymied, delayed and potentially derailed by interference in the criminal investigation by Judge Colin, which is currently under investigation as well.

The cases are as follows:

Florida Supreme Court CASE NUMBER: SC15-1077

Judge Coates Cases

[if !supportLists]1. [endif]Case ID: 502015CP002717XXXXNB

Judge Martin Colin Cases

Estate and Trust Cases, Simon, Shirley and Children

[if !supportLists]1. [endif]Case # 502012CP004391XXXXSB – Simon Bernstein Estate

[if !supportLists]2. [endif]Case # 502011CP000653XXXXSB – Shirley Bernstein Estate

[if !supportLists]3. [endif]Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

[if !supportLists]4. [endif]Case # 502014CP003698XXXXSB – Shirley Trust Construction

[if !supportLists]5. [endif]Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE #

502014CA014637XXXXMB

[if !supportLists]6. [endif]Case # TBD – Creditor Claim – Eliot v. Estate of Simon

[if !supportLists]7. [endif]Case # 13-cv-03643 – Federal Lawsuit in the US District Court of Eastern Illinois, before the Hon. Judge Amy St. Eve., now before Honorable Judge Robert Blakey.

Judge David E. French Cases

[if !supportLists]1. [endif]Case # 20I2CP004391 IX – Simon Bernstein Estate

All of the family estate problems may also be linked to another series of crimes still being pursued committed against both my father and myself involving Intellectual Property Thefts committed by our attorneys at law from Proskauer Rose, LLP and Foley & Lardner LLP for IP valued in the billions to trillions and which led my filing a RICO and ANTITRUST civil lawsuit that was subsequently related a New York Supreme Court Attorney Disciplinary Department Whistleblower Lawsuit of Christine C. Anderson, Esq. This lawsuit will shortly be petitioned to be reopened due to the alleged new RICO violations in the Florida Probate Courts, including new predicate acts of, Alleged Murder of Simon Bernstein, Fraud, Forgery, theft of estate and trust assets and more, all crimes again primarily committed by attorneys at law. My car has had a bomb put in it and for visual graphics of the car bombing that blew up three cars next to it in Del Ray Beach, FL see www.iviewit.tv homepage. My RICO case and the cases legally related by Hon Federal Judge Shira Scheindlin are as follows:

Cases @ New York Second Circuit

[if !supportLists]1. [endif]File USCA Case Number 10-5303 = P. Stephen Lamont Appeal Docket No. Case 08-4873-cv United States Court of Appeals for the Second Circuit Docket – Bernstein, et al. v Appellate Division First Department Disciplinary Committee, et al. – TRILLION DOLLAR LAWSUIT

[if !supportLists]2. [endif]Capogrosso v New York State Commission on Judicial Conduct, et al.

[if !supportLists]3. [endif]Esposito v The State of New York, et al.

[if !supportLists]4. [endif]McKeown v The State of New York, et al.

Related Cases @ US District Court – Southern District NY

[if !supportLists]5. [endif]07cv09599 Anderson v The State of New York, et al. – WHISTLEBLOWER LAWSUIT which other cases have been marked legally "related" to by Fed. Judge Shira A. Scheindlin

[if !supportLists]6. [endif]07cv11196 Bernstein, et al. v Appellate Division First Department Disciplinary Committee, et al.

[if !supportLists]7. [endif]07cv11612 Esposito v The State of New York, et al.,

[if !supportLists]8. [endif]08cv00526 Capogrosso v New York State Commission on Judicial Conduct, et al.,

[if !supportLists]9. [endif]08cv02391 McKeown v The State of New York, et al.,

[if !supportLists]10. [endif]08cv03305 Carvel v The State of New York, et al., and,

[if !supportLists]11. [endif]08cv4438 Suzanne McCormick v The State of New York, et al.

[if !supportLists]12. [endif]08 cv 6368 John L. Petrec-Tolino v. The State of New York

Sought Relation but not

[if !supportLists]13. [endif]08cv02852 Galison v The State of New York, et al.,

[if !supportLists]14. [endif]08cv4053 Gizella Weisshaus v The State of New York, et al.

[if !supportLists]15. [endif]06cv05169 McNamara v The State of New York, et al

RICO AND ANTITRUST LAWSUIT

http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080509%20FINAL%20AMENDED%20COMPLAINT%20A]

The Florida Courts have been infected by criminals and it appears a top down takeover. Since you are at the top of the regulatory agency that is responsible for protecting the citizens of Florida from rogue and dangerous criminals disguised as Attorneys at Law and Judges I anticipate your immediate response to both Barbara and my own cases, seeking full investigation by the State Bar and JQC and joining the necessary State and Federal Criminal authorities as you are duty bound to do when members of your cartel are alleged by citizens to have committed felony acts and used the Courts as their vehicle to commit crimes. Recently, large amounts of Press have exposed the guardianship abuses running rampant in Florida and similar to the home foreclosure fraud in Florida, the crimes are being committed by "attorneys at law" and further aided and abetted by "judges" all members of an organization headed by you and where nothing is being done by your agency to take any action other than to protect the accused and aid and abet in the evasion of their criminal prosecutions.

Thank you,

Eliot I. Bernstein

Inventor

Iviewit Holdings, Inc. – DL

Iviewit Holdings, Inc. – DL (yes, two identically named)

Iviewit Holdings, Inc. – FL

Iviewit Technologies, Inc. – DL

Uviewit Holdings, Inc. – DL

Uview.com, Inc. – DL

Iviewit.com, Inc. – FL

Iviewit.com, Inc. – DL

I.C., Inc. – FL

Iviewit.com LLC – DL

Iviewit LLC – DL

Iviewit Corporation – FL

Iviewit, Inc. – FL

Iviewit, Inc. – DL

Iviewit Corporation

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http://www.facebook.com/#!/iviewit

http://www.youtube.com/user/eliotbernstein?feature=mhum

in loving memory and sad post mortem attorney corruption story

http://iviewit.tv/ShirleyBernstein

http://iviewit.tv/SimonBernstein

http://iviewit.tv/ThisisBullshit

Also, check out

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video courtesy of NY Senate, my fav part at end

http://www.youtube.com/watch?v=7oHKs_crYIs

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video Handheld Camera View, my favorite version at the very end

http://youtu.be/3Q9MzqZv4Iw

and

Christine Anderson New York Supreme Court Attorney Ethics Expert Whistleblower Testimony, FOX IN THE HENHOUSE and LAW WHOLLY VIOLATED TOP DOWN EXPOSING JUST HOW WALL STREET / GREED STREET / FRAUD STREET MELTED DOWN AND WHY NO PROSECUTIONS OR RECOVERY OF STOLEN FUNDS HAS BEEN MADE. Anderson in US Fed Court Fingers, US Attorneys, DA's, ADA's, the New York Attorney General and "Favored Lawyers and Law Firms" @

http://www.youtube.com/watch?v=6BlK73p4Ueo

and finally latest blog

http://iviewit.tv/iviewit2/?p=187

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #1

http://youtu.be/i1Ao1BYvyoQ

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #2

http://youtu.be/OaXys6bImFI

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #3
http://youtu.be/9R1PNnJVVGU
Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #4
http://youtu.be/rUHCZFkro08
Eliot Bernstein Iviewit Inventor Televison Interview Dick Woelfle Network 125
http://youtu.be/WEgSXJFqrhQ
Other Websites I like:
http://proskauersucks.com
http://exposecorruptcourts.blogspot.com
http://deniedpatent.blogspot.com
http://www.judgewatch.org/index.html
http://www.parentadvocates.org
http://www.newyorkcourtcorruption.blogspot.com
http://cuomotarp.blogspot.com
http://www.disbarthefloridabar.com
http://www.constitutionalguardian.com
http://www.americans4legalreform.com
http://www.attorneysabovethelaw.com
http://www.VoteForGreg.us Greg Fischer
http://www.facebook.com/pages/Vote-For-Greg/111952178833067
www.justice4every1.com
www.schwagerfirm.com
www.eldermurderabuseandexploitation.blogspot.com
https://mccormickestatefraud.wordpress.com
http://www.nationallibertyalliance.org
www.AAAPG.net
www.corruptny.com
www.corruptWA.com
www.killingseniors.com
www.guardianpredators.com
www.guardianshipexposed.com
http://www.hangthebankers.com
www.ddaweb.org
http://tedbernsteinreport.blogspot.com
—
"We the people are the rightful master of both congress and the courts – not to overthrow the Constitution, but to overthrow the men who pervert the Constitution." – Abraham Lincoln

"Whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force." — Thomas Jefferson, The Kentucky Resolutions of 1798
"If a law is unjust, a man is not only right to disobey it, he is obligated to do so." Thomas Jefferson
"Each time a person stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, these ripples build a current that can sweep down the mightiest walls of oppression and resistance." – Robert F. Kennedy
"Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty, or give me death!" – Patrick Henry
"Dick: The first thing we do, let's kill all the lawyers." The Shakespearean Solution, Sam The Butcher, Henry The Sixth, Part 2 Act 4, scene 2, 71–78
"**G**atthew 5:5 Blessed are the **G**eek, for they will inherit the earth." Eliot Bernstein
I live by the saying from Ellen G. White:
"The greatest want of the world is the want of men, –men who will not be bought or sold; men who in their inmost souls are

true and honest, men who do not fear to call sin by its right name; men whose conscience is as true to duty as the needle to the pole, men who will stand for the right though the heavens fall." -Education, p. 57(1903)

If you are one of these people, nice to be your friend ~ Eliot

<image001.jpg>

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**From:** barbara stone [mailto:bstone575@gmail.com]

**Sent:** Friday, August 7, 2015 11:16 AM

**To:** evanderk@flcourts.org

**Cc:** Adam Walser; Michael Miller; Joan Chrissos; cfrank@miamiherald.com; cmarbin@miamiherald.com; helpmehoward@wsvn.com; mmarques@miamiherald.com; clue@wsvn.co; leonardgreene@nypost.com; martin.baron@washpost.com; John CMG-WestPalm Pacenti; swestwood@washingtonexaminer.com; tips@nationalenquirer.com; john.emshwiller@wsj.com; gary.fields@wsj.com; ashby.jones@wsj.com; Bob Norman; scoop@huffingtonpost.com; chamby@publicintegrity.org; wkroustan@sunsentinel.com; raolmeda@tribune.com; mediarelations@publicintegrity.org; investigations@icij.org; ediarelations@icij.org; drphil@drphil.com; Scott Powers; Today@nbc.com; WT@nbc.com; Dateline@nbc.com; dan noyes; paige.kreegel@myfloridahouse.gov; mike.larosa@myfloridahouse.gov; chris.latvala@myfloridahouse.gov; larry.lee@myfloridahouse.gov; debbie.mayfield@myfloridahouse.gov; charles.mcburney@myfloridahouse.gov; klonne.mcghee@myfloridahouse.gov; larry.metz@myfloridahouse.gov; george.moraitis@myfloridahouse.gov; jared.moskowitz@myfloridahouse.gov; mike.miller@myfloridahouse.gov; Amanda.murphy@myfloridahouse.gov; Edwin.narain@myfloridahouse.gov; jeanette.nunez@myfloridahouse.gov; jose.oliva@myfloridahouse.gov; marlene.otoole@myfloridahouse.gov; mark.pafford@myfloridahouse.gov; kathleen.passidomo@myfloridahouse.gov; keith.perry@myfloridahouse.gov; Kathleen.peters@myfloridahouse.gov; Cary.pigman@myfloridahouse.gov; Ray.pilon@myfloridahouse.gov; scott.plakon@myfloridahouse.gov; rene.placensia@myfloridahouse.gov; elizabeth.porter@myfloridahouse.gov; bobby.powell@myfloridahouse.gov; Sharon.pritchett@myfloridahouse.gov; Jake.raburn@myfloridahouse.gov; Kevin.rader@myfloridahouse.gov; Danile.raulerson@myfloridahouse.gov; lake.ray@myfloridahouse.gov; michelle.rehwinkel@myfloridahouse.gov; ronald.renuart@myfloridahouse.gov; david.richardson@myfloridahouse.gov; Kenneth.roberson@myfloridahouse.gov; hazelle.rogers@myfloridahouse.gov; ray.rodrigues@myfloridahouse.gov; Patrick.rooney@myfloridahouse.gov; darryl.rouson@myfloridahouse.gov; david.santiago@myfloridahouse.gov; irving.slosberg@myfloridahouse.gov; jimmie.smith@myfloridahouse.gov; ross.spano@myfloridahouse.gov; chris.sprowls@myfloridahouse.gov; cynthia.stafford@myfloridahouse.gov; Richard.stark@myfloridahouse.gov; greg.steube@myfloridahouse.gov; Charlie.stone@myfloridahouse.gov; jennifer.sullivan@myfloridahouse.gov; dwayne.taylor@myfloridahouse.gov; carlos.trujillo@myfloridahouse.gov; victor.torres@myfloridahouse.gov; jay.trumbull@myfloridahouse.gov; john.tobia@myfloridahouse.gov; charles.vanzant@myfloridahouse.gov; Barbara.watson@myfloridahouse.gov; Clovis.watson@myfloridahouse.gov; alan.williams@myfloridahouse.gov; john.wood@myfloridahouse.gov; ritch.workman@myfloridahouse.gov; dana.young@myfloridahouse.gov; budmail@mail.house.gov; write2joecrowley@mail.house.gov; degette@mail.house.gov; William.Delahunt@mail.house.gov; lloyd.doggett@mail.house.gov; doolittle@mail.house.gov; rep.doyle@mail.house.gov; annagram@mail.house.gov; samfarr@mail.house.gov; TalkToBobFilner@mail.house.gov; vito.fossella@mail.house.gov; Gingrey.GA@mail.house.gov; texas.granger@mail.house.gov; sam.graves@mail.house.gov; jane.harman@mail.house.gov; alcee.pubhastings@mail.house.gov; mhinchey@mail.house.gov; tellhoek@mail.house.gov; mike.honda@mail.house.gov; Jay.Inslee@mail.house.gov; congressman.issa@mail.house.gov; rep.johnson@mail.house.gov; webpage@feingold.senate.gov; stephanie.tubbs.jones@mail.house.gov; REP.KAPTUR@mail.house.gov; dkildee@mail.house.gov; jack.kingston@mail.house.gov; tom.la05@mail.house.gov; barbara stone; marioaj01; alfredo; Eliot Bernstein; Robert Sarhan; ginny johnson; Alyece Russell; Todd Krautheim; Teresa Lyles; Conrad 315RC; Antoinette; Lily Echarte's victim; hiestanl@flcourts.org; 13869471562@faxorama.com

**Subject:** Re: Response and Additional Emergency Notice of alleged crimes and corruption

Please see the attached and below in follow up

**TO: JUDGE EVANDER**

**RE: RETALIATION AGAINST BARBARA STONE FOR WHISTLEBLOWING ON GUARDIANSHIP ABUSE IN THE STATE OF FLORIDA AND REPORTING THE CRIMES OF MICHAEL GENDEN AND THE FLORIDA BAR**

**FROM: BARBARA STONE**

**DATE: AUGUST 7, 2012**

**CC: MEDIA, LEGISLATORS AND OTHER INTERESTED PARTIES**

Dear Judge Evander:

I am in receipt of the retaliatory disbarment against me for my reporting alleged criminal misconduct and wrongdoing of attorneys and judges as mandated by the Florida Bar rules. I am also in receipt of the retaliatory notice of disbarment that was filed of record in my Federal lawsuit against Michael Genden which was improper, an abuse of power and for apparently for the purpose of further prejudicing my case.

**I had expected you would investigate the crimes alleged against Michael Genden who is alleged to be engaged in heinous crimes of extortion, exploitation, holding my mother hostage and in grave danger instead of retaliating against me for exposing crimes as a mandated reporter under the Florida Bar Rules of Professional Conduct.**

It would seem that Honorable Judges would not want their profession to be tainted by judges who use the courts to engage in **alleged criminal racketeering activity and financial fraud on the order of a PONZI SCAM involving guardianship abuse**. As you are aware the State of Florida and Governor Rick Scott are trying to reform this widely reported predatory crime that runs rampant in the legal and judicial system in the State of Florida Courts whereby Elderly adults are being abused and financially devastated through the misuse of the Court system by rogue and dangerous Attorneys at Law and Judges. This dirty "secret" of guardian abuse and exploitation is so rampant that one legislator referred to these predators as "cockroaches."

I brought my mother to "guardianship court" to protect her and Michael Genden and Roy Lustig and predator "guardians" masterminded a Machiavellian scam to steal my mother, strip her rights, drug and abuse her until she is incoherent and extort her assets. These predators then rabidly escalate, retaliate and attack me to silence me from exposing this diabolical racket and **to divert, avoid, evade, dodge, obstruct, block, impede, thwart, cover up the criminal response to their alleged crimes by attacking their accuser.**

**I should be lauded for exposing the vile practice of terrorizing vulnerable adults in predator guardianships instead of attacked by vicious retaliation by judges no less.**

It is hardly "judicial" for the State of Florida to maintain a practice through its "probate/guardian" courts of slowly murdering vulnerable elderly adults by isolating them, depriving them of food, drugging them mercilessly until they are incoherent, removing them from their family so these crimes can be committed in secret, warehousing them in deplorable nursing homes and then retaliating against anyone trying to expose the crimes, including outstanding and long serving respectable members of the Florida Bar such as myself.

Please read the information attached herein. **These news stories and personal stories tell a tale of fraud and crimes and cover up in guardianship and probate courts so horrific that it is impossible to fathom. We are in a crises -reform cannot be instituted soon enough.** Steven King the master of macabre could not even contemplate the Machiavellian horrors devised by attorneys Roy Lustig and Steven Hertz (the husband of guardian Jacqueline Hertz) and others of their ilk who have **masterminded this guardianship probate racketeering scheme of theft** for years to the point where the problem has spread like wildfire and is endemic. One of the best exposes is reported by Marti Oakley, expert on guardian abuse in this YouTube that must be heard:

https://ppjg.files.wordpress.com/2014/05/rense_oakley_062911.mp3

**The 3rd DCA exposed Roy Lustig's fraud and corruption in the case of Leo's Gulf Liquors v. Lakhani No. 3D00-130, 802 So. 2d 337 (2001) where he was found guilty of fraud on the court, repeatedly lying under oath and perjury. Yet due to the failure of that Court to refer him to the State Attorney and the Florida Bar as reported by the Sun Sentinel, the Florida Bar did not take disciplinary action against him, in fact they have colluded with him in retaliation against me yet Lustig who engaged in misconduct so brazen that although courts rarely issue such rulings against an attorney, they found Lustig's conduct so abhorent they issued a scathing opinion against him.**

Due to the lack of prosecution by the Florida Bar or criminal authorities, he is unafraid of retribution and has now perfected his fraud on and in the court to terrorize and extort elderly adults. Lustig deliberately perjured a guardian report and fabricated pleadings in my case denying the life threatening condition of my mother thereby repeatedly placing my mother in grave danger all while Judge Genden aided and abetted and refused to take judicial action, instead retaliating against me and destroying my life to shut down my efforts to expose what is now fast becoming public knowledge.

Thus my mother, a once vital, healthy self-sufficient woman in need of only a short term financial guardianship was corralled into this vicious medically induced guardianship and now languishes in a disgusting nursing home, diapered, drugged, isolated, her stomach cut open to shove a feeding tube (a criminal battery) into her without need and she has almost died repeatedly. My mother has not eaten food or water in almost 2 years. These are hate crimes, crimes of ISIS terrorists posing as attorneys and judges and guardians. To remove and isolate an elderly woman from her daughter in the remaining years of her life is an act of malice and cruelty by someone devoid of morals. It is certainly not the act of a judge.

Jacqueline Hertz, now recently deceased was a master of this depraved human trafficking racket orchestrated in conjunction with Florida Bar members acting as Judges and Lawyers who are all involved in the feeding frenzy to rob family estates statewide.

When I reported and exposed alleged criminal acts to the Florida State Bar, the Judicial Conduct Commission and state and federal authorities, Genden in an monumental abuse of power, removed not only my access to the Court, but revamped the filing system to secret away the court documents from the public in violation of the Constitution to attempt to cover up the crimes of the probate Court and the Court appointed Guardians and Attorneys at Law.

My whistleblower complaint filed with the Supreme Court exposes this charade of justice and the incompetent system of having lawyers oversee the discipline of other lawyers and judges instead of having them independently investigated and criminally prosecuted. This self-regulating system is inherently conflicted and unconscionable and must be reformed by the use of independent investigatory agencies.

The cover up and whitewashing of violations of canons, ethics and crimes has exploded because there is no accountability and discipline. Christine Anderson, Esq. another whistleblower attorney in New York who was an insider in the disciplinary system attempted to expose the widespread corruption of the failed and criminal disciplinary system and she like myself was grossly retaliated against. Joanne Denison, Ken Ditkowsky and Lanre Amu exposed the corruption in Illinois and were suspended or disbarred. Other attorney whistleblowers across the country including Teddy Moore and Cole Stuart have been retaliatory disbarred or suspended for exposing the crimes of other lawyers and judges, their only crimes.

Wilfredo Ferrer, the Miami USDA said in an interview with Steven Kroft on 60 minutes that Miami is the most corrupt city in the country. Is this how the State of Florida wants to be identified?

1. Stripping an elderly adult of their Constitutional and civil rights, denying their due process, forcing them into medically induced guardianship, terrorizing and abusing them and extorting their assets and property while family members futilely try to free them, off their rights and stealing and extorting their family assets?
2. Protecting and covering up alleged crimes by so called "attorneys" and "judges" who operate a racketeering enterprise rife with corruption and fraud?. My mother confided to me on a recorded line that she was in fear of her life –that strange "aides" and other unknown persons from barely legitimate "care agencies" hired by Hertz and Lapides were coming into her home every day, stealing her food, her money and drugging her until she was incoherent. These substandard agencies were used by these predators, Hertz and Lapides to deprive my mother of quality care so her assets could be diverted to Hertz, Lapides and Lustig.
3. Retaliating against many witnesses who saw and reported my mother's drugging, abuse, the deprivation of food and other heinous crimes? Michael Genden denied my mother the right to counsel to keep the racket under wraps and further denied me the right to independent counsel and to file Pro Se virtually stripping my rights to due process in his racketeering enterprise. Another Attorney at Law, Debra Rochlin exposed in an affidavit that Michael Genden threatened her to force her to cease representing my mother and myself or he would file a bar compliant against her. She was so fearful that she withdraw as counsel in fear of her livelihood, leaving her exposed to vicious retaliation and leaving my mother defenseless. Despite her withdrawal, Genden then viciously filed a Florida Bar Complaint against her in efforts to destroy her life as he has done mine and my mothers' and any party exposing his malice.
4. Enabling and covering up for a judge who is engaged in terrorist crimes against a vulnerable elderly woman and her daughter in a court that has descended into a terrorist enterprise?
5. Abetting a judge who isolates an elderly woman from her daughter and keeps her caged in a lock down unit where she is denied all visitors so she can be abused and extorted in secrecy? Please refer to the fraudulent invoices of these predators set forth in link on the enclosures.
6. Abetting a judge who issues orders that are a product of fraud, perjury and fabrication in order to defraud an elderly woman?
7. Abetting a judge who engages in extortion, threats, retaliation and knowingly and intentionally endangers the life of an elderly adult?
8. Abusing the Federal and appellate courts in the State of Florida that are presided over by Florida Bar members to cover up

and shield Michael Genden issuing brazenly irrational and retaliatory rulings that have no semblance of legitimacy. This is obvious in the "ruling" by Judge Kathleen Williams (apparently a "hand-picked' judge as she is familiarly referred to as "Kathy" by Genden and Lustig) wherein she stated in an order issued June 2, 2014 that even if Ms. Stone raised sufficient concerns about the danger to her mother, **she did not know how removing the guardians would alleviate that concern.**

There is not even a semblance of due process in any of my matters where emergency petitions are ignored, and judges are hand selected. The lack of due process is so open that an order was issued by one judge "hand-selecting" another conspiratorial judge to "preside" over the retaliatory "disbarment" of me, a retired attorney in direct violation of the rules that mandate blind assignment.

**It should be obvious that in none of my lawsuits, appeals or other legal actions, THERE HAS NEVER BEEN AN EVIDENCIARY HEARING NOR HAS MICHAEL GENDEN EVER RESPONDED TO ANY OF THE ALLEGATIONS. Instead, there is a rush to deny my due process, obstruct my justice, and aid and abet Michael Genden to enable him to avoid accountability for his alleged criminal acts and violation of judicial canons and ethics.**

What is apparent is that the Courts, the Prosecutors, the Judges, the Attorneys at Law involved are all working together to protect and cover up alleged crimes by so called "attorneys" and "judges" that operate a racketeering enterprise rife with corruption and fraud. Judges who commit crimes should be investigated and removed from the bench, not protected by the judicial community and the courts who fail to provide accountability and are tainting the legal process.

Judicial misconduct is running unchecked in all courts across the State of Florida, particularly in the very courts where families require the most protection—probate/guardian, family court, bankruptcy and foreclosure. Families are being destroyed by the very courts who should serve justice. Judges as in the case of my retaliatory disbarment are hand selected to silence reports of crime and misconduct. Lawyers and judges have fiduciary duties to insure the integrity of the judiciary and the legal system. A task force is urgently needed to address this tsunami of corruption/human trafficking.

Judges who commit crimes should be investigated and removed from the bench, not protected by the judicial community. The Federal and appellate courts who fail to provide accountability are subverting and perverting the legal process.

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Barbara Stone
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244 Fifth Avenue - B 296
New York, NY 10001

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Fraudulent self- conjured "bills" of Lustig, Hertz, Lapides and others who devise crimes, sue Helen Stone's daughter and use Helen Stone's assets to pay for their crimes by illegal, conspiratory order of Michael Genden.

www.iviewit.tv/Barbara/Combined Bills.pdf

articles about predatory guardians, judges and attorneys and their criminal activities

Cc: Miami Herald, Wall Street Journal, Miami New Times, New York Times, NY Post, Washington Post and other Media, legislators and other interested parties

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On Fri, Aug 7, 2015 at 9:23 AM, barbara stone <bstone575@gmail.com> wrote:

Please see attached in response to further retaliation.

**TO: JUDGE EVANDER**

**RE: RETALIATION AGAINST BARBARA STONE FOR WHISTLEBLOWING ON GUARDIANSHIP ABUSE IN THE STATE OF FLORIDA AND REPORTING THE CRIMES OF MICHAEL GENDEN AND THE FLORIDA BAR**

**FROM: BARBARA STONE**

**DATE: AUGUST 7, 2012**

**CC: MEDIA, LEGISLATORS AND OTHER INTERESTED PARTIES**

Dear Judge Evander:

I am in receipt of the retaliatory disbarment against me for my reporting alleged criminal misconduct and wrongdoing of attorneys and judges as mandated by the Florida Bar rules. I am also in receipt of the retaliatory notice of disbarment that was filed of record in my Federal lawsuit against Michael Genden which was improper, an abuse of power and for apparently for the purpose of further prejudicing my case.

**I had expected you would investigate the crimes alleged against Michael Genden who is alleged to be engaged in heinous crimes of extortion, exploitation, holding my mother hostage and in grave danger instead of retaliating against me for exposing crimes as a mandated reporter under the Florida Bar Rules of Professional Conduct.**

It would seem that Honorable Judges would not want their profession to be tainted by judges who use the courts to engage in **alleged criminal racketeering activity and financial fraud on the order of a PONZI SCAM involving guardianship abuse**. As you are aware the State of Florida and Governor Rick Scott are trying to reform this widely reported predatory crime that runs rampant in the legal and judicial system in the State of Florida Courts whereby Elderly adults are being abused and financially devastated through the misuse of the Court system by rogue and dangerous Attorneys at Law and Judges. This dirty "secret" of guardian abuse and exploitation is so rampant that one legislator referred to these predators as "cockroaches."

I brought my mother to "guardianship court" to protect her and Michael Genden and Roy Lustig and predator "guardians" masterminded a Machiavellian scam to steal my mother, strip her rights, drug and abuse her until she is incoherent and extort her assets. These predators then rabidly escalate, retaliate and attack me to silence me from exposing this diabolical racket and **to divert, avoid, evade, dodge, obstruct, block, impede, thwart, cover up the criminal response to their alleged crimes by attacking their accuser.**

**I should be lauded for exposing the vile practice of terrorizing vulnerable adults in predator guardianships instead of attacked by vicious retaliation by judges no less.**

It is hardly "judicial" for the State of Florida to maintain a practice through its "probate/guardian" courts of slowly murdering vulnerable elderly adults by isolating them, depriving them of food, drugging them mercilessly until they are incoherent, removing them from their family so these crimes can be committed in secret, warehousing them in deplorable nursing homes and then retaliating against anyone trying to expose the crimes, including outstanding and long serving respectable members of the Florida Bar such as myself.

Please read the information attached herein. **These news stories and personal stories tell a tale of fraud and crimes and cover up in guardianship and probate courts so horrific that it is impossible to fathom. We are in a crises -reform cannot be instituted soon enough.** Steven King the master of macabre could not even contemplate the Machiavellian horrors devised by attorneys Roy Lustig and Steven Hertz (the husband of guardian Jacqueline Hertz) and others of their ilk who have **masterminded this guardianship probate racketeering scheme of theft** for years to the point where the problem has spread like wildfire and is endemic. One of the best exposes is reported by Marti Oakley, expert on guardian abuse in this YouTube that must be heard:

https://ppjg.files.wordpress.com/2014/05/rense_oakley_062911.mp3

**The 3rd DCA exposed Roy Lustig's fraud and corruption in the case of Leo's Gulf Liquors v. Lakhani No. 3D00-130, 802 So. 2d 337 (2001) where he was found guilty of fraud on the court, repeatedly lying under oath and perjury. Yet due to the failure of that Court to refer him to the State Attorney and the Florida Bar as reported by the Sun Sentinel, the Florida Bar did not take disciplinary action against him, in fact they have colluded with him in retaliation against me yet Lustig who engaged in misconduct so brazen that although courts rarely issue such rulings against an attorney, they found Lustig's conduct so abhorent they issued a scathing opinion against him.** Due to the lack of prosecution by the Florida Bar or criminal authorities, he is unafraid of retribution and has now perfected his fraud on and in the court to terrorize and extort elderly adults. Lustig deliberately perjured a guardian report and fabricated pleadings in my case denying the life threatening condition of my mother thereby repeatedly placing my mother in grave danger all while Judge Genden aided and abetted and refused to take judicial action, instead retaliating against me and destroying my life to shut down my efforts to expose what is now fast becoming public knowledge.

Thus my mother, a once vital, healthy self-sufficient woman in need of only a short term financial guardianship was corralled into this vicious medically induced guardianship and now languishes in a disgusting nursing home, diapered, drugged, isolated, her stomach cut open to shove a feeding tube (a criminal battery) into her without need and she has almost died repeatedly. My mother has not eaten food or water in almost 2 years. These are hate crimes, crimes of ISIS terrorists posing as attorneys and judges and guardians. To remove and isolate an elderly woman from her daughter in the remaining years of her life is an act of malice and cruelty by someone devoid of morals. It is certainly not the act of a judge. Jacqueline Hertz, now recently deceased was a master of this depraved human trafficking racket orchestrated in conjunction with Florida Bar members acting as Judges and Lawyers who are all involved in the feeding frenzy to rob family estates statewide.

When I reported and exposed alleged criminal acts to the Florida State Bar, the Judicial Conduct Commission and state and federal authorities, Genden in an monumental abuse of power, removed not only my access to the Court, but revamped the filing system to secret away the court

documents from the public in violation of the Constitution to attempt to cover up the crimes of the probate Court and the Court appointed Guardians and Attorneys at Law.

My whistleblower complaint filed with the Supreme Court exposes this charade of justice and the incompetent system of having lawyers oversee the discipline of other lawyers and judges instead of having them independently investigated and criminally prosecuted. This self-regulating system is inherently conflicted and unconscionable and must be reformed by the use of independent investigatory agencies.

The cover up and whitewashing of violations of canons, ethics and crimes has exploded because there is no accountability and discipline. Christine Anderson, Esq. another whistleblower attorney in New York who was an insider in the disciplinary system attempted to expose the widespread corruption of the failed and criminal disciplinary system and she like myself was grossly retaliated against. Joanne Denison, Ken Ditkowsky and Lanre Amu exposed the corruption in Illinois and were suspended or disbarred. Other attorney whistleblowers across the country including Teddy Moore and Cole Stuart have been retaliatory disbarred or suspended for exposing the crimes of other lawyers and judges, their only crimes.

Wilfredo Ferrer, the Miami USDA said in an interview with Steven Kroft on 60 minutes that Miami is the most corrupt city in the country. Is this how the State of Florida wants to be identified?

1. Stripping an elderly adult of their Constitutional and civil rights, denying their due process, forcing them into medically induced guardianship, terrorizing and abusing them and extorting their assets and property while family members futilely try to free them, off their rights and stealing and extorting their family assets?
2. Protecting and covering up alleged crimes by so called "attorneys" and "judges" who operate a racketeering enterprise rife with corruption and fraud?. My mother confided to me on a recorded line that she was in fear of her life –that strange "aides" and other unknown persons from barely legitimate "care agencies" hired by Hertz and Lapides were coming into her home every day, stealing her food, her money and drugging her until she was incoherent. These substandard agencies were used by these predators, Hertz and Lapides to deprive my mother of quality care so her assets could be diverted to Hertz, Lapides and Lustig.
3. Retaliating against many witnesses who saw and reported my mother's drugging, abuse, the deprivation of food and other heinous crimes? Michael Genden denied my mother the right to counsel to keep the racket under wraps and further denied me the right to independent counsel and to file Pro Se virtually stripping my rights to due process in his racketeering enterprise. Another Attorney at Law, Debra Rochlin exposed in an affidavit that Michael Genden threatened her to force her to cease representing my mother and myself or he would file a bar compliant against her. She was so fearful that she withdraw as counsel in fear of her livelihood, leaving her exposed to vicious retaliation and leaving my mother defenseless. Despite her withdrawal, Genden then viciously filed a Florida Bar Complaint against her in efforts to destroy her life as he has done mine and my mothers' and any party exposing his malice.
4. Enabling and covering up for a judge who is engaged in terrorist crimes against a vulnerable elderly woman and her daughter in a court that has descended into a terrorist enterprise?
5. Abetting a judge who isolates an elderly woman from her daughter and keeps her caged in a lock down unit where she is denied all visitors so she can be abused and extorted in secrecy? Please refer to the fraudulent invoices of these predators set forth in link on the enclosures.
6. Abetting a judge who issues orders that are a product of fraud, perjury and fabrication in order to defraud an elderly woman?
7. Abetting a judge who engages in extortion, threats, retaliation and knowingly and intentionally endangers the life of an elderly adult?
8. Abusing the Federal and appellate courts in the State of Florida that are presided over by Florida Bar members to cover up and shield Michael Genden issuing brazenly irrational and retaliatory rulings that have no semblance of legitimacy. This is obvious in the "ruling" by Judge Kathleen Williams (apparently a "hand-picked' judge as she is familiarly referred to as "Kathy" by Genden and Lustig) wherein she stated in an order issued June 2, 2014 that even if Ms. Stone raised sufficient concerns about the danger to her mother, **she did not know how removing the guardians would alleviate that concern.**

There is not even a semblance of due process in any of my matters where emergency petitions are ignored, and judges are hand selected. The lack of due process is so open that an order was issued by one judge "hand-selecting" another conspiratorial judge to "preside" over the retaliatory "disbarment" of me, a retired attorney in direct violation of the rules that mandate blind assignment.

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www.iviewit.tv/Barbara/Combined Bills.pdf

articles about predatory guardians, judges and attorneys and their criminal activities

Cc: Miami Herald, Wall Street Journal, Miami New Times, New York Times, NY Post, Washington Post and other Media, legislators and other interested parties

–

Barbara Stone
305 684 2547
bstone575@gmail.com

On Thu, Aug 6, 2015 at 2:37 PM, barbara stone <bstone575@gmail.com> wrote:

Attached is an emergency notice of extortion, life endangering crimes and other misuse of office by a "judge" under color of law. The life of an elderly adult is in grave danger. This seeks his urgent removal and response

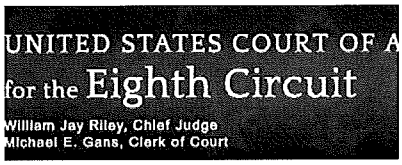
Barbara Stone
305 684 2547
bstone575@gmail.com

★ Like
Be the first to like this.

**Related**

Judicial Corruption - No known limits
From: Eliot Bernstein <iviewit4@gmail.com> Date: Fri, Feb 22, 2013 at 1:43 AM Subject: IVIEWIT BREAKING NEWS!!! "Judges Were Illegally Wiretapped, Says Insider " & "Governor Andrew Cuomo Asked to Shut Down
With 2 comments

Law Firm Admits Violated Law - Regarding - Murder of Chairman of Iviewit Simon Bernstein?
Begin forwarded message: From: "Eliot Ivan Bernstein" <iviewit7@gmail.com> To: "Undisclosed List" <iviewit@gmail.com> Subject: Murder of Chairman of Iviewit Simon Bernstein? Attorneys Robert Spallina & Donald
In "Constituion"




PUBLIC NOTICE: CRIMINAL CHARGES/COMMERICAL LIENS - Corrupt Judges



**About arnierosner**

As an American I advocate a republic form of government, self-reliance, and adherence to the basic philosophy of the founding fathers and the founding documents, I ONLY respect those who respect and "HONOR" their honor. No exceptions!

View all posts by arnierosner →

This entry was posted in Civil Rights Violations. Bookmark the permalink.

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# Florida Probate Fraud, Forgery and Corruption; Simon Bernstein Estate Case

Florida Estate and Probate Case, Forgery, and Alleged Murder, blog written upon information, knowledge and belief of Crystal L. Cox, Investigative Blogger.

Florida Probate Court | Florida Estate Case | Alan Rose | 7020 Lions Head Lane Boca Raton | Docket Northern Illinois Case | Simon Bernstein Trust Heritage Jackson National District Court | Shirley Bernstein Estate Docket | Simon Bernstein Estate Docket | 7020 Lions Head Lane Boca Raton | Shirley Bernstein | Simon Bernstein | Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case | Judge David E. French | Robert Spallina | Mark Manceri | Donald Tescher | Tescher and Spallina Law Firm | Mark Manceri | Petition to Freeze Estate Assets | Estate Fraud Docket | Insurance Proceed Scheme | Donald Tescher | Robert Spallina | Ted and Deborah Bernstein | Life Insurance Concepts Boca | Ted Bernstein Fraud

Tuesday, December 8, 2015

## Florida Judge, Judge L. Phillips RULES to not disqualify himself? WOW, is that Lawful? Ethical? What is Judge Phillips up to, I mean its been many years right and Ted Bernstein and his Cronies have run off with the money, forged documents and yet all are NOT in Jail and NOTHING happens in the Case.

Yet Judge JOHN L PHILLIPS wants to continue being the Judge in all these cases? Why? He is not doing anything to move them forward and sure seems to be aiding and abetting criminals. Umm and the OBVIOUS is, it is NOT legal for Judge Philips to rule on his disqualification. A higher Judge has to do that, been there many times. So what is the not so honorable Judge John Philips up to? Hmmm..

Here is Eliot Bernstein's motion to Disqualify Florida Circuit Judge, Click Below to Read
https://drive.google.com/file/d/0Bzn2NurXrSkiTVMyMmIwSFpzS1U/view?usp=sharing

Here is Florida Judge, Judge John Philips ruling on his own disqualification. Gee YEP he ruled to keep himself as judge of a case that has been deliberately, maliciously, unethically, unconstitutionally and illegally stalled for years. All the while the Bad Guys sell off assets and move on with their life, and the Bad Guy attorneys continue to violate the constitutional rights of other clients in Florida. All while Bad Judges, such as Judge Colin and Judge Philips look the other way to aid and abet them.

Click below for this short QUICK, corrupt, SMACKDOWN Denial
https://drive.google.com/file/d/0Bzn2NurXrSkiT191S2cybUJuVmM/view?usp=sharing



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# the Ted Bernstein Report by Investigative Blogger Crystal L.

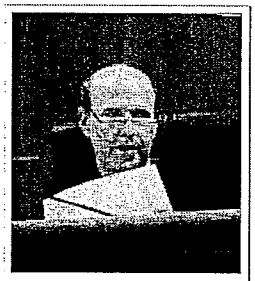
written upon information, knowledge and belief of Crystal L. Cox, Investigative Blogger



Saturday, January 11, 2014

## Investigative Blogger Crystal Cox THINKS it is time to File a Lien against ALL the Judges involved in the massive fraud on the courts, property theft, forgery, and constitutional rights violating case of the Shirley Bernstein Estate and Simon Bernstein Estate going on now in the Florida Probate Courts and involving Judge Martin Colin, Judge David French, Judge Charles E. Burton, Judge David Crow and possible the Sheriff of Palm County Florida.

**Let's take a look at your rights to PUT a lien on a Judge or Sheriff.**


Judge Martin Colin

Information on filing a lien against a bond of a Judge.

I believe state officers are required by statute or by the head of any state department to secure and give a fidelity bond, a bond that ensures their actions.

It is my understanding that if you feel a Judge is corrupt or is not upholding the law or your constitutional rights, you Can You File A Lien Against His Bond On File In Order To **Force Him To Do His JOB.**

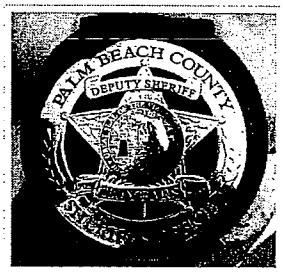
If a judge wants to **play "god" in the courtroom**, and totally ignore the rules of law and your constitutional rights. I believe you can file a lien upon his bond in order to force him into complying with the law. As it sure seems the Judge and Sheriff are neglecting their duties and neglecting their court.

**If a Judge is "railroading" you,** clearly **acting outside of the laws** of the United States and the State of Florida, then it is my understanding that you certainly can file a lien against this judge for his total ignoring of law and violating your rights of due process and constitutional rights.

It is my understand that a judge and a Sheriff cannot work in their job if they cant get bonded.

So why NOT file your Proof of Corruption AND the UnEthical, UnConstitutional, and UnLawful actions of the Judges in this case as a LIEN against their BOND?

**Tips, Information and Laws on How to File a Lien against a Judges Surety Bond in Florida**



Palm County Florida Sheriff

It is my understanding that when you file a lien against a public servant the lien holder/ins company does an investigation, thus they must see proof as to the validity of the lien. In the Simon Bernstein and Shirley Bernstein Estate we see clear evidence of fraud, forgery and attorneys seem to be conspiring with Judges, or so it looks that way from what I have read.

We see clearly that these attorneys and Ted Bernstein conspired with or are connected to Kimberley Moran of Tescher and Spallina law firm to have it look as if Simon Bernstein signed documents, and had them notarized at Tescher & Spallina Law Firm with Kimberley Moran AFTER HE DIED.




This evidence is clear, it is on court dockets, in hearing transcripts, on Governor complaints and rulings, on sheriff reports and yet Judge Martin Colin and other Judges in this case seem to be protecting estate and probate law firm Tescher & Spallina and Boca Raton Insurance Company Life Insurance Concepts, Ted Bernstein.

Ted Bernstein


Life Insurance Concep

Ted Bernstein, Tescher a

- Florida Estate Forge DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher a

- Florida Estate Forge DOCKET

Blog Archive

- ▼ 2014 (125)
  - ► June (32)
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  - ► April (2)
  - ► March (19)
  - ► February (35)
  - ▼ January (22)
    - Palm Beach Cour Investigation,
    - Hello Palm Beach


Ted Bernstein

This is all connected to the multi-Billion dollar legal action of the iViewit technology case and I myself believe that these judges are favoring what looks to be corrupt lawyers and they may possibly be getting a kick back as there is plenty of money to be had in this case, as we have previously seen from the iViewit case naming all of this same parties and worth 100's of BILLIONS. I believe the Judges involved in the Simon Bernstein and Shirley Bernstein Estate forgery and fraud case have violated title 42 USC code. I also believe they have ALL violated 28 U.S.C. § 455, the Due Process Clause of the Fourteenth Amendment to the Constitution, The Code of Conduct for United States Judges, and have violated human and civil rights of the victims of this case.

**A GUIDE TO CIVIL RIGHTS LIABILITY UNDER 42 U.S.C. § 1983:**
**AN OVERVIEW OF SUPREME COURT AND ELEVENTH CIRCUIT PRECEDENT**
http://www.constitution.org/brief/forsythe_42-1983.htm

Section 1983 Litigation to help you understand the laws regarding this issue.
http://www.fjc.gov/public/pdf.nsf/lookup/Sect1983.pdf/$file/Sect1983.pdf

If Judge Martin Colin appointed Ted Bernstein executor of the Simon Bernstein state after he knew of clear forgery and fraud on the courts and crimes against the true heirs of the Simon Bernstein, and Shirley Bernstein Estate, is Judge Martin Colin **liable for the financial damage and hardship that his rulings outside of law and the constitutional rights of those in his court?**


Judge David French

Did Judge Martin Colin require a **probate bond** in this case where millions are at stake and there is massive fraud, estate assets sold off and stolen?

Do laws in the State of Florida require the executor of an estate to provide a probate bond to the courts? Probate bonds will guarantee that executors of the estate will not alter or damage the estate. Did Judge Martin Collin require a probate bonds in this case?

**Did Tescher & Spallina provide a probate bond?** This is a rather large estate and assets over a million dollars each have already been SOLD off, by what looks like the fraudulent activity of Ted Bernstein conspiring with Donald Tescher and Rober Spallina of Tescher & Spallina.

Are there any laws or ways to uphold the estate and probate law in Florida when someone dies and their own attorneys and estranged offspring loot their estate?


Ted Bernstein, Bernstein Family Foundation

Also in this there was a condo already sold for over a million that may have undersold for a million, this involved a buyer named Wesley Voorheis, who I believe made a deal of some kind to get the property for at least a million less then it was worth, by way of some shady dealings with Life Insurance Concepts and Ted Bernstein, just how I see it.

Note: **I am a REAL ESTATE Forensics EXPERT**, I do not claim to know fully Florida Law. However, this property SOLD via Old Republic National Title Insurance Company, and had Title Insurance insuring that it was SOLD by the property own and there sure seems to be some fraudulent actions here in my opinion, here is my report and opinion on the Shirley Bernstein Condo Sale.

https://docs.google.com/document/d/1hjawNPI4EXpN0L8oZ33Pmpirngh3073da5_i0iVlQtw/edit

It appears to me that Gregory Gefen of Signature ALL REGENCY TITLE COMPANY, Signature Title Group Knowingly allowed Ted Bernstein to steal a 1.6 million dollar property, just how I see it.

So Is Wesley Voorheis a Proxy for Ted Bernstein?
http://tedbernsteinreport.blogspot.com/2013/08/do-we-have-banking-and-mortgage-fraud.html

Did Wesley Voorheis of move this asset out of the country for Tescher and Spallina, Ted Bernstein or ?

G. Wesley Veorheis seems to be the same Wesley Veorheis Chairman of Hudbay Minerals Inc., Director at Granite Real Estate Inc., Managing Director of VC & Co. Incorporated and a Partner of Voorheis & Co. LLP, which act as strategic advisors to institutional and other shareholders. Prior to the establishment of Voorheis & Co. LLP in 1995, Wesley Voorheis was a partner in a major Toronto law firm. Wesley Public Company Directorships (Past 5 years): MI Developments Inc. (June 2011 to present), Coventree Inc. (2008 to 2012), easyhome Ltd. (2010 to 2011), Hollinger Inc. (2006 to 2008), Sun Times Media Group, Inc. (2007 to 2008).
http://www.forbes.com/profile/g-voorheis/

http://www.concernedeconomical.com/about_VC_Co.html

How is G. Wesley Voorheis connected to Tescher and Spallina, Ted Bernstein, Greg Geffen or any other players of the Shirley Bernstein, Simon Bernstein fraud and forgery estate and probate case out of Palm County Florida?

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RICO, Racketeer Courts Case, A
Mark Manceri aK would like to l
RICO, Racketeer Case connect
Florida Estate Fr on the Courts
Judge David E. F Manceri, Tesc
Sheriff's Reports Bernstein Esta
Petition to Relea
Fraud, Forgery, E Tescher and S
► 2013 (31)

I fully believe, in my opinion that the above sale involved mortgage fraud, title insurance fraud and banking fraud at least. It also seems that the Bank of Montreal is somehow connected to all this, in what sure seems to me to be white collar crime.


Donald Tescher, Lawyer

How in the world did what seems to be a Canadian Resident, Wesley Voorheis, get a single Family Fannie Mae loan on a condo of this value in FLORIDA? Is this a primary resident? Is this Fannie Mae FRAUD? Surely Fannie Mae, Wesley Voorheis, BMO Harris Bank N.A., and Steve Paraggua know about the fraud and forgery in connection with all of this.

Here is the Mortgage Document I am commenting on;
https://docs.google.com/file/d/0Bzn2NurXrSkiQjlmSmRoNXJBdHc/edit

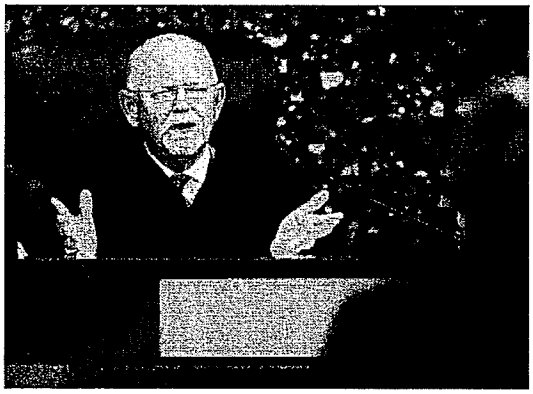
I personally believe that Ted Bernstein of Life Insurance Concepts did some deal to hide this asset from the rightful heirs, either with Wesley Voorhei knowing or not knowingly conspiring, just my opinion.

A bit more on this Condo Sale

http://tedbernsteinreport.blogspot.com/2013/08/ted-bernstein-life-insurance-concepts.html

Note: Look at this Insurance company also questioning issues of these Estates, yet the Judges involved are "playing dumb". There is so many layers to all this, meanwhile the victims of all this, in this moment are children and are the heirs of the estate, in which Tescher and Spallina seem to have VIOLATED the wishes of their now deceased clients.

the Heritage Union Life Insurance case
https://docs.google.com/file/d/0Bzn2NurXrSkiWnBNVUtJUEFJRms/edit


Judge David Crow, Judge in Kimberly Moran Case

So can the True and Correct lawful heirs of the Simon Bernstein, and Shirley Bernstein Estate file a lien against the Judges and Sheriff involved, as there are some pretty hefty price tags on these assets adn I believe these judges now have some liability.

Folks, pay attention to this case as many of your parents, grandparents move to Florida, many of you in Florida over a lifetime; you work your whole life, pay your attorneys to carry out your wishes and the commit forgery having documents signed by you AFTER YOU DIE, and Florida Judges such as **Judge Charles E. Burton, Judge David Crow** and estate and probate Judges such as **Judge Martin Colin and Judge David French,** as well as the Sheriff of Palm County Florida should be liable for any action that violated the constitutional rights of the victims of this case or did not uphold the oath of their office.

It looks to me, in my Opinion, as if these Judges and the Sheriff violated 28 U.S.C. § 455, the Due Process Clause of the Fourteenth Amendment to the Constitution, The Code of Conduct for United States Judges, and 28 U.S.C. 455.

And I think that Victims of these Judges should file a Lien against their Bond.

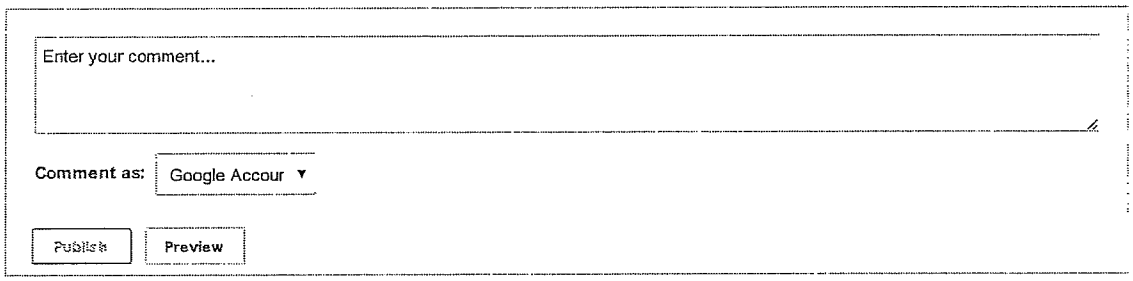
Posted by Crystal L. Cox at 4:15 PM

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# the Ted Bernstein Report by Investigative Blogger Crystal L.

written upon information, knowledge and belief of Crystal L. Cox, Investigative Blogger

PLAINTIFF'S EXHIBIT
Blumberg No. 6113



Friday, February 21, 2014

## Judge Martin Colin has a history of protecting the bad guys protecting attorneys that he favors and having conflicts of interest. Judge Martin Colin should have walked away from the Simon Bernstein Estate Case and the Shirley Bernstein Estate Case long Ago.

""The self-proclaimed adopted son of the late mob boss John Gotti, Kasman didn't like the way the Gambino crime family treated him after the Dapper Don died in prison in 2002. So the 51-year-old Boca Raton man strapped on an FBI wire and spilled information that in February helped the feds build criminal cases against 62 reputed New York mobsters.

Now Kasman has his sights set on a much less notorious target: Palm Beach County Family Court Judge Martin Colin.

Using court decisions that grew out of a long-running legal battle among Colin and his wife and her ex-husband, Kasman is on a tear to have the judge thrown out of office and get longtime Democratic power broker and attorney Henry Handler disbarred...

When the **Judicial Qualifications Commission**, which disciplines judges, meets in mid-July, it will consider claims from Kasman and at least two other men that the judge dished out favors to attorneys who represented his wife in her divorce. Similar allegations have been raised in a strange and tortuous legal battle that went all the way to the Florida Supreme Court. The Florida Department of Law Enforcement has investigated as well.

Colin and attorneys embroiled in the quagmire dismiss allegations that a conspiracy was afoot to tip the scales of justice against Kasman or anyone else."

Source and Full Article
http://jaablog.jaablaw.com/2008/07/01/things-getting-rougher-for-judge-colin.aspx

"During the protracted divorce that chewed through at least five judges, Lewis Kasman accused one of them - Palm Beach County Circuit Judge Martin Colin - of failing to reveal his ties to the firm. Weiss Handler briefly represented Colin's wife in her divorce from a previous husband. While Colin had been ordered by the Fourth District Court of Appeal to tell litigants who came before him about his wife's connection to the firm, he didn't tell Lewis Kasman."

Source and Full Document
http://joebrunoonthemob.wordpress.com/tag/palm-beach-county-circuit-judge-martin-colin/

**Why is Judge Martin Colin of Boca Raton Florida still presiding over the Simon Bernstein Estate Case and the Shirley Bernstein Estate Case?**

Judge Martin Colin knows of fraud, forgery, possible murder and claimed he "should" read the attorneys involved their Miranda Rights but still no one has a criminal investigation and on top of that Judge Martin Colin is letting these attorneys still have a say in these estates knowing full well that have committed crimes.

Judge Martin Colin knows that officers of his court, attorneys, and law firms have committed crimes yet he lets them have a say in who gets to be the personal representative in these estates. And seems to be planning to use some "Hat Trick Method", a law it seems he made up, in order to pick this powerful position over these estate matters.

Judge Martin Colin knows full well that these guys have acted illegally, so why would he still give them power in this case.

**Judge Martin Colin** knows that John J. Pankauski has massive conflicts of interest yet lets this lawyer have a say in these matters, knowing full well that John J. Pankauski is violating attorney client privilege, has misled Eliot Bernstein to get personal information, strategy in the case, and proprietary information in this case to then use against Eliot Bernstein acting as counsel

Ted Bernstein



Life Insurance Concep

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- Florida Estate Forg DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher a

- Florida Estate Forg DOCKET

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to the opposition.

Judge Martin Colin knows that John J. Pankauski SHOULD not even be allowed in the court room on this, so why is Judge Martin Colin letting all this still go on?

Why is **Judge Martin Colin letting a clearly conflicted** John J. Pankauski of Pankauski Law Firm get to pick a possible PR in this matter? Is this Legal? I say it is not LEGAL, as far as I see it and certainly there is no law that conflicts checks, due diligence and judicial duty in estate cases is about putting NAMES IN A HAT. This is ludicrous at best.

All of these crimes CLEARLY happened in **Judge Martin Colin's court, yet he does not report the crimes, seems to do nothing to bring justice to these rogue and lawless lawyers and now** Judge Martin Colin is a material witness to all this, and still does nothing and refuses to remove himself from these proceedings, WHY?

**Who PROTECTS Judge Martin Colin to act completely outside of the Law?**

The above articles seems to be saying that Judge Martin Colin is connected to the mob, abuses his judicial power to favor attorneys he likes, and blatantly ignores conflicts of interest.

Its the Law that Judge Martin Colin must recluse himself if he has a conflict, yet Judge Martin Colin refuses to remove himself and also rules on this matter himself, which is not lawful. I have seen this in many courts, and the superior Judge rules on this motion, NOT the Judge who the litigant is asking to be removed. This is not LAWFUL.

## HERE is a Bit on Judicial Laws and Judicial Disqualification

"According to, **Judicial Disqualification**: An Analysis of Federal Law, Second Edition, Charles Gardner Geyh, Associate Dean of Research, John F. Kimberling Professor of Law, Indiana University Maurer School of Law, a Federal Judicial Center Publication;

"For centuries, **impartiality has been a defining feature of the Anglo-American judge's role in the administration of justice.**

The reason is clear: **in a constitutional order grounded in the rule of law, it is imperative that judges make decisions according to law, unclouded by personal bias or conflicts of interest.**

Accordingly, upon ascending the bench, every federal judge **takes an oath to "faithfully and impartially discharge and perform all the duties" of judicial office; and the Due Process Clause of the Fourteenth Amendment to the United States Constitution has been construed to guarantee litigants the right to a "neutral and detached," or impartial, judge.**

Moreover, in a democratic republic in which the legitimacy of government depends on the consent and approval of the governed, public confidence in the administration of justice is indispensable.

It is not enough that judges be impartial; the public **must perceive them to be so.**

**The Code of Conduct for United States Judges** therefore admonishes judges to **"act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and to "avoid impropriety and the appearance of impropriety in all activities"**

"When the impartiality of a judge is in doubt, the appropriate remedy is to disqualify that judge from hearing further proceedings in the matter.

In Caperton v. A.T. Massey Coal Co., a case concerning disqualification of a state supreme court justice, the U.S. Supreme Court reaffirmed that litigants have **a due process right to an impartial judge**, and that under circumstances in which judicial bias was probable, due process required disqualification. The Court noted, however, that disqualification rules may be and often are more rigorous than the Due Process Clause requires.

So it is with disqualification requirements for federal judges, which require disqualification when a judge's impartiality "might reasonably be questioned."

**Disqualification Under 28 U.S.C. § 455**

A. Overview

1. The text of § 455 The primary source of disqualification law in the federal judicial system is 28 U.S.C. § 455. It provides, in its entirety, as follows:

**§ 455. Disqualification of justice, judge or magistrate judge**

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► January (22)
► 2013 (31)

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household. 10 Judicial Disqualification: An Analysis of Federal Law

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the

securities.
(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.
(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.
Sections (a) and (b) occupy the core of § 455 and should be read together. The two sections divide the universe of disqualification into two halves: the general, catch-all category of § 455(a), which requires disqualification from any proceeding in which a judge's "impartiality might reasonably be questioned"; and a list of more specific grounds for disqualification in § (b).
The remainder of § 455 is directed at implementing §§ (a) and (b):
• Section (c) admonishes judges to keep abreast of their financial interests to ensure that they know when to disqualify themselves under § 455(b)(4).
• Section (d) defines terms employed in §§ (a) and (b).
• Section (e) provides parties with a limited opportunity to waive disqualification otherwise required by the catch-all § (a)—typically where the judge is poised to disqualify himself or herself sua sponte—but does not permit the parties to waive disqualification required by the more specific provisions of § (b).
• Section (f) provides a limited opportunity for judges to avoid the need to disqualify themselves for financial interest under § (b)(4) through divestiture.
2. Interpretive ground rules
a. Interpreting § 455(a) in relation to § 455(b)

As embodied in § 455, §§ (a) and (b) are conceptually separate. Section (a) compels disqualification for the appearance of partiality, while § (b) "also" compels disqualification for bias, financial interest, and other specific grounds. In contrast, the Model Code of Judicial Conduct—after which § 455 was originally modeled—and the current Code of Conduct for United States Judges unify the two halves conceptually by characterizing the specific grounds for disqualification as a nonexclusive subset of circumstances in which a judge's impartiality might reasonably be questioned.
For the most part, this may be a distinction without a difference—disqualification is required if the specific or general provisions are triggered, regardless of whether the specific provisions are characterized as a subset of or separate from the general.

On the other hand, by onceptualizing them separately, § 455 can require disqualification under specific circumstances enumerated in § (b) that might not reasonably be characterized as calling a judge's impartiality into question under § (a). For example, § (b)(4) requires judges to disqualify themselves for financial interest "however small," which necessarily includes an interest so small that it could not reasonably call the judge's impartiality into question.

Any circumstance in which a judge's impartiality might reasonably be questioned under § (a) requires disqualification, even if the circumstance is not enumerated in § 455(b).
At the same time, when § 455(b) identifies a particular situation requiring disqualification, it will tend to control any § 455

(a) analysis with respect to that specific situation. For example, §455(b)(5) requires disqualification when one of the parties is within the third degree of relationship to the judge. Consequently, a fourth-degree relationship to a party does not by itself create an appearance of partiality requiring disqualification under § 455(a)— although disqualification under § 455(a) might still be appropriate if, for example, the judge's personal relationship with the fourth-degree relative was so close as to call the judge's impartiality into question. As the Supreme Court explained, "[s]ection 455(b)(5), which addresses the matter of relationship specifically, ends the disability at the thirddegree of relationship, and that should obviously govern for purposes of § 455(a) as well."
The 1974 amendments to § 455, however, shifted the balance by requiring disqualification whenever a judge's impartiality "might" reasonably be questioned, and the legislative history made clear that in revising the statute, Congress sought to end the "duty to sit".

"When Congress amended § 455(a), **it made clear that judges should apply an objective standard in determining whether to disqualify.** A judge contemplating disqualification under § 455(a), then, should not ask whether he or she **believes he or she is capable of impartially presiding over the case.**

**Rather, the question is whether a judge's impartiality might be questioned from the perspective of a reasonable person,** and every circuit has adopted some version of the "reasonable person" standard to answer this question.

In the context of denying a motion for his disqualification from Cheney v. United States District Court for the District of Columbia, Justice Scalia noted that this reasonable person is aware "of all the surrounding facts and circumstances." The Second Circuit has characterized the reasonable person as an "objective, disinterested observer" who is privy to full knowledge of the surrounding circumstances."

...

"The question has sometimes arisen as to whether the standard for disqualification differs in a bench trial where the judge's role is even more pivotal than in a jury trial. In Alexander v. Primerica Holdings, Inc., the court of appeals said: "We cannot overlook the fact that this is a non-jury case, and that [the judge] will be deciding each and every substantive issue at trial . . . . When the judge is the actual trier of fact, the need to preserve the appearance of impartiality isespecially pronounced"

Pursuant to 28 U.S.C. 455, and upon examination of the record, I, Personally believe that Judge Martin Colin is NOT impartial and is violating the constitutional and lawful rights of the victims in this case."

http://www.law.cornell.edu/uscode/text/28/455

**Judge Martin Colin** SHOULD NOT, as a matter of law and the duties of his Judicial Office, be RULING on a Motion to NOT exclude HIMSELF. This is unethical, unconstitutional and sure seems to me to be Illegal.

Posted by Crystal L. Cox at 8:45 AM

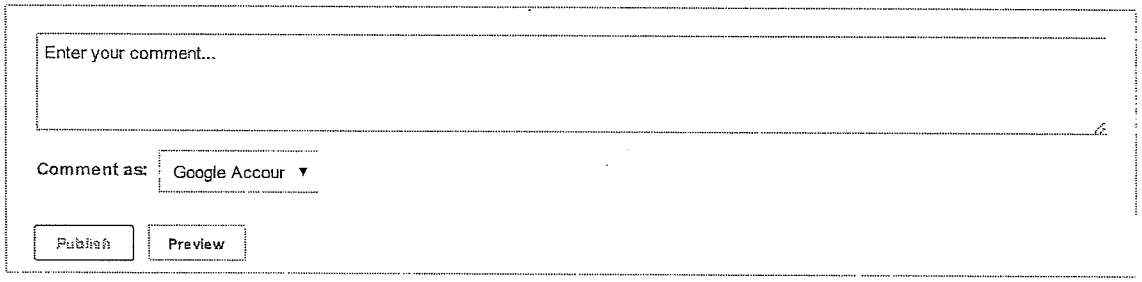


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# the Ted Bernstein Report by Investigative Blogger Crystal L.

written upon information, knowledge and belief of Crystal L. Cox, Investigative Blogger



Wednesday, May 14, 2014

## John Pankauski ~ John J. Pankauski - Pankauski Law Firm PLLC

WOW are you KIDDING. Undo Influence Expert? Really?

Invalid or Void.. ? Hmm.. Why is Johnny Boy Protecting Ted Bernstein to commit Estate Fraud? or is He.. Hmmm.. Undo Influence is SERIOUSLY Abundant in the Simon and Shirley Bernstein Estate's..

Read this WHOLE Blog and WOW, then will you hire this GUY?

Undue Influence | Pankauski Law Firm | Undue I...

0:00 / 1:17

Posted by Crystal L. Cox at 11:11 PM

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Donald Tescher on Left



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# Ted Bernstein Insurance Scam

Written Upon Knowledge and Belief of Crystal L. Cox

Monday, March 30, 2015

## 7020 Lions Head Lane Boca Raton. Real Estate Buyers have a Legal Right to have FULL DISCLOSURE. Buyer Be AWARE.

**Why Does Alan Rose Want to HIDE the TRUTH from the Buyers of this Property?**

Why Does Judge Martin Colin Think it is ok to HIDE the Truth From Real Estate Consumers?

It is NOT ok for a Real Estate Broker, a Seller or a JUDGE to HIDE Known Facts about a Real Estate Transaction from a Real Estate Consumer. PERIOD.

Assets seem to have been stolen long ago. The property has been left to be run down. The courts simply do nothing to protect this asset and now a buyer is to get in the middle of t mess? I have been a real estate broker, owner of my own company for 15 year and a Real Estate Advocate for Real Estate Buyers. I would not go anywhere near this property until th estate is REALLY Legally Settled. Check out the transcript below as attorney Alan Rose whines and cries to PREVENT disclosure to the Real Estate Consumer.

Judge Martin Colin has no LEGAL Reason, as a matter of LAW to withhold to a real estate buyer that the property is in litigation, this is a violation of the BUYERS Rights, and again the LAW PERIOD.

John Poletto, a real estate broker in Florida seems to have no issue with hiding know facts from buyers. The law is that latent defects, lawsuits, and anything that can harm a buye MUST be disclosed so why is the Florida Courts allowing this cover up that will cause BUYERS massive headache, stress and legal liability.

https://drive.google.com/file/d/0Bzn2NurXrSkiVUFCVVZKb1YtWnM/view?usp=sharing

I am a Broker, a Real Estate Advocate, a Real Estate Whistleblower and I have owned my own real estate company for over 15 years. Check out the Transcript below as you see a JUDGE, and several attorneys seem to conspire to aid and abet a real estate sale and NOT disclose to BUYERS that they may spend years in litigation down the road after they have fixed up a place that Ted Bernstein let run down as a BAD PR for the property.

It is NOT ok for a JUDGE to want to hide this litigation from BUYERS. It is not lawful nor morally ethically for Judge Martin Colin to NOT want BUYERS to know when this affects thei VERY life, the life of their children and their quality of life in EVERY WAY.

**SHAME SHAME on this JUDGE.**

Really, Look Below, this document clearly shows this JUDGE ranting about YOU, the Real Estate Consumer NOT having a right to know what the Real Estate Seller and the Real Estat Broker KNOW and by law have to disclose. WOW.

MARTIN H. COLIN

Thursday, March 26, 2015
South County Courthouse
Courtroom 8
Delray Beach, Florida 33444
1:03 p.m. - 2:10 p.m.

Stenographically Reported By:
April Y. Segui, RPR, FPR
Registered Professional Reporter
Florida Professional Reporter

WWW.USLEGALSUPPORT.COM
561-835-0220

2

APPEARANCES:

On behalf of the Plaintiff:




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Phone: (561)655-2250

E-mail: Arose@mrachek-law.com 6
ALAN B. ROSE, ESQUIRE

**Other Research Links**

http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121002%20PETITION%20FOR%20ADMINISTRATION%20SIMON.pdf

http://tedbernsteinreport.blogspot.com/
Read the Entire Blog, Go to the bottom of the page and click older posts OR use search in upper left to search the Blog for what you want.

If you need information to protect you as a Real Estate Buyer of 7020 Lions Head Lane Boca Raton, email me at **SavvyBroker@yahoo.com**

Posted by CrystalL. Cox at 5:20 PM No comments: G+1 Recommend this on Google

Saturday, January 4, 2014

# Ted Bernstein of Life Insurance Concepts, Tescher and Spallina Law Firm, Robert Spallina, Donald Tescher and Florida Notary Kimberly Morane Florida Insurance Scam and Estate Fraud, Forgery Case, overseeing Judge is Judge Martin H. Colin.

**"Kimberly Moran Florida Notary Public, Tescher and Spallina Law Firm involved in Forgery and Estate Fraud**

Kimberly Moran Florida Notary Public, Tescher and Spallina Law Firm ( Robert Spallina and Donald Tescher ), Ted Bernstein of Life Insurance Concepts and the Bernstein Family Foundation are involved in Estate Fraud, Insurance Schemes, Fraud on the Courts, Forgery, Possible Murder and other illegal and unethical behavior. The Judge in the Case is Judge Martin H. Colin.

Kimberly Moran Florida Notary Public of Tescher and Spallina Law Firm, Robert Spallina, Donald Tescher, Ted Bernstein of Life Insurance Concepts sure seems to have a lot of explaining to do, check out the forgery, fraud on the courts, flat out lies and for some reason none of these folks are in jail. The Judge in the Case is Judge Martin H. Colin, we wi watching to see if he follows through with those Miranda Rights and to see if Kimberly Moran, who is already confirmed to have committed forgery, sees any jail time and how this Notary at a law firm got such a high priced criminal attorney ?

Take a look at the details of this Florida Estate Fraud, Forgery, Real Estate Fraud, Child Endangerment, Fraud on the Courts and Possible Murder Case is playing out.

Kimberly Moran, Florida Notary Public involved in Fraud, Forgery, Estate Fraud ..
Motion to Freeze Assets in Shirley Bernstein Estate
https://docs.google.com/file/d/0Bzn2NurXrSkia3dyOGs4MnowODg/edit



ARREST has been made in the Estate of Shirley for FRAUDULENT NOTARIZATIONS and admitted FORGERIES of five documents in our names and one our father's name, which was FORGED POST MORTEM for him by Donald and Roberts Legal Assistant and Notary Public, Kimberly Moran.
http://tedbernsteinreport.blogspot.com/2013/12/response-to-ted-and-donald-letters-re.html

Kimberly Moran State of Florida Notary Suspension
http://www.flgov.com/wp-content/uploads/orders/2013/13_291_moran.pdf

Court Petition Naming Kimberly Moran, Florida Notary Publichttp://www.docstoc.com/docs/160162877/Ted-Bernstein-Petition

RESPONSE TO TED and DONALD LETTERS RE EMERGENCY DISTRIBUTIONS FOR THREE MINOR CHILDREN AND MORE
http://tedbernsteinreport.blogspot.com/2013/12/response-to-ted-and-donald-letters-re.html

Additional Respondents Added

https://docs.google.com/file/d/0Bzn2NurXrSkicnFEdTI5Zktlc00/edit

**More information on this Estate Fraud, Forgery, Fraud on the Courts Case**
http://tedbernsteinreport.blogspot.com/

http://tedbernsteinreport.blogspot.com/2013/12/does-ted-bernstein-not-understand-truth.html

Insurance Schemes and Fraud on the Court, Ted Bernstein
http://www.docstoc.com/docs/document-preview.aspx?doc_id=165105099&key=undefined&pass=undefined

**"NOTICE OF MOTION TO RE-OPEN BASED ON FRAUD ON THE COURT"**

"That Case No. 502012CA013933XXXX, Stansbury v. Ted Bernstein et al. is a lawsuit with a claim against the estate, where RICO Defendant Greenberg Traurig acts as counsel to Plaintiff's brother Theodore. However, after Plaintiff points out to his brother and Spallina that Greenberg Traurig is conflicted with assets of the estates, including but not limited to the approximate 30% interests held in the Iviewit Companies, the Iviewit Intellectual Properties and this RICO lawsuit, Greenberg Traurig suddenly withdraws as counsel in the matter, months after the lawsuit was instituted"

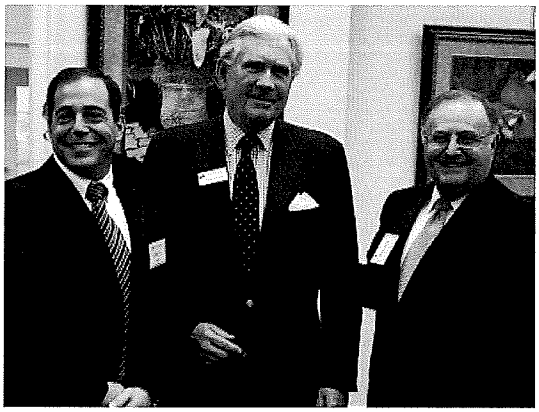
Source and Full Document
http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20
tion%20to%20Rehear%20and%20Reopen%20Obstruction%20of%20Justice165555%20WITH%20EXHIBITS.pdf

Hearing Transcript where Judge Martin H. Colin clearly knows of fraud on the courts, and has yet to actually follow through with the threatened reading of the Miranda rights.
https://docs.google.com/file/d/0Bzn2NurXrSkia3NzaDd1NG45aUk/edit

Lawsuit filed against Ted Bernstein
https://docs.google.com/file/d/0Bzn2NurXrSkiWnBNVUtJUEFJRms/edit

http://tedbernsteinreport.blogspot.com/2013/08/ted-bernstein-life-insurance-concepts.html "

Source of Robert Spallina and Donald Tescher, Tescher and Spallina Law Firm, Ted Bernstein of Life Insurance Concepts, Greg Geffen Attorney Signature Title, Florida Notary Kimbe
Moran and Judge Martin H. Colin post.
http://ireport.cnn.com/docs/DOC-1072355



Donald Tescher on the Far Right

Check out the Documents in this Florida Estate Case. The overseeing judge is Judge Martin H. Colin who "almost" read the attorneys their Miranda Rights. We have forgery, fraud, dead people signing documents, possible murder, sibling rivalry and all the makings of a Law and Order mini series. Read these document, and decide for yourself who is committir fraud, who is lying, who is telling the truth, who is abiding the law and take a deep look as to whether you want to buy insurance from Ted Bernstein of Life Insurance Concepts, or your Estate "Handled" by what sure looks to me to be crooks who will do as they please after you die, regardless of your wishes.



Donald Tescher in the Middle

More Robert Spallina and Donald Tescher, Tescher and Spallina Law Firm, Ted Bernstein of Life Insurance Concepts, Greg Geffen Attorney Signature Title, and Florida Notary Kimbe Moran seem to be involved in a massive Florida Insurance Scam and Estate Fraud Case, overseeing judge is Judge Martin H. Colin. research links

http://tedbernsteinreport.blogspot.com/2013/12/response-to-ted-and-donald-letters-re.html

Petition to Freeze Bernstein Assets
https://drive.google.com/file/d/0Bzn2NurXrSkiTzBGbkdSTXI4MEU/edit?usp=sharing

Motion to Remove Personal Representative
https://drive.google.com/file/d/0Bzn2NurXrSkiNFdEOWo3ZnhHMEU/edit?usp=sharing

Response to Florida Governor in Kimberly Moran Notary Fraud, Forgery Case
https://drive.google.com/file/d/0Bzn2NurXrSkiOVFPR0I0YllQUFU/edit?usp=sharing

Forgery, Fraud on the Courts, Sanctions
https://drive.google.com/file/d/0Bzn2NurXrSkiRDZGYjVlVnVoQm8/edit?usp=sharing

Kimberly Moran Notary Fraud, Forgery Case. Kimberly Moran of Tescher and Spallina Law Firm response on Notary Fraud whereby she forged the signature of a deceased man to enr her bosses Robert Spallina and Donald Tescher and DENY the true, moral and legal wishes of those whose Estate Robert Spallina and Donald Tescher were handling the affairs and as of.
https://drive.google.com/file/d/0Bzn2NurXrSkiTmd6Q2VnRVpDdWM/edit?usp=sharing

Notary Public Comparison of Signatures and Dates, Evidence in Kimberly Moran Notary of Tescher and Spallina Law Firm Fraud, Forgery Case
https://drive.google.com/file/d/0Bzn2NurXrSkiU2FsT0hfVEhocWM/edit?usp=sharing

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA, (BOTH PERSONALLY & PROFESSIONALLY); DONALD R. TESCHI (BOTH PERSONALLY & PROFESSIONALLY); THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH PERSONALL & PROFESSIONALLY); Emergency Hearing Judge Martin Colin Court.
https://drive.google.com/file/d/0Bzn2NurXrSkia3ZTZWNEczNxaE0/edit?usp=sharing

Jackson Response to Bernstein Trust Requests
https://drive.google.com/file/d/0Bzn2NurXrSkibWlpdmNoQ21YcmM/edit?usp=sharing




In March of 2012 Donald Tescher was awarded by the " MITZVAH SOCIETY" for allegedly being a "CARING ESTATE PLANNING PROFESSIONALS".

Yet it is clear from the court documents above, that Donald Tescher and TESCHER & SPALLINA, P.A will do as they please after you die, regardless of what your TRUE wishes are and regardless of how much you pay him, or to what lengths, efforts and legal means you go to prepare your ESTATE to be handled per your wishes.

And it sure seems that the JUDGES in Florida will assist Tescher and Spallina, even if they are involved in clear fraud, forgery and acting outside of the law and the wishes their clients estate plans.

Posted by Crystal L. Cox at 7:46 PM No comments: G+1 Recommend this on Google

Friday, September 27, 2013

## For More Information On Ted Bernstein Being Sued, and More Court Filings Against Ted Bernstein..

Check out the Ted Bernstein Report by Investigative Blogger Crystal L. Cox
http://tedbernsteinreport.blogspot.com/

Posted by Crystal L. Cox at 4:27 PM No comments: G+1 Recommend this on Google

Tuesday, July 30, 2013

## Sheri Goldman; Investigative Blogger Crystal Cox Alleges that Ted Bernstein, the man in the news video w the person financing Sheri Goldman to be a building where no other medical professionals were.

Investigative Blogger Crystal Cox Alleges that Ted Bernstein is behind the Botox scheme, used her services and KNEW full well that she was not a nurse. Investigative Blogger Crysta Cox Alleges that Ted Bernstein this is in connection with other insurance and high finance scams in which Ted Bernstein of Boca Raton Florida may be involved int.

"Boca woman arrested after police say she offered botox, told people she was a nurse

"BOCA RATON, Fla. - The Florida Department of Health's Investigative Services Unit- West Palm Beach, announced that their joint investigation with the City of Boca Raton Police Department and the Florida Department of Corrections has led to the arrest of Sheri Goldman for the unlicensed practice of a health care profession, which is a third degree felony punishable by up to five years in jail.
Goldman was also arrested for violation of probation based on a previous arrest for unlicensed activity in Palm Beach County.

The joint operation was conducted after the City of Boca Raton Police Department received an anonymous complaint that Sheri Goldman was offering Botox injections and claiming be a nurse.

Authorities say Goldman is not licensed to perform any health care profession within the state of Florida.
After a joint undercover operation with the listed agencies at Goldman's place of business, Beauty & Balance, she claimed to be an "OR nurse." In addition, a search of the website www.groupon.com revealed she was posing as a "surgical nurse" according to investigators.

DOH has several resources to combat unlicensed activity: Consumers are encouraged to use DOH's Web site www.flhealthsource.com where they can view the license information o their health care practitioner.

Source of Post and Full Article http://www.wptv.com/dpp/news/region_s_palm_beach_county/boca_raton/boca-woman-arrested-after-police-say-she-offered-botox-and-told-peopl she-was-a-nurse#ixzz2aZYFulYt

**Research More Regarding the Unethical, possibly ILLEGAL actions of Boca Raton Florida's Life Insurance Concepts owned by Ted Bernstein.**

MOTION TO REMOVE PERSONAL REPRESENTATIVES
https://docs.google.com/file/d/0Bzn2NurXrSkiT0tBZGhKemNzc1E/edit

**"NOTICE OF MOTION TO RE-OPEN BASED ON FRAUD ON THE COURT"**

"That Case No. 502012CA013933XXXX, Stansbury v. Ted Bernstein et al. is a lawsuit with a claim against the estate, where RICO Defendant Greenberg Traurig acts as counsel to Plaintiff's brother Theodore. However, after Plaintiff points out to his brother and Spallina that Greenberg Traurig is conflicted with assets of the estates, including but not limited to the approximate 30% interests held in the Iviewit Companies, the Iviewit Intellectual Properties and this RICO lawsuit, Greenberg Traurig suddenly withdraws as counsel in the matter, months after the lawsuit was instituted"

Source and Full Document
http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rehear%20and%20Reopen%20Obstr on%20of%20Justice165555%20WITH%20EXHIBITS.pdf

Posted by Crystal Cox at 4:08 PM No comments: G+1 Recommend this on Google

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    7020 Lions Head Lane Boca Raton, Real Estate Buyer...

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G+1 0 More Next Blog»

# 7020 Lions Head Lane Boca Raton Florida - Buyer Do your Diligence

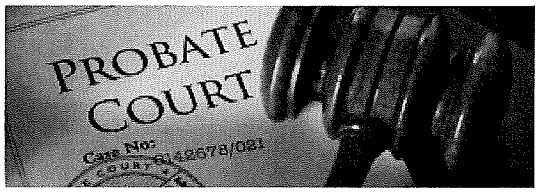
Written by Real Estate Whistleblower and Real Estate Consumer Advocate, Investigative Blogger Crystal Cox.

Monday, April 20, 2015

## Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company; Insurance Fraud, Forged Documents, Murder Allegations, No Policy and Millions Paid.

**Note:** All Cases on this property INVOLVE property located at 7020 Lions Head Lane Boca Ratonl, Florida, 2494 S Ocean Blvd, Apt C5, Boca Raton, FL 33432, and **880 Berkley St. Boca Raton.** These properties are tied up in multi-millions in litigation and they don't want potential buyers to know. Do your homework folks. As a, what seems to be corrupt, lawless or just ignorant Florida Probate Judge is ordering that you, the REAL Estate Buyer NOT be told (DISCLOSED) as to what will inevitably affect your life.

**The Ocean Blvd property was SOLD,** I believe through a fraudulent residential loan. As it is clearly and investment property and the buyer does not even live in the country. I believe the buyer is friends with Ted Bernstein or associates, and is connected to the lender and others acting in Civil Conspiracy regarding buying this property with little mney down, a low interest residential loan out of Illinois and then profiting tax free acting as if it's a primary resident instead of an investment property.




Meanwhile in **Judge Colin's Court in Palm County Florida** there is massive crimes and cover up and Judge Martin Colin seems to want to sweep it all under the rug and get it out of the Illinois courts where Justice may be served.

Judge Martin Colin seems to be involved in a Probate Attorney Protection racket, and the victims are children and other innocent citizens. Meanwhile years go by and properties are run down, stolen, sold. .. money disappears, jewelry gone, and so much admitted fraud and forgery AND Judge Martin Colin DOES nothing.

Ted Bernstein pays for an attorney with Estate money and seems to pay for his own life, while other heirs have no attorney, no rights and some are minors. Judge Martin Colin has clearly broken the law and violated constitutional rights and seems to believe he is so connected (probably to Labarga and others from his Prosecutor job) that he will never face prison or any kind of justice. I say he is wrong and that one day someone will bring Judge Martin Colin to Justice.

Here is the Illinois Docket
http://ia601902.us.archive.org/6/items/gov.uscourts.ilnd.283534/gov.uscourts.ilnd.283534.docket.html

Answer to Complaint
http://ia601902.us.archive.org/6/items/gov.uscourts.ilnd.283534/gov.uscourts.ilnd.283534.17.0.pdf

**Heritage Union Life Insurance Company, Jackson National** will pay YOU millions and all you have to do is say oh ya my dad had a police for 2 million and the pay with NO Policy, simply to get out of a litigation. WOW?? oh and there is murder allegations and a Heavy Metal Toxin autopsy report. So I guess one can commit murder, then say hey Heritage Union Life Insurance Company, Jackson Life Insurance, I had a policy on that guy, now pay me 2 million and they say ok. Sounds LEGIT.

WOW ... Folks.. WTF comes to mind.

**More on the Illinois case**

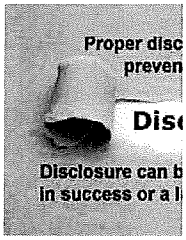
http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131104%20Ted%20Pam%20Lisa%20Jill%20Answer%20to%20Complaint%20Jackson%20Heritage%20Northern%20District%20Illinois%20Simon%20v%20Heritage%20Jackson%20Insurance.pdf

http://www.iviewit.tv/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20LOW.pdf

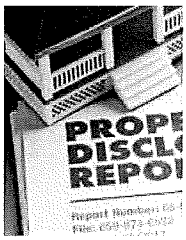
http://tedbernsteinreport.blogspot.com/search?q=District+of+Illinois

Why does Judge Martin Colin Protect Tescher and Spallina in CLEAR and Blatant Insurance Fraud, Forgery, and cover ups. And allow them ALL to keep creating victims? There is no policy? Yet millions was paid?? Why is Spallina not investigated by Heritage Life, Jackson National or the the LAW in any Way?

**Disclose**




**DISCLOSURE is LAW**






Attorney Robert Spallina, protected by Judge Martin Colin ( in my opinion) tried to colled 2 million in life insurance. The alleged policy holder with NO POLICY, looks to have been murdered. So why is Jackson National Insurance Company NOT investigating this matter?

Here is the Letter Robert Spallina, Florida Probate attorney sent to try and collect the millions.

"Dear Sir or Madam: Enclosed is the Claimant's Statement for the above referenced policy. together with an original Death Certificate for the insured, Simon Bernstein, .

We are also enclosing a copy of Internal Revenue Service Form SS-4, Application for Employer Identification Number for the Simon Bernstein Irrevocable Insurance Trust June l. 1995, which is the trust listed as beneficiary of the above referenced policy.

We will provide wiring instructions for the trust bank account when you have processed the claim, if possible, in lieu of a check. Finally, we are enclosing a copy of the obituary for the decedent which was published in the Palm Beach Post.

We are unable to locate a copy of the original insurance policy.

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

Sincerely

ROBERT L SPALLINA"

Heritage Claim Form, Spallina Alleged Fraud
https://docs.google.com/file/d/0Bzn2NurXrSkia0RmS3lWaDF6SEU/edit

## District of Illinois Federal Case regarding insurance of deceased owner of 7020 Lions Head Lane

Folks do you want to put time, money, blood sweat and tears into making a family home, only to have it taken back by the true heirs once there real is clear and legal title in a way that a dead guy does not sign trust documents.

Buy at your own Risk. Below is a Link to more on the Illinois Case involving this Property ( the Simon Bernstein Estate)

http://tedbernsteinreport.blogspot.com/2015/04/illinois-master.html




**Regency Title dba US Title of Florida and Old Republic National Title Insurance Company** seems to be involved in Florida Real Estate probate fraud. As we see that the Shirley Bernstein estate condo was SOLD and they guaranteed a clear title through Greg Gefen Florida attorney who seems to have several title companies. Regency Title dba US Title of Florida and Old Republic National Title Insurance Company is liable for the millions in property that they allowed the wrong owner to sell.
http://judgemartincolin.blogspot.ie/2015/04/gregory-s-gefen-john-poletto-judge.html

## Simon Bernstein Estate Case; Florida Probate Court; Judge Martin Colin; 7020 Lions Head Lane

Click Below for Linked Docket of Simon Bernstein Estate Case
https://docs.google.com/file/d/0Bzn2NurXrSkiS0NMblNaNUk2MXc/edit

## 7020 Lions Head Lane Boca Raton; Judge Martin Colin has BANNED Real Estate Disclosure.

Judge Martin Colin has banned Eliot Bernstein from DISCLOSING to Real Estate Buyers, as a matter of law, that 7020 Lions Head Lane, Boca Raton Florida is involved in several multi-million dollar legal actions.

When the buyers find out in the future and sue, Eliot Bernstein or his children will be financially liable, he is abiding by the law and blocked by Judge

Martin Colin.

**Click the Link Below for More**
http://tedbernsteinreport.blogspot.com/2015/04/florida-lis-pendens-7020-lions-head.html

## Shirley Bernstein Estate Probate Case connected to the Simon Bernstein Estate Case, both will affect what happens to 7020 Lions Head Lane. Don't Believe Me, do your DUE Diligence, Trust NO One. This is YOUR LIFE.

Click Below for More on the Shirley Bernstein Estate Case, Florida Probate Case in the Court of Judge Martin Colin (ya know the JUDGE who is order NON-Disclosure)

http://tedbernsteinreport.blogspot.com/2015/04/shirley-bernstein-estate-case-master.html

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LEARN MORE GOT IT

### Motion to Remove Ted Bernstein as PR

https://docs.google.com/file/d/0Bzn2NurXrSkiNFdEOWo3ZnhHMEU/edit

https://docs.google.com/file/d/0Bzn2NurXrSkiT0tBZGhKemNzc1E/edit

### Florida Probate Attorney Donald Tescher (Protected by Judge Martin Colin), Excerpt from deposition testimony.

https://docs.google.com/file/d/0Bzn2NurXrSkiNDFNWi1sTHBPVzA/edit

## The Lasalle National Trust and C/O Robert Spallina Mystery

"Bates #JCK001262, is a letter regarding the filing of a claim dated October 09, 2012, sent from HERITAGE to SPALLINA with SPALLINA addressed as "LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA, ATTORNEY AT LAW" address "4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431" and the Letter starts "Dear Trustee."
http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140112%20FINAL%20SIGNED%20PRINTED%20MOTION%20TO%20STRIKE%20AMENDED%20COMPLAINT%20ECFCOPY.pdf

"LaSalle National Trust, N.A." seems to basically be a national holding company, via big title companies and banks and simply a way to convey property, assets, holdings and real estate. Thing is what instrument gave Spallina the right to be the Trustee in the Simon Bernstein estate in this regard?



What was Robert Spallina really up to, using this huge company name and having documents sent to him directly? Or wanting to collect on the Heritage Union Life Insurance Company / Jackson National Life Insurance Company Policy, or lack of policy?

**Seems to me that "LaSalle National Trust, N.A.", the real one, has a major claim against Tescher and Spallina unless Robert Spallina was acting with their authority???**

"SPALLINA acting as both the TRUSTEE of"LaSalle National Trust, N.A." and as Trustee of the Lost or Suppressed Trust, HERITAGE would have to legally pay him as either the Primary or the Contingent Beneficiary in his fraudulent Legal and Fiduciary roles. "
Page 13
http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140112%20FINAL%20SIGNED%20PRINTED%20MOTION%20TO%20STRIKE%20AMENDED%20COMPLAINT%20ECFCOPY.pdf
To document search the above page, click on Control F, then type in Lasalle, to read all the places it is mentioned int he above document.

**Eliot Bernstein Disclosure**; Heritage Union Life Insurance; Jackson National Life Insurance
http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131022%20Rule%2026%20Disclosure%20Eliot%20Jackson%20National%20Lawsuit.pdf

Chicago Title Land Trust Company is successor trustee to the listed bank land trustees, as seen here,
http://www.ctlandtrust.com/#!successorships-h-l/ctsk
If Robert Spallina claimed to speak for LaSalle National Trust then is this connect to Chicago Title Company, and perhaps real estate shady dealings involving Greg Geffen in Florida? Hmmm....

Chicago Title is a pretty big deal in Title Insurance. I have owned my own real estate company for 14 years, and well um.. how is Spallina trying to pull off that he is successor trustee or whatever mumbo jumbo he was trying to pull off?

Did Robert Spallina real say he was speaking for Lasalle? really? Employee fund, real estate, SEC, how in the world is Spallina speaking for Lasalle? call me Confused.

**More Research**

http://tedbernsteinreport.blogspot.com/2014/02/why-is-heritage-union-life-insurance.html

http://tedbernsteininsurancescam.blogspot.com/2014/01/ted-bernstein-of-life-insurance.html

http://www.docstoc.com/docs/160196536/Ted-Bernstein-Life-Insurance-Concepts-Boca-Raton

http://tedbernsteinreport.blogspot.com/2014/02/wow-fraud-sure-seems-to-be-piling-up-is.html

http://tedbernsteinreport.blogspot.com/2014/01/robert-spallina-consent-and-joinder-to.html

http://robertspallina.blogspot.com/2014/02/is-adam-simon-liar-liar-pants-on-fire_6.html

Sheriff Report, Spallina
https://docs.google.com/file/d/0Bzn2NurXrSkiTThFWTg4S2plamM/edit

Palm Beach County Sheriff Office Supplemental Report
https://docs.google.com/file/d/0Bzn2NurXrSkiNHFZMmhJWjlzdk0/edit

Heritage Claim Form, Spallina Fraud
https://docs.google.com/file/d/0Bzn2NurXrSkia0RmS3lWaDF6SEU/edit

Fraud on the Courts, Tescher Spallina and Ted Bernstein
https://docs.google.com/file/d/0Bzn2NurXrSkiRDZGYjVlVnVoQm8/edit

## Judge Martin Collin DENIAL Of Emergency Petition to Freeze ASSETS; Now the assets are stolen,sold cheap or just gone.

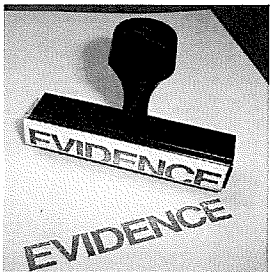
Judge Martin Colin SHOULD have froze assets until there was clear title, he did NOT.

Here is the DENIAL TO Freeze assets
https://docs.google.com/file/d/0Bzn2NurXrSkiN0RlUWEzM2RWNVU/edit

One of those assests is 7020 Lions Head Lane Boca Raton

Judge Martin Colin never did Freeze assets and it's been near 2 years now. So the assets have illegally been sold off, stole, moved, damaged and ALL because Florida Probate Judge, Judge Martin Colin is protecting Elite Florida Probate attorneys.

Here is the Petition to Freeze Assets
https://docs.google.com/file/d/0Bzn2NurXrSkiTzBGbkdSTXI4MEU/edit




## 2494 S Ocean Blvd, Apt C5, Boca Raton, FL 33432

More on Litigation involving the above property.

"SPALLINA STATED THAT TED BERNSTEIN IS THE TRUSTEE FOR SHIRLEY' S TRUST .

HE SAID THAT A CONDO THAT "WAS SOLD FOR $l, 400, 000 AND THAT MONEY

WENT INTO THE TRUST. "

And lot's more on the supplemental Sheriff's Report Below
https://docs.google.com/file/d/0Bzn2NurXrSkiNHFZMmhJWjlzdk0/edit

**Buyer:** Wesley G. Voorheis
333 Bay Street #910
Toronto Ontario, M5h 2R2 Canada

Mortgage
https://docs.google.com/file/d/0Bzn2NurXrSkiQjlmSmRoNXJBdHc/edit

**Closer: Steve Paraggua**
Rolling Meadows Illinois

BMO Harris Bank N.A.
Rolling Meadows Illinois

Florida Single Family Fannie Mae / Freddie Mac instrument
Lenders Address is Scottsdale, Arizona

Ok so we have a mortgage broker, banker out of Illinois, a lender out of Arizona, a property in Florida and a buyer in Ontario Canada. And we have a single family residential loan?? REALLY ??

I, Real Estate Expert and advocate Crystal L. Cox say that there is mortgage fraud involved in the sale of the above property, as well as no clear titles, SOLD by someone who had no legal right to sell, has title insurance fraud, RESPA violations and much more.

It says second home, so maybe its legit. But hmm now it's a million more? I say that Broker John Poletto and Ted Bernstein are in on a million dollar scam with the lender and the buyer to dupe the real and true, legal heirs.

What if a buyer knew that they were buying a property from someone who did not have the legal right to sell, and they got a loan like this? Hmm.. all kinds of trouble I'd say.

I know Florida law is different, however, I have never seen a title agent sign on a loan document such as this. Did Title Agent, Florida Attorney Greg Gefen get kickback from this mortgage? On the title insurance? Did Ted Bernstein? Hmm..

**Shirley Bernstein Estate Case, Florida Probate Case in the Court of Judge Martin Colin**
**http://tedbernsteinreport.blogspot.com/2015/04/shirley-bernstein-estate-case-master.html**




To research more on the Eliot Bernstein, iViewit RICO

https://www.facebook.com/iviewit/posts/133089426862083

http://federalricolawsuit.blogspot.com/2010/01/judiciary-committee-reviews-iviewit.html

iViewit RICO Crime Chart
http://iviewit.tv/CompanyDocs/RICO%20CRIME%20CHARTS.pdf

http://iviewit.tv/wordpress/

http://www.iviewit.tv/

Full RICO Filing
http://investigativeblogger.blogspot.com/2014/03/district-of-nevada-rico-and.html

iViewit Supreme Court Case
http://www.iviewit.tv/supreme%20court/index.htm

iViewit SEC Complaint
http://iviewit.tv/wordpress/?p=288

iViewit Motion to ReHear

http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rehear%20and%20Reopen%20Obstruction%20of%20Justice165555%20WITH%20EXHIBITS.pdf

Posted by Crystal L. Cox at 11:19 AM No comments: G+1 Recommend this on Google

Friday, April 17, 2015

## Gregory S. Gefen, John Poletto, Judge Martin Colin, Ted Bernstein and more seem to be involved in massive real estate fraud, forgery and cover up.

" **Real Estate Forensics Report / Fraud Analysis:** Shirley Bernstein Condo Sale

**Real Estate Warranty Deed Transaction Date:** April 18th 2013
**Prepared by:** Gregory S. Gefen, PA
File Number U13-412

**Recorded:** 05/06/2013
Palm Beach County, Florida
AMT 1,600,000
Doc Stamp 11,200
Pages 1029 - 1031;

The Following report is my Professional Opinion and advice based on 13 years as a Real Estate Broker Owner, and Currently owning a Real Estate Consulting and Real Estate Forensics Firm. This report is written upon the knowledge and information of Crystal L. Cox, Broker.

**Notes on Trustee Affidavit**

Regarding Warranty Deed prepared by Gregory S. Geffen, PA, File Number: U13-412

This recorded document now seems to be the only recorded documents regarding Ted Bernstein having Seller or Grantor rights in this matter. Before this closing, there appears to be no legal record, as a matter of law in which proves Ted Bernstein of having legal rights to sell subject property.

It appears to me that this real estate transaction is fraudulent, and that All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company have a liability to the buyer in this transaction and to the true and correct heirs of the Shirley Bernstein Estate.

I would tell the Title Company to show you the legal documentation they have that gave them the legal right to allow Ted Bernstein to sell this Condo, to sign as the Seller, Grantor of said Property?

**It is my understanding that the Shirley Bernstein Trust Agreement does not state that Ted Bernstein is the executor.** Or at least I see no proof provided in the closing documents in which the title company filed in the closing of this 1.6 Million dollar sale, that would give Ted Bernstein a legal right to be the "Grantor" of said property.

**What documentation did the title company have that gave them the legal right to let Ted Bernstein sell this real estate?** What documentation did the title company have that justified providing a title insurance policy on a 1.6 Million dollar real estate sale, that insured to the buyer, that Ted Bernstein was the legal Grantor / Seller in this sale?

**Ted Bernstein swore that the trust had not been revoked or terminated And that the the vesting Deed was**

**recorded that provides the trustee with the full power of sale and that the subject transaction will not violate the trust.** Yet there is no court documents, no judicial ruling that provides legal proof that Ted Bernstein is the person that gets to speak on behalf of the Shirley Bernstein estate.

There seems to have been no probate nor judicial order appointing Ted Bernstein as executor, successor of the Shirley Bernstein estate. So why would this title company guarantee title with no legal documents proving such and allow a $1.6 million dollar real estate transaction and provide title policy on said property?

As a real estate broker, I would not let Ted Bernstein sign a listing on this property, as there is no documentation that he has Sellers rights and this would be a violation of law.

**Ted Bernstein Had no legal right to act as Seller in this deed transfer.** This title company provided title insurance in this matter and is liable to the Shirley Bernstein estate, as well as no liable to the buyer in this matter and the cost of this property being deed back to the rightful owner, as far as I see this case.

**This seems to be a matter of property theft.** All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company **guaranteed clear title in this real estate transaction via title insurance policy**, and I would demand to see the settlement statement and all related documents, especially any document that was used as legal proof that Ted Bernstein was the SELLER, legally in this transaction. I do not see such a legal document in the recorded documentations for the sale of the subject property.

Ted Bernstein, under penalty and perjury swore the document to be true. The fact is that is simply a "pinky swear", that is one man swearing that he owns a 1.6 million dollar property. There is no court document, no estate documents and no proof, of any kind that Ted Bernstein in fact has a legal right to convey title to this property, as far as I can see.

The Notary ONLY verified that it was indeed Ted Bernstein and that he showed proper ID, a Notary is not a lawyer, nor a court clerk. The title company needs to prove via a court recorded document that Ted Bernstein had a legal right to sell said property.

This is the reason to use a title company to close a LEGAL real estate transaction. The title company insures the title, researches recorded documents and PROVES who has rights to convey property.

Anyone can sign any document and swear that what the document says is true. The Notary swears that it is that person and not that the person is telling the truth, or has a legal document of FACT. Nor does the notary provide any kind of legal recorded proof that this person is entitled to swear to this information as a matter of law. A Notary simply verifies the identity of the person who signs the document.

All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company sold an insurance policy with this real estate transaction insuring that the title was clear to sell to said buyer, when in fact Ted Bernstein did not have a legal right to sell this property, as far as the documentation provide shows.

Ted Bernstein is NOT the true and correct, proper "Grantor" named in the warranty documents.

Ted Bernstein could have just as easily signed an affidavit swearing that he was the seller of the White House, and a Notary would have verified the document, only to the extent that it was indeed a man named Ted Bernstein, whom had the proper identification to prove his identity. And this has NOTHING to do with proof of title rights.

A signed affidavit from someone claiming rights to sell the White House, as in this example, would not give the person the legal right to do so, nor does it in the case of this real estate transaction.

**This is a fraudulent real estate transaction, in my expert opinion**. The question then becomes did the title company get kick back on this deal? Was the title company promised future deals with these powerful men Ted Bernstein and **George Wesley Thomas Voorheis**?

It is a title companies job, BEFORE issuing a title insurance policy, to make sure that the title is clear and is able to be Sold. Said property seems to be in major legal dispute and is part of an estate in litigation, of which Ted Bernstein is NOT the Trustee, as appointed by a court of law.

This title company took a man's word that he owned a 1.6 Million dollar property, and let said man sell this property, without legal ownership. Upon my knowledge and belief, this title company has massive liability over this issue.

**Notes on the Shirley Bernstein Trust Agreement pages provided in the closing documents of said property.**

This document has no clear sign of being true and correct. As a real estate Broker, I would not take this as proof that Ted Bernstein had a right to be a SELLER aKa Grantor of this property.

This is simply a document that may or may not have been actually signed by Shirley Bernstein. The correct and lawful procedure in these matters, in my expert opinion is the subject property to have gone through probate, and have a court appointed executor or trustee of the estate.

The legal process is not simply for someone who wants to be an heir to swear they are and then a Title Company allows

this person to sell millions of dollars of real estate they CLEARLY have no proof of owning.

In order for me to prove title and allow a person to act as Seller, I would have to see the probate documents, and the court rulings that granted Ted Bernstein the power to be the executor or the estate, have legal rights to the deed, and execute the sale of the subject property.

There seems to be no court document that gives Ted Bernstein the LEGAL right to sell subject property, there is only a man saying he has the right and a title company issuing title insurance on a multi-million dollar property insuring the title on said property.

In my experience, professional title companies go to the courthouse records for proof of liens, judgements, deed rights, estate issues and they do NOT simply take a sworn statement from a man who swears he is the legal Seller and give this man the absolute rights to millions of dollars of property of which he clearly has no probate, court stamped, judicial documents to prove this is true.

**Notes on the warranty deed dated the 18th day of April, 2013**

This appears to be fraudulent as there is no court document in which appoints Ted Bernstein as Successor of the Shirley Bernstein Trust. There does not seem to be any LEGAL documents that prove that Ted Bernstein has rights to the subject property as Successor, Executor, Trustee, Seller or Grantor.
Here we see **a Ted Bernstein who himself claims to be a "Successor Trustee", acting as Grantor selling subject property to Grantee G. Wesley Veorheis, a Canadian Resident, and there seems to be something amiss in this transaction.**

There appears to be fraud in this transaction and I advise the true and correct heirs of the Shirley Bernstein estate to file legal action against All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company, against the Corporate Company and the individuals involved in the sale, who may have been involved in kickback schemes or other anti-trust and civil conspiracy violations in this real estate transaction.

From what I can determine, and in my expert opinion, **Ted Bernstein is not the legal "Grantor"** and therefore has no legal right to convey title to said property.

**All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company have no legal right to have provide an insurance policy that guaranteed this title.**

Just because there is a Notary and witnesses who signed the Warranty Deed, does not in any way legally prove that All Regency Title dba US Title of Florida had a LEGAL right to allow Ted Bernstein to act as Grantor or Seller of Subject Property.
I see no proof, whatsoever that Ted Bernstein is the rightful Grantor, and therefore this transactions appears to be fraudulent.

Just because there is a Notary and witnesses who signed the Warranty Deed, does not in any way legally give this title company right to provide title insurance through their title insurance provider Old Republic National Title Insurance Company, with corporate offices in Minneapolis, MN.

Again, **a Notary stamp is not a COURT STAMP, nor a Judicial Ruling.**

**Regarding the "Certificate of Approval"**

This document appears to be directly from the Condo Association. I have not read the bylaws of the Aragon Condominium Association, however, in my professional opinion, there may be some fraud between **Ted Bernstein and the Aragon Condominium Association president James McGee.**

The association in most cases can approve membership, and may be able to exclude certain people, however the association seems to be providing certification to further DUPE the title company, by claiming they have the power to **give Ted Bernstein approval to convey title for Wesley George T. Voorheis to acquire.**

Did the association have court documents that proved that Ted Bernstein had a right to convey title? If not then it is my opinion that the Aragon Condominium Association and that James McGee personally are also liable for what looks to be a real estate heist to me.

**Regarding Non Identity Affidavit**

This documented is suspected to be a fraudulent tax document. As Ted Bernstein has no proof that he is the court appointed Trustee in this matter and has no legal right to certify that he owes no estate tax in this matter.

Ted Bernstein may be committing fraud against the U.S. government in possibly illegally conveying title to a property he has no legal right to and at the same time claiming **himself tax exempt for this millions of dollars in alleged inheritance.**

I recommend that the true and correct heirs notify the Florida and U.S. Tax Authorities on this issue. As there may be a

great deal of estate tax due on this matter, and Ted Bernstein has no legal proof that he can speak on behalf of the Shirley Bernstein estate.

Based on my experience it is a standard of practice in real estate regarding estate issues, for the property to go through probate, have a court appointed trustee and proceed through the courts and **NOT through a sworn affidavit by a dreamy eyed family member wishing to receive millions of tax free dollars.**

If any potential heir or for that matter any person off the street can sign a document to swear they have rights to property, with no recorded deed or court order, well then this is a serious matter that the Department of Justice and Attorney General need to look into, as this title company may have done this before and thereby created many victims in this scheme. It is not lawful to let anyone claiming they have title right to sell other people's property.

It is the PURPOSE of purchasing the Title Insurance Policy, which I assume the Shirley Bernstein Estate paid for, that this policy guarantees to the buyer that Ted Bernstein has the right to sell the property and that all liens, judgments, tax issues on said property have been taken care of and cleared by a court of law.

If not then the Title Insurance company and policy provided has a serious liability not only to the buyer but to the actually true and correct heirs of the Shirley Bernstein estate, whomever the courts deem that to legally be.

As a professional real estate service provider, be it a title company or a real estate brokerage, we are taught to make absolute SURE that a Seller has a legal right to sell a property. This is mostly done by a true and correct, court filed warranty deed in the name of the SELLER aKa Grantor, with the names of the people who will be signing a listing agreement with a real estate brokerage or closing documents with a local title company.

It is not standard of practice, ethical nor lawful to use the closing process and title insurance policy of a local title company in place of a legal, court documented estate and probate proceedings, as a matter of law.

In my experience Sellers aKa Grantors do not sell properties by swearing to an affidavit that they have a right to sell. This would make it so that anyone who wanted to be an heir, or anyone of the street for that matter, could simply go to a notary and sign a document swearing they have a right to sell, and without title in their name sell millions of dollars in property.

It is my professional opinion that this title company is liable to the true heirs of the Shirley Bernstein estate and possibly even interest, punitive damage, and criminal charges.

It is my experience that in an Estate settlement, the Estate is settled in full before property is Sold, another words there would be probate and estate process as a matter of law. And if Ted Bernstein has proper legal documentation then he would have a deed in his name, and from that deed he would then be the Grantor.

See In Barnhart v. Hovde, 490 So.2d 1271 (Fla. 5th DCA) for reference on this matter., review denied 510 So.2d 543 (Fla. 1986), Hovde was named trustee for the beneficiaries, who were her stepchildren. Hovde sold a trust asset (an apartment complex) without obtaining a court order to do so in violation of Fla. Stat. 737.403(2). Hovde had conflicting interests with the beneficiaries of the trust, and the sale of asset resulted in benefit to the trustee and a detriment to the beneficiaries. Id. The Trustee had interests which definitely conflicted with those of the other beneficiaries, which resulted in a benefit to the trustee and a detriment to the other beneficiaries, and the Court found that Hovde violated the terms of the trust and applicable state statutes. Id.

Again an affidavit is not a legal document proving title rights. **This affidavit is a man claiming under penalty and perjury that he has legal rights to be the Grantor of said property**, however this is not a legally binding document in which I, as a Real Estate Broker would accept as proof of entitlement to act as Seller or Grantor.

It is not a Power of Attorney, it is not a legally filed Warranty Deed in Ted Bernstein's name, nor is it a court order ruling that Ted Bernstein is the true and correct, LEGAL Seller, Owner, Grantor of said property.

This document appears to be a Ted Bernstein claiming that he has the rights to be the Seller, Grantor and is the Successor Trustee, Executor of the Shirley Bernstein estate and that with this claim he promises to **NOT hold All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company liable for any legal actions, legal fees in the future, or any other future liability.**

Ted Bernstein does not seem to be the LEGAL Seller / Grantor of said property and therefore cannot be in a legal agreement releasing All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company of liability regarding the matters of the Shirley Bernstein estate.

**Conclusion**

In my expert opinion, the title company in this case, All Regency Title dba US Title of Florida, has made a grave error in allowing Ted Bernstein to sell the subject property with the documents provided to them.

And it is my professional opinion that All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company, needs to file notice of insurance claim, fraud and massive liability in this matter as soon as possible.

As a Real Estate Broker owning my own firm, I would not let Ted Bernstein have listed this property for sale, nor would I have allowed any agent working for me to do so. As there is no court documented proof that Ted Bernstein has a legal right to sell said property and I would not put my liability insurance provider nor my company at that risk.

A title company has even a greater risk in guaranteeing title, and is therefore liable to the heirs of the Shirley Bernstein Trust.

No reputable real estate company SHOULD take this property as a listing, due to the inability to prove who has property authority and rights of Grantor / Seller.

It is my opinion that Ted Bernstein has used **All Regency Title dba US Title of Florida to circumvent the legal process and thereby gaining title to Shirley Bernstein's property.**

Ted Bernstein went straight for the paycheck, and skipped the step of gaining legal title to the property first. Therefore avoiding estate tax, capital gains, and the process of fighting the legal heirs of the Shirley Bernstein Trust in order to obtain money from the sale of the subject property.

It is my opinion that the true and proper legal heirs of the Shirley Bernstein estate should use all legal means necessary regarding All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company, in order to make this right.

**Florida Laws: FL Statutes - Title XLII Estates and Trusts Section 736.0101 Short title. seem to have been violated in this transaction.**

As a Real Estate Broker owner experienced in all manner of real estate for over 13 years, including estate, trust tax issues, and all related matters, I strongly advise the true legal heirs of the Shirley Bernstein estate to contact a Florida lawyer and sue All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company of Minneapolis.

**Corporate Headquarters:**
**Old Republic National Title Insurance Company**
**400 Second Avenue South**
**Minneapolis, MN 55401**
**(612) 371-1111**

I, Crystal L. Cox am fully qualified to give this real estate opinion and forensics analysis. I am not a lawyer. I am a fully qualified real estate advisor and forensics expert. I am FULLY qualified to provide expert witness and expert opinion in the Shirley Bernstein estate on all related matters discussed herein, real estate matters.

Written By

**Crystal L. Cox**

Real Estate Broker Owner
Real Estate Forensics Expert
Expert Witness Real Estate
Real Estate Fraud Expert
Real Estate Consultant"

Source; **April 18th 2013 Real Estate Forensics Report by Broker Crystal Cox; Original Report**
https://docs.google.com/document/d/1hjawNPI4EXpN0L8oZ33Pmpimgh3073da5_i0iVIQtw/edit

## About the Title Company who closed this sale

**Gregory S Gefen** is president and managing member of **Signature Title Group, LLC** and personally oversees all closings.

Greg has been admitted to the Florida Bar since 1991 and is a member of the Real Property, Probate and Trust Section.

Greg has been a member and agent of several of South Florida's largest title underwriter, since founding his law firm, **Gregory S. Gefen**, PA, in 1995 www.gefenlaw.com.

He resides in Boca Raton

Posted by Crystal L. Cox at 10:05 AM No comments: G+1 Recommend this on Google

Awesome Inc. template. Powered by Blogger.

# Alan B. Rose of Mrachek, Fitzgerald, Rose, Konopka, Thoma Weiss Florida Probate Case

lorida Estate and Probate Case, Forgery, and Alleged Murder, blog written upon information, knowledge and belief of Crystal L. Cox, Blogger.

Alan Rose | 7020 Lions Head Lane Boca Raton | Docket Northern Illinois Case | Simon Bernstein Trust Heritage Jackson National District Court | Shirley Bernstein Estate Docket | Simon Bernstein Estate Docket | 7020 Lions Head Lane Boca Raton | Shirley Bernstein | Simon Bernstein | Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case | Judge David E. French | Robert Spallina | Mark Manceri | Donald Tesch | Tescher and Spallina Law Firm | Mark Manceri | Petition to Freeze Estate Assets | Estate Fraud Docket | Insurance Proceed Scheme | Donald Tescher | Robert Spallina | Ted and Deborah Bernstein | Life Insurance Concepts Boca | Ted Bernstein Fraud

Thursday, June 4, 2015

## I Allege that this Web Stat is the Condo Buyer in the Shirley Bernstein Estate. I also allege that Ted Bernstein, Alan Rose, and other conspired with this buyer to get a rock bottom deal on this condo under illegal and unethical circumstance.

**Visitor Analysis & System Spec**

| | | | |
|---|---|---|---|
| Referring URL: | (No referring link) | | |
| Host Name: | | Browser: | IE 11.0 |
| IP Address: | 67.71.41.251 — [Label IP Address] | Operating System: | Win7 |
| Location: | Toronto, Ontario, Canada | Resolution: | 1366x768 |
| Returning Visits: | 0 | Javascript: | Enabled |
| Visit Length: | Multiple visits spread over more than one day | ISP: | Bell Canada |

### Navigation Path

| Date | Time | WebPage |
|---|---|---|
| | | (No referring link) |
| 26 May | 05:41:05 | tedbernsteinreport.blogspot.ca/2014/06/why-is-alan-rose-knowingly-willfully.html |
| | | (No referring link) |
| 31 May | 07:37:36 | tedbernsteinreport.blogspot.ca/2014/06/why-is-alan-rose-knowingly-willfully.html |
| | | (No referring link) |
| 4 Jun | 05:39:42 | tedbernsteinreport.blogspot.ca/2014/06/why-is-alan-rose-knowingly-willfully.html |
| | | (No referring link) |
| 4 Jun | 05:40:53 | tedbernsteinreport.blogspot.ca/2014/06/why-is-alan-rose-knowingly-willfully.html |

Posted by Crystal L. Cox at 7:03 AM No comments: g+1 Recommend this on Google

## Eye on Alan Rose of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. in West Palm Beach, Fla.. in West Palm Beach, Florida.

Alan Rose has a NEW CASE. Well Let's keep an eye on this one too; Transparency

"WEST PALM BEACH, Fla. (Legal Newsline) - A prominent class action law firm is suing two firms with which it partnered on a class action lawsuit in Florida for allegedly failing to pay it a fee.

Cohen, Milstein, Sellers & Toll, PLLC filed the lawsuit in Palm Beach County Circuit Court on May 5 against Anderson + Wanca and Bock & Hatch LLC, claiming it is owed about $280,000 in fees for joining in on the class action lawsuit. Bock & Hatch removed the case to U.S. District Court for the Southern District of Florida on May 26.

The suit claims Cohen Milstein agreed in March 2012 to to serve as the local counsel for a class action suit in which the firms were involved in Florida. The two sides came to terms on a fee agreement and also agreed that Cohen would receive 20 percent of the attorneys' fees awarded in the class action suit, the complaint says.




To Read this WHOLE BLOC posts on the bottom right page. Don't let this Florida Insurance FRAUD and Forg YOU.

Posts

Alan B. Rose of Page Mr Fitzgerald & Rose LI...
Eliot Bernstein Iviewit I Interview Dick Wo...
Alexandra aka Monica in Bernstein
Alan B. Rose is MADD as he ain't goin...
Hey Lindsay, you may w the ol' digital...
Alan B. Rose of Page Mr Fitzgerald & Rose Ge...
UNITED STATES DISRICT SOUTHERN DISTRICT OF
You know that Mark Twa "Truth is stranger...
John Pankauski, Pankau Alan B. Rose, ...
Who does Alan B. Rose Mrachek, Fitzgerald ...
Don Sanders, Jackson N seems to have m...
Oh and you Spineless, C Lawless, Free Spee...
Burke, Warren, Mackay Taking a Look
Alan B. Rose of Page Mr Fitzgerald & Rose se...
Folks, Alan Rose is a MA Hypocrite. ...
Alan B. Rose, Esq. seem suppressing speech...
Eliot Bernstein and iVie
Isn't Armonk, New York Lamont's neck of th...
Don Sanders, assistant V National Life ...
Life Reassurance Corp. - Bankers Life Insu...
Judge Amy J. St. Eve is Davis Polk & W...

Case: 1:13-cv-03643 Document #: 297-11 Filed: 11/09/17 Page 61 of 76 PageID #:15191

In October, the court awarded about $1.4 million in attorneys fees. Cohen Milstein claims Anderson has not paid the 20 percent contingency fee made in the fee agreement.

In March, Anderson acknowledged the fee agreement, but "demanded" Cohen Milstein reduce the fee, the lawsuit said.

In addition to the $280,000, the plaintiff is also seeking lost profit damages, plus court costs for filing the suit.

The law firm is represented by Alan B. Rose **of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. in West Palm Beach, Fla.**

U.S. District Court for the Southern District of Florida case 9:15-cv-80662"

Source
http://www.washingtonexaminer.com/cohen-milstein-suing-fellow-class-action-firm-over-fees-from-fla.-case/article/feed/2176218

Also Check Out
of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. in West Palm Beach, Fla.
http://attorneyalanrose.blogspot.ie/

Posted by Crystal L. Cox at 6:23 AM No comments: g+1 Recommend this on Google

Saturday, May 30, 2015

## I am Reporting on the Simon Bernstein Estate CASE and will continue to do so. My reporting is NOT controlled by anyone but ME. Alan Rose continues to WHINE.

Alan Rose is acting suspicious, does he WANT Eliot to complain about Judge Coates? It sure looks like it. What is Alan Rose REALLY up to?




**Why wine about this DRIBBLE now?** There is a new judge, we shall see if the law is obeyed. Alan Rose seems to be pushing to disqualify Judge Coates, why is that?

I mean the Proskauer Rose thing is true, however if Judge Coates were to sign a Conflict of Interest Disclosure then maybe no issue, either way why in the world is Alan Rose so whiny about all this?

Sounds like Alan Rose should file a motion to disqualify himself instead of pushing Eliot Bernstein to do it.

Oh and I love that Florida Attorney Alan Rose is hanging on my every word INSTEAD of doing his JOB. Just obey the law and don't worry about the bloggers dude.

Either Coates will do a lawful, ethical, constitutional job or not?

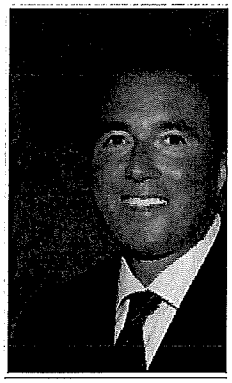
I have never seen Alan Rose show so much knowledge about iViewit, oh and so much love for me, It kind of makes me blush actually.

Judge Coates must be a Good Guy for Alan Rose to show such disingenuous concern over possibly conflicts. Things that make you say hmmm...

**Check out the eMails below. (Transparency and Accountability)**

Celebrity New York
WOW, a full days wages National Empl...
Pam and Ted CUT out of they seem to be...
Whatch all worried abou Fines, Judgement...
Not Getting Much Work ya? I sure ho...
303 East Wacker Drive S Chicago Illinois
STP Enterprises, Inc. - F
Jackson National Life Di Registere...
So Where Does Christop Ex Proskauer...
Carol Ann Kindred at He Life Insurance...
Heritage Union Life Insu is well awar...
So, who at Jackson Nati palms, all ...
So is Pamela Simon the i in all this?...
Jackson National Life In Company has HUGE L...
oh and Don't Forget the CONDO and how...
More on Michael A. Well National Life Co...
Looks to me like Jackso Little SPOO...
So Funny, that Heritage Insurance Compa...
Heritage Union Life Insu is well awar...

Ted Bernstein



Life Insurance Concepts

Blog Posts

Is Google Really the Best Conduct a Fraud, ...
Welcome Back, How is t Investigation Goi...
Order for Discharge and Counsel Tesc...
Morgan Stanley Group N Tescher & Spalli...
Judge Martin Colin seen the Right Thi...
Why is Ted Bernstein NO to this Story? ...
Motion to Halt Hat Trick Believe this is ...
Hmmm.. Friend or Foe?




"From: Alan Rose
Sent: Tuesday, May 26, 2015 11:52 AM
To: 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'
Subject: Judge Coates

Mr. Eilot Bernstein:

The estate/trust cases have been assigned to Judge Coates. One order is attached but he has all of the cases.

You already have started with the internet nonsense as to Judge Coates:

(http://tedbernsteinreport.blogspot.com) as of mid-day Friday. Apparently, he worked at Proskauer, and we all know you labor under the belief that someone there stole trillions of dollars of intellectual property from you or your company.

If you object to his continued service, please advise the parties asap, so we can consider simply doing an agreed or joint motion/order requesting his recusal.

Please advise.

Alan B. Rose
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A."

---

**From:** Alan Rose
**Sent:** Wednesday, May 27, 2015 11:44 AM
**To:** 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'
**Cc:** 'John P. Morrissey'; 'O'Connell, Brian M.'; 'Foglietta, Joy A'; 'Peter J. Feaman, Esq.'
**Subject:** RE: Judge Coates

Now that Brian has set a hearing before Judge Coates, Eliot needs to speak now if he contests the court's ability to hear this case. Silence equals acceptance and waiver of any objections in my view.

Eliot has filed at least two and probably more motions to disqualify Judge Colin, and already has started with nonsense about Judge Coates.

For the record, we have no objection to Judge Coates. But Eliot may and he needs to assert that objection or waive it. There is no point having a hearing and wasting time just to have Eliot complain that day about Judge Coates.

Also for the record, the "journalist" Eliot corresponds and communicates with, Crystal Cox, posted the following highlighted material:

Friday, May 22, 2015
Was Howard Coates REALLY picked Randomly as a Judge in this Case? REALLY? Seriously? A former Proskauer Rose attorney?WOW
Was with Proskauer Rose for 10 years and now on the iViewit SCANDAL in Florida?? Are you Kidding, WOW
Well this should be interesting, hopefully lawful !!
Bio
http://15thcircuit.co.palm-beach.fl.us/web/judge-coates
http://ballotpedia.org/Howard_K._Coates
http://www.avvo.com/attorneys/33401-fl-howard-coates-1273629.html
News on ..
http://www.palmbeachpost.com/news/news/crime-law/scott-picks-three-for-palm-beach-county-judgeships/njZNL/

Alan B. Rose, Mrachek, F
Rose, Konopka &...
Hello Marc Randazza, W
PARTY, Hope yo...
Alan Rose Wants the Fir
to Be Set Asid...
Hey Liars, Thugs, Thieve
Murdering, Gre...
Hey Alan B. Rose, Mrach
Rose, Konop...
Judge Martin Colin has a
protecting the...
I keep waiting for Judge
punish, o...
Whatch hiding FROM Bo
Hey Flushing New York .
Raymond or possib...
Objection to Motion to
Personal Repres...
Objection to Motion to
Personal Repres...
I am getting me some "b
that somethin...
Why is Heritage Union L
Company Filin...
"Criminal Action through
Simulated Legal Pr...
Letter to Judge Martin
Opposition to Ted...
What is Going on with J
about not ...
Motion for Appointment
Administrator...
Ted Petition for Appoin
Successor Personal...
Alan Rose Esq., John J.
Pankauski Law F...
Chicago Insurance and C
Litigation Law Fi...
Morgan Stanley Group, T
and Tescher & ...
Wow, the Fraud Sure Se
Piling Up. Is Ted ...
Full Docket Of Heritage
Insurance Case ...
Heritage Lawsuit Illinois
Response Regar...
Reported as a Murder, y
checked is medic...
"The Document in Ques
the Inheritance ...
Looks like the Tescher E
Bernstein F...

Ted Bernstein, Tescher and Sp

- Florida Estate Forgery, F
DOCKET

Donald Tescher on Left



Judge Coates was at Proskauer between 1991 and 2000; I believe those are some of the years Proskauer represented iViewIt and possibly during the times that Eliot sued that firm. Eliot has alleged that during these years is when Proskauer stole his patents. It was an unpleasant lawsuit for the firm I'm sure, and no doubt Eliot made it as unpleasant as possible for the partners of "Porksour Rose". Eliot lost his claim in federal court back in 2008 and I believe owes the firm a sanction award imposed by Judge Scheindlin, but he has not given up on that firm and continues to mention it in recent filings.

The point here is that Eliot must advise the parties of his position and the PR needs to get this resolved before there a number of hearings.

Also, you have set too many issues for one 30 minute hearing, particularly when it would be the Judge's first involvement in the case, in my opinion.

Alan B. Rose, Esq."




Posted by Crystal L. Cox at 9:09 AM No comments: g+1 Recommend this on Google

## Has Alan Rose gone ROUND the BEND? Alan Rose is already whining to a new Judge about my blogs reporting on this case? WOW

Calm Down Alan Rose, the Law Speaks for itself. Obey the Law, tell the TRUTH, the whole Truth and nothing but, and don't worry about those reporting on this high profile never ending Florida Estate Case which is a MASSIVE public concern.

Murder Allegations and millions paid in insurance, heirs waiting years for money while Ted Bernstein sells homes and let's them run down, Ted Bernstein getting an estate paid attorney and no one else, forged documents, documents signed by dead guys to close estates, and much MORE. This case is VERY important as so many go to Florida for their retirement, yet the attorneys in this case did NOT carry out the wishes of the Deceased. So why move to Florida if Probate Court will not carry out your wishes?




How in the world has all this been allowed to go on for years in Florida Probate court? Meanwhile Eliot Bernstein's family is starved out, kids lose their school and they are constantly harassed by Alan Rose attorney(paid by the estate in which is bullying the other heirs it seems) and others in the case. All this in a simple estate, that should have easily been settled years ago.

Now Alan Rose is WHINING to the New Judge about my blogs, again claiming my blogs are Eliot's and they are MY BLOGS, controlled by me.




Check this whiny Dribble out; GROW UP ALAN ROSE
https://docs.google.com/file/d/0Bzn2NurXrSkiNzZxRGtvb01MTzA/edit

Florida Estate Forgery, F
DOCKET

Blog Archive

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▼ June (2)
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► 2013 (31)

**Marie Chandler**

**Subject:** FW: Case Nos. 502011CP000653, 502012CP004391, 502015CP00162, 502014CP003698 XXXXMBIJ
**Attachments:** ABR to Judge Coates 05-29-15 re Bernstein Matters.pdf

**From:** Marie Chandler
**Sent:** Friday, May 29, 2015 4:39 PM
**To:** (Redacted)
**Cc:** Alan Rose
**Subject:** Case Nos. 502011CP000653, 502012CP004391, 502015CP00162, 502014CP003698 XXXXMBIJ

Dear Ms. Phillips:

Pursuant to your permission given to Mr. Rose, attached please find correspondence from Mr. Rose to Judge Coates.

cc: All parties on all service lists attached to letter.

Marie B. Chandler
Assistant to L. Louis Mrachek and Alan B. Rose
Email: mchandler@mrachek-law.com
Direct: (561) 472-2417
MRACHEK FITZGERALD ROSE KONOPKA THOMAS & WEISS, P.A.
505 S. Flagler Drive, Suite 600

Posted by Crystal L. Cox at 8:59 AM No comments: Recommend this on Google

2000 Since clerk of Proskauer

Will That Insure That Al Gortz

Friday, May 22, 2015

## Was Howard Coates REALLY picked Randomly as a Judge in this Case? REALLY? Seriously? A former Proskauer Rose attorney?WOW

Was with Proskauer Rose for 10 years and now on the iViewit SCANDAL in Florida?? Are you Kidding, WOW

Well this should be interesting, hopefully lawful !!

1990s - Proskauer rep. iViewit + Eliot

Bio
http://15thcircuit.co.palm-beach.fl.us/web/judge-coates

http://ballotpedia.org/Howard_K._Coates

http://www.avvo.com/attorneys/33401-fl-howard-coates-1273629.html

News on ..

http://www.palmbeachpost.com/news/news/crime-law/scott-picks-three-for-palm-beach-county-judgeships/njZNL/

Posted by Crystal L. Cox at 12:57 PM No comments: Recommend this on Google

Proskauer collects acts w EB $444K

YAY Judge Colin Recused himself. Good Thing, as he has fumbled around for years. We shall HOPE that a New Judge is MORE Lawful and Ethical.

To Download
https://drive.google.com/file/d/0Bzn2NurXrSkidVdlWENfTFZoaG8/view?usp=sharing

Nasty Wtgul

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

CASE NO: 502012CP004391XXXXSB
PROBATE DIVISION: IY

THE ESTATE OF
SIMON L. BERNSTEIN,
Deceased.
_____/

ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.

Posted by Crystal L. Cox at 12:03 PM No comments: g+1 Recommend this on Google

Thursday, May 21, 2015

## so Ted Bernstein Never Called the Sheriff and reported a murder? never contacted a corner? and he did not report that Robert Spallina was acting as .. hmmm Check it Out

https://drive.google.com/file/d/0Bzn2NurXrSkiVGt5bVlwcE9vQ00/view?usp=sharing

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95,

Plaintiff,

v. Case No. 13 cv 3643

HERITAGE UNION LIFE INSURANCE
COMPANY,

Defendant,

HERITAGE UNION LIFE INSURANCE
COMPANY,

Counter-Plaintiff

v.

SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95

Counter-Defendant

Posted by Crystal L. Cox at 10:59 AM No comments: g+1 Recommend this on Google

Tuesday, May 19, 2015

## Wells Fargo AGAIN ?

Visitor Analysis & System Spec

| | | | |
|---|---|---|---|
| Search Referral: | www.google.com/ (Keywords Unavailable) | | |
| Host Name: | bp06aloxdc-out.wellsfargo.com | Browser: | IE 8.0 |
| IP Address: | 159.45.71.14 — [Label IP Address] | Operating System: | Win7 |
| Location: | Saint Louis, Missouri, United States | Resolution: | 1600x900 |
| Returning Visits: | 1 | Javascript: | Enabled |
| Visit Length: | Not Applicable | ISP: | Wells Fargo & Company |

### Navigation Path

| Date | Time | WebPage |
|---|---|---|
| | | www.google.com/ (Keywords Unavailable) |
| 19 May | 06:28:41 | tedbernsteinreport.blogspot.com/ |

Posted by Crystal L. Cox at 6:52 AM No comments: g+1 Recommend this on Google

Friday, May 15, 2015

## Petition to Remove Judge Martin Colin from the Simon and Shirley Bernstein Estate Cases in Florida. Judge Martin Colin has let massive crimes occur in his court and has seriously caused irreparable harm to the victims in this case.

Click Below to Read or Download this Court Filing
https://docs.google.com/file/d/0Bzn2NurXrSkiRlp6bTUyVnZZYmc/edit

Judge Martin Colin has let this Fraud, Forgery, Alleged Murder Case go on and on for years. He must, as a matter of law be removed. Judge Martin Colin has serious conflicts of interest in this case.

Filing # 27319445 E-Filed 05/14/2015 05:23:02 PM

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

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

PROBATE DIVISION
CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

_____/

Other Applicable Related Cases this Disqualification of Judge Martin Colin Should Apply to:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate

Case # 502011CP000653XXXXSB – Shirley Bernstein Estate

Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

Case # 502014CP003698XXXXSB – Shirley Trust Construction

Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB

_____/

Posted by Crystal L. Cox at 5:13 AM No comments: g+1 Recommend this on Google

Wednesday, May 13, 2015

## Heritage Union Life Insurance Company is well aware of what is going on in the Simon Bernstein Case. So is Heritage Union part of the fraud? If not then why have they, themselves not joined in to SUE Tescher & Spallina and to cry out fraud on the courts, insurance fraud and possible murder?

**Letter To Mark Sarlitto ~ Senior Vice President and General Counsel of Heritage Union Life Insurance Company / WiltonRe and Chris Stroup ~ Chairman of the Board of Directors and Chief Executive Officer.**

"From: Eliot Ivan Bernstein [mailto:iviewit@gmail.com]
Sent: Wednesday, May 21, 2014 6:19 AM

To: **Mark Sarlitto** ~ Senior Vice President and General Counsel @ Heritage Union Life / WiltonRe (msarlitto@wiltonre.com); **Chris Stroup** ~ Chairman of the Board of Directors and Chief Executive Officer @ Heritage Union Life / WiltonRe (cstroup@wiltonre.com)

Subject: URGENT RE INSURANCE FRAUD -
**Policy Number: 1009208 on the life of SIMON L. BERNSTEIN**

Dear Mr. Stroup and Mr. Sarlitto @ Heritage Union Life / Wilton RE,

I am writing regarding the Life Insurance Policy on my father, Simon L. Bernstein (deceased), Policy No. 1009208. It has come to my attention through a Federal Court case titled "Simon Bernstein Irrevocable Insurance Trust Dtd 612111995, et. al. v. Heritage Union Life Insurance Company, et. al," Case No.13 cv 3643 in the US District Court Northern District of Illinois that a claim was filed with Heritage by a one **Robert Spallina, Esq. of the law firm Tescher & Spallina PA**, acting as the Trustee for an **alleged lost trust** named **"The Simon Bernstein 1995 Irrevocable Insurance Trust"** claimed to be the Contingent Beneficiary, however **no executed copies of the Trust exist as of this date.**

Further, **Mr. Spallina represented** that **he has never seen nor been in possession of the lost trust**, yet he filed a claim with Heritage Union acting as the Trustee **of that lost trust he never saw or possessed.**

Further, from production documents in the Federal Case it was also learned that Spallina additionally **represented himself to the carrier as the Trustee of the alleged Primary Beneficiary of the Policy, a one LaSalle National Trust, N.A.,** of which he also is not.

The claim was **DENIED due to the inability to show a proper beneficiary and produce a legal valid trust document as beneficiary.**

Legally, **a valid executed trust instrument must be present at death for a trust to be paid any benefits and in the case of a lost beneficiary at death Florida law is clear that the benefit should be paid to the Estate of the insured.**

Mr. **Spallina and his partner Donald Tescher**, Esq. have **recently resigned** as Personal Representatives/Executors, Trustees and Counsel to the Estate and Trusts of Simon Bernstein, after **admittedly altering Trust documents** in my parents Estates and Trusts to illegally change beneficiaries and whose **Notary Public and Legal Assistant, a one Kimberly Moran has been arrested and convicted of Fraud** and admitted to six counts of FORGERY of estate documents, including **a POST MORTEM FORGERY** of my deceased father's name in efforts to alter the beneficiaries of my deceased mother's estate.

They also **used my deceased father to act as Personal Representative/Executor** after he was deceased and consummated a fraud **on the Florida Probate Court under Judge Martin Colin**.

**After the claim was rightfully denied by Heritage,** certain of Simon's children who were **wholly disinherited in the Estate** plan by both Simon and his deceased spouse Shirley, Theodore Stuart Bernstein and Pamela Simon, **filed a Breach of Contract lawsuit against Heritage Union** and in this action **Theodore suddenly now claimed he was the Trustee of the lost trust and not Spallina.**

Theodore Bernstein it has been learned from a Palm Beach County Sheriff investigation report, attached herein, is **alleged to have taken already improper distributions of assets in his alleged fiduciary capacities, AGAINST THE ADVICE OF COUNSEL.**

You will note that in Jackson National's initial opposition to the lawsuit on behalf of Heritage, **Jackson also claimed that Theodore had NO LEGAL STANDING to the file the lawsuit in the first place** and was advised by counsel of such, which appears **a correct legal analysis**.

Due to these alleged FRAUDULENT ACTIVITIES that took place in the filing of the life insurance claim, I have contacted the Jacksonville, IL Police department and spoke with **Detective Scott Erthal** who opened **Case No. 2014000865**.

Detective Erthal then contacted me and told me **he had spoken to Carol Ann Kindred at Heritage Union and that they would be conducting the initial FRAUD investigation internally**.

I was surprised when I got the attached letter from C.A. Kindred, which attempts to inform me that **Heritage is not investigating the alleged FRAUDULENT** claim filed with the company, most surprising is **why she did not direct her letter to Detective Erthal** and instead contacted me to inform me that Heritage was **refusing to conduct an investigation.**

**C.A. Kindred also stated that the Federal Court would be handling the Fraud issues and obviously Federal Courts do not conduct criminal investigations or insurance investigations.**

As you may know, **life insurance carriers are legally required to attempt to find the true and proper beneficiary of an**

Case: 1:13-cv-03643 Document #: 297-11 Filed: 11/09/17 Page 68 of 76 PageID #:15198

insurance contract upon death and in this instance no effort has been made to [illegible] LaSalle National Trust, N.A. to join the Federal lawsuit by the life insurance carrier or any other party and attempts are being made to pay an alleged contingent beneficiary (the lost trust, which is **not listed with the carrier as the contingent beneficiary** according to their records) without first **paying the Primary Beneficiary, a truly bizarre case.**

The Life Insurance contract has also not been produced and it appears Heritage and their Successors and their reinsurers **have all lost the contract that the Breach of Contract lawsuit was filed on**, making an almost **surreal lawsuit where neither the alleged Plaintiff, the lost trust is legally nonexistent and the contract the breach is based upon also does not exist.**

In efforts to secure the contract I am asking that you check your files for Heritage and see if you can locate one. It also has come to my attention that no one has notified the Primary Beneficiary or made any efforts to this date to make contact with them, LaSalle National Trust, N.A., which is now owned by:

Chicago Title Land Trust Company
10 South LaSalle Street, Suite 2750
Chicago, Illinois 60603
Tel: [illegible] 312.223.2195

As hearings in the Federal Case are proceeding quickly, your prompt attention to these matters is required and please inform me of your work with the Jacksonville PD so that I may know if this matter has to be investigated **by Federal Authorities at this time for the initial alleged Fraudulent claim made to Heritage Union that Heritage and its successors refuse to investigate internally.**

I have contacted your offices as it appears that the Heritage Union Life Insurance Company website was taken down and refers now **to Wilton RE as the successor.**

Attorney for **Jackson National Life in the Federal case, Alexander Marks, Esq.** has told the Federal Court Judge, Amy St. Eve, that Heritage et al. while being discharged from the Federal lawsuit would be willing to help the parties in any way and this **refusal to investigate is directly opposite this claim** and if further problems stand in the way I will be forced to seek leave to have all parties **reinstated in the Federal action instantly, including now Wilton RE.**

Finally, from reviewing the production materials in the lawsuit, it appears that certain **carrier files may have been tampered with by an insider,** who Plaintiffs have claimed was willing to pay an insurance claim **without any proper beneficiary documentation and we are also looking to find who this party is.**

Thank you for your cooperation in these matters and please feel free to contact me with any questions or further information.
Eliot

Eliot I. Bernstein"

**Attached the Letter were These Two Documents**

https://drive.google.com/file/d/0Bzn2NurXrSkiaIlSQ0U1RVpqdVk/edit?usp=sharing

https://drive.google.com/file/d/0Bzn2NurXrSkiNkNTVzV1S1NZTEk/edit?usp=sharing

So Heritage Union Life Insurance Company is very aware of what is going on in this case. What will they do, if anything, is yet a mystery.

Posted by Crystal L. Cox at 11:54 AM No comments: [illegible] Recommend this on Google

## Hey did one of you bad guys hide your money at Lloyds Banking Group Plc

**Visitor Analysis & System Spec**

| | | | |
|---|---|---|---|
| **Search Referral:** | www.google.co.uk/ (Keywords Unavailable) | | |
| **Host Name:** | | **Browser:** | IE 8.0 |
| **IP Address:** | 141.92.129.44 — [Label IP Address] | **Operating System:** | WinXP |
| **Location:** | United Kingdom | **Resolution:** | 1680x1050 |
| **Returning Visits:** | 0 | **Javascript:** | Enabled |
| **Visit Length:** | 2 mins 32 secs | **ISP:** | **Lloyds Banking Group Plc** |

### Navigation Path

| Date | Time | WebPage |
|---|---|---|

Case: 1:13-cv-03643 Document #: 297-11 Filed: 11/09/17 Page 69 of 76 PageID #:15199

www.google.co.uk/ (Keywords Unavailable)
13 May 08:05:19 tedbernsteinreport.blogspot.co.uk/2014/02/alan-rose-wants-first-amendment-to-be.html
www.google.co.uk/ (Keywords Unavailable)
13 May 08:07:51 tedbernsteinreport.blogspot.co.uk/2015/04/judge-martin-colin-ordered-alan-rose.html

Posted by Crystal L. Cox at 8:13 AM No comments: +1 Recommend this on Google

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# Florida Probate Fraud, Forgery and Corruption; Simon Berns Estate Case

Florida Estate and Probate Case, Forgery, and Alleged Murder, blog written upon information, knowledge and belief of Crystal L. Cox Blogger.

Alan Rose | 7020 Lions Head Lane Boca Raton | Docket Northern Illinois Case | Simon Bernstein Trust Heritage Jackson National District Court | Shirley Bernstein Estate Docket | Simon Bernstein Estate Docket | 7020 Lions Head Lane Boca Raton | Shirley Bernstein | Simon Bernstein | Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case | Judge David E. French | Robert Spallina | Mark Manceri | Donald Tesch | Tescher and Spallina Law Firm | Mark Manceri | Petition to Freeze Estate Assets | Estate Fraud Docket | Insurance Proceed Scheme | Donald Tescher | Robert Spallina | Ted and Deborah Bernstein | Life Insurance Concepts Boca | Ted Bernstein Fraud

Monday, September 14, 2015

## oh and you do know that Blogging is a Constitutionally Protected Activity RIGHT?

Do you need me to list cases to assist you in this? Besides my MAJOR, Landslide one of a kind court of appeals win, there are tons of courts that flat out state that blogging is a constitutionally protected activity.. just a factoid.

So here we go, more whining from the Ted Bernstein camp. Why? The TRUTH really would be easier. Simply DO THE RIGHT THING and OBEY the LAW.

oh and for the 10 millionth time, Eliot Bernstein DOES not control any of my blogs, never has and never will. I have a constitutionally protected right to report on this case.

Posted byCrystal L. Coxat8:30 PM No comments: G+1 Recommend this on Google

## Hey Alan

Don't forget when tattling on me for reporting on this story, there are tons of blogs you missed such as

http://attorneyalanrose.blogspot.com/

Updates to ALL coming soon

http://donaldtescher.blogspot.com/

http://robertspallina.blogspot.com/

http://judgemartincolin.blogspot.com/

oh and hundreds of other blogs on this and connected cases exposing corruption in the Florida Probate Courts, Family Court, Police Investigations, Intellectual Property and patent lawyers and lot's more documents of undeniable PROOF. Should an honest court ever actually take a look.

Posted byCrystal L. Coxat8:24 PM No comments: G+1 Recommend this on Google

Saturday, September 12, 2015

## POOR Baby Ted Bernstein is going to Use his Legal Power ?? to STOP the First Amendment? Or is it use legal remedies to huff and puff? So funny Ted Bernstein costs the "estate" millions and is now trying to avoid jail it sure seems and is whining of 100,000? What? Check out this whiny DRIBBLE.

To Read this WHOLE BLOG, posts on the bottom right, p page. Don't let this Florida I Insurance FRAUD and Forge YOU.

Posts

Alan B. Rose of Page Mrach & Rose Li...
Eliot Bernstein Iviewit Inve Dick Wo...
Alexandra aka Monica inter Bernstein
Alan B. Rose is MADD as a h he ain't goin...
Hey Lindsay, you may want ol' digital...
Alan B. Rose of Page Mrach & Rose Ge...
UNITED STATES DISRICT CC SOUTHERN DISTRICT OF ...
You know that Mark Twain is stranger...
John Pankauski, Pankauski Alan B. Rose, ...
Who does Alan B. Rose of F Fitzgerald ...
Don Sanders, Jackson Natic seems to have m...
Oh and you Spineless, Cow Lawless, Free Spee...
Burke, Warren, Mackay & S Taking a Look
Alan B. Rose of Page Mrach & Rose se...
Folks, Alan Rose is a MASSI Hypocrite. ...
Alan B. Rose, Esq. seems s suppressing speech...
Eliot Bernstein and iViewit
Isn't Armonk, New York Ste neck of th...
Don Sanders, assistant VP - National Life ...
Life Reassurance Corp. - C Life Insu...
Judge Amy J. St. Eve is for Polk & W...
Cedarhurst, New York



My clattering rambling RANT is in BLUE.

"From: Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]
Sent: Friday, September 11, 2015 1:12 PM
...

Subject: Online defamation

...

"The 3rd anniversary of Dad's death is approaching and I feel obligated, as his son and your brother, to reach out to you on behalf of myself and the other professionals working for Dad's trusts and estates. "

Yes Sad isn't it Ted, that you have disgraced and dishonored your father so badly, and you have harmed his grand children, seemingly forged his signature and tied up millions of his money and your mom's money and greedily did what ever you pleased while your siblings suffered. And you feel a sense of morbid "OBLIGATION" now? What a Crock of Shit.

There were NO professionals working on your Dad's Trust, It seems to me that there were crooks, forgers, liars, thieves and those who massively dishonored your Dad's wishes, oh and broke the law.

" On numerous occasions and in many different ways, I have requested that you remove all of the blogs and websites in which you are slandering and defaming me, my family, my businesses and the judges and other professionals providing service to the trusts and estates of mom and dad; but so far you have refused. "

Does Eliot have things written online about you? Hmmm I can't seem to find them. I can't seem to find any websites or blogs that Eliot has about whiny baby Ted at all. And WOW crying about blogs defaming JUDGES?? What? Judges are public officials and COLIN umm he broke the law Ted for you, well not really you but to protect Tescher and Spallina for YOU. So it will all come out in a non-corrupt court one day, just keep on sitting there doing NOTHING to make things right and ENSURE your prison sentence COMING SOON, as far as I see it.

Slandering YOUR Business? Are you Kidding? Anyone who reads my news blogs that have nothing to do with Eliot, oh except he is a party to the case, well if they can read the actual DOCUMENTS then they can see you have broke the law, and looks to me personally that you were involved in your Dad's death or covering it up for whoever was.

So where is this slander of you, your family, your business? Oh and your business really? What business is that? the illegal Botox business? or the insurance business? whatever you actually do with that one?

"I also have asked you to cease publishing information about, and interfering in, the sale of our parents' home; but so far you have refused. "

Where has Eliot published anything about you? You mean documents of his case? or do you mean my blogs, that are published and COMPLETELY controlled by me, Crystal Cox, personally, as is my First Amendment right.

"To date, your actions have cost the Trust more than $100,000 of net sales proceeds for this property alone. "

Is this a joke? Your actions have cost around a million in attorney fees right? to keep up your LIES, right? And you have sold off condos and personal property with NO money to the actual heirs, right? And you have used up, stolen or somehow hidden millions, or so it seems from the documents I have read over YEARS. And now your whining over $100,000? WOW Alan Rose or even the Broker John Poletto got more then that right?

"As you know better than anyone, whether or not Dad adequately provided for us during his lifetime, Dad's final wishes were to leave his assets equally to his grandchildren, 3 of whom are your children. Your disappointment about this and your resulting actions are helping to ensure that most of his assets will be squandered in administrative costs and professional fees. Over the past three years, in my role as a fiduciary attempting to carry out Mom and Dad's final wishes, I have tolerated an incredible amount of abuse from you. "

Just so there is no error here to who ever you are spewing this bullshit to. YOU are the one who has hurt the grandkids and you have NOT carried out ANY final wishes. You are the abuser and NOT the VICTIM. You appear to be delusional, must be all that botox and the ???

"We hardly know one another, having virtually no contact over the past 30 years. Since our Dad died, you have made unfounded accusations about me that appear to be part of a playbook repeated by you over the past 20 years to intimidate and bully those who do not agree with you. Your motivation for slandering and defaming innocent people online is malicious and serves no purpose to the efficient administration of the trusts and estates. "

Slandering and Defaming "innocent" people? Really? Have you even read the thousands of documents of proof of the iViewit case, or even this estate case? Your CAUGHT Ted. Who ever you worked for or with at Proskauer, you are ALL caught. It is now only a matter of time before an honest court steps up to indict you ALL.

No Playbook, just Rules of Procedure and the LAW, oh and some pretty good reporting of course.

WOW, a full days wages fo National Empl...
Pam and Ted CUT out of th they seem to be...
Whatch all worried about? Judgement...
Not Getting Much Work Do ya? I sure ho...
303 East Wacker Drive Suit Chicago Illinois
STP Enterprises, Inc. ~ Pan
Jackson National Life Distr Registere...
So Where Does Christopher Ex Proskauer...
Carol Ann Kindred at Herit. Insurance...
Heritage Union Life Insurar is well awar...
So, who at Jackson Nationa palms, all ...
So is Pamela Simon the rea all this?...
Jackson National Life Insur has HUGE L...
oh and Don't Forget the BU CONDO and how...
More on Michael A. Wells, . National Life Co...
Looks to me like Jackson N Little SPOO...
So Funny, that Heritage Ur Insurance Compa...
Heritage Union Life Insurar is well awar...

Ted Bernstein



Life Insurance Concepts

Blog Posts

Is Google Really the Best W a Fraud, ...
Welcome Back, How is that Investigation Goi...
Order for Discharge and W Counsel Tesc...
Morgan Stanley Group New Tescher & Spalli...
Judge Martin Colin seems t the Right Thi...
Why is Ted Bernstein NOT this Story? ...
Motion to Halt Hat Trick. C Believe this is ...
Hmmm.. Friend or Foe?
Alan B. Rose, Mrachek, Fit: Konopka &...
Hello Marc Randazza, Welc PARTY, Hope yo...

"You endlessly level accusations against people without providing proof for what you claim. "

WHAT? Have you NOT read THOUSANDS, literally thousands of documents of proof in this and other cases connected in any way to Eliot Bernstein?

"Mom and Dad chose Tescher and Spallina to draft their documents and to act as their trusted fiduciaries upon their deaths."

YEP and Tescher and Spallina chose to go against their wishes, hook up with you and sign their name after they died and try and run off with millions. Can you say Aid and Abet?

"Members of that firm admittedly acted illegally and with poor judgment. I am sure Mom and Dad would not be pleased to learn what occurred. But their wrongdoing, which has been investigated by the proper agencies and will be addressed in a prudent manner, does not justify your continued and disruptive actions."

It doesn't? Well you helped them do those illegal acts Ted? You are the one who had poor judgement and broke the law right? Did you not work with them?

And here you are saying they admitted to the crimes, yet you want blogs talking about the crimes to stop publishing what you allege to be slander and defamation?

"Moreover, none of the people or professional firms who now provide service or act as fiduciaries, including myself, played any role in the creation of these documents. Despite these realities, you have made allegations for 3 years now, about all of us, ranging from murder, explosions and illegal Botox funding. Every allegation you have made remains only that, allegations and accusations made by you and Crystal Cox, your partner. No proof, no charges, no investigations. Nothing but carefully constructed blogs designed to trick unknowing readers.

I am not out to TRICK anyone. If these "unknowing readers" come to my blog, they can read the documents of the case and think for themselves. Read your depositions, read the police report and you claiming there was a murder then changing your story, they can KNOW as they read all of your words, and all of the documented proof that I give them and THINK for themselves. There is no requirement to believe me. I always insist that the reader have a BRAIN.

"Every single matter you are involved in results in you claiming fraud, car bombings, theft, ethical violations, professional misconduct, judicial misconduct, law suits, threats - and ultimately, online defamation of your opponents. None of these matters are related yet you use the same tactics each and every time."

Umm hey DUMBASS, there was a car bombing. Do you even give a shit that your family had someone try and murder them? hmm I guess not, why would you?

opponent?? defamation?? you mean the criminals who robbed him and his family?

"You represent yourself as an attorney, although you are not a lawyer and have no legal background or training whatsoever. Representing yourself, without competent legal counsel, you play without rules and eviscerate the boundaries and rules which counselors and judges must follow. "

Being pro se is a THING, dumb dumb. And Eliot is VERY good at it. Read the legal documents or have someone read them to you, ya um seems to be doing a very good job in the face of MASSIVE EVIL, and not just your face.

"You sued Florida Supreme Court justices, New York Supreme Court justices and dozens of companies and individuals. In New York, Judge Schiendlin has enjoined you from filing additional claims based upon your belief that your trillion-dollar technology has been stolen through a conspiracy involving courts, judges, lawyers and major tech companies, and entered sanctions against you.

"You have also litigated unsuccessfully in other states, including Nevada. Your behavior in the Palm Beach county courts is remarkably similar. You are a vexatious litigant. This appears to be a crucial part of your method."

Ummmm WHAT? Did Eliot litigate in Nevada? I have not seen

You signed a contract with Mom and Dad more than 10 years ago agreeing that you would never sue any member of your family. As a planner dealing in this area for the past 30 years, I have never heard of any other similar agreement between a child and his parents.

All of us understand that the death of Mom and Dad has been emotionally devastating for you and economically destabilizing. Your sisters and I understand the special challenges and circumstances you face and as a result, we have been extremely tolerant."

Tolerant? You have been made to obey the law and you have hated it, you have done all you can to be EVIL and have not been TOLERANT in any way"

Alan Rose Wants the First A
Be Set Asid...

Hey Liars, Thugs, Thieves,
Murdering, Gre...

Hey Alan B. Rose, Mrachek
Rose, Konop...

Judge Martin Colin has a hi
protecting the...

I keep waiting for Judge M
punish, o...

Whatch hiding FROM Boys?

Hey Flushing New York .. i
or possib...

Objection to Motion to Wit
Personal Repres...

Objection to Motion to Wit
Personal Repres...

I am getting me some "bad
that somethin...

Why is Heritage Union Life
Company Filin...

"Criminal Action through u
Simulated Legal Pr...

Letter to Judge Martin Coli
Opposition to Ted...

What is Going on with Jane
about not ...

Motion for Appointment of
Administrator...

Ted Petition for Appointme
Successor Personal...

Alan Rose Esq., John J. Pa
Pankauski Law F...

Chicago Insurance and Con
Litigation Law Fi...

Morgan Stanley Group, Tec
and Tescher & ...

Wow, the Fraud Sure Seem
Up. Is Ted ...

Full Docket Of Heritage Un
Insurance Case ...

Heritage Lawsuit Illinois, R
Response Regar...

Reported as a Murder, yet
checked is medic...

"The Document in Questior
Inheritance ...

Looks like the Tescher & S
Bernstein F...

Ted Bernstein, Tescher and Spallin

- Florida Estate Forgery, Fr
DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher and Spallin

- Florida Estate Forgery, Fr
DOCKET

Blog Archive

▼ 2015(124)

"But history is repeating itself and you have turned this into an abusive tirade against your family. After 3 years of baseless accusations about fraud, frauds and fraud on the courts, enough is enough. "

Baseless, Really? You hypocrite, you just admitted above that there was fraud, illegal activity and poor judgement and now it's all baseless? What a Dumb Ass.

"The online defamation and slandering is simply no longer an acceptable way for you to cope."

Not about COPING Teddy, it is about reporting on corruption in the Probate court in FLORIDA. Actually documents and information, REPORTING and not a way to "cope".

"I am not suggesting that you stop your campaign to prove what you believe - that is your prerogative. I am, however, pleading with you to immediately stop the defamation and the slander about me and the other innocent professionals. "

What? Eliot cannot stop something he is not doing and Eliot is not my partner, and has no access or control over my blogs in ANY way. And there are no "innocent professionals", they know who broke the law and have not upheld their oath of honor, ethics and to the constitution. THEY have violated their professional standards and they are being exposed, period.

".. Please remove these sites from the Internet and instruct your partner, Crystal Cox, to do the same. If you do not immediately remove these sites and my name from them, you are leaving me with no other choice but to pursue all available legal remedies. "

Eliot has NOT ever controlled my blogs, nor will he ever. And the TRUTH about you and these not so professional professionals will remain online, eternally, no matter what, so there is that.

Eliot is not MY PARTNER, he is one of thousands of victims of corruption I report on my thousands of blogs. So what is this huff and puff legal remedy you are going to do to Eliot about my blogs? Well I guess we shall wait and see.

Ted

Posted byCrystal L. Coxat8:40 PM No comments: G+1 Recommend this on Google

Friday, September 11, 2015

## John Poletto, YOU are LIABLE for what Ted Bernstein and Alan Rose talked you into doing. YOU know what is LAW and what is NOT. Tell the TRUTH now and maybe avoid going to jail with them.

**Visitor Analysis & System Spec**

| | | | |
|---|---|---|---|
| **Search Referral:** | https://www.google.com/ (Keywords Unavailable) | | |
| **Host Name:** | c-98-219-94-233.hsd1.fl.comcast.net | **Browser/OS:** | Safari iPad/iOS |
| **IP Address:** | 98.219.94.233 -- [Label IP Address] | **Mobile Device:** | Apple iPad |
| **Location:** | Boca Raton, Florida, United States | **Resolution:** | 768x1024 |
| **Returning Visits:** | 0 | **Javascript:** | Enabled |
| **Visit Length:** | Not Applicable | **ISP:** | Comcast Cable |

### Navigation Path

| Date | Time | WebPage |
|---|---|---|
| | | https://www.google.com/ (Keywords Unavailable) |
| 5 Sep | 08:16:42 | tedbernsteinreport.blogspot.com/2014/07/john-poletto-and-mark-nestler-ted.html |

Posted byCrystal L. Coxat11:25 PM No comments: G+1 Recommend this on Google

▼ September(8)
oh and you do know tha a Constitution...
Hey Alan
POOR Baby Ted Bernste Use his Legal ...
John Poletto, YOU are l what Ted Bernstei...
Hello Pam, so ya ready TRUTH, the whol...
Oppenheimer iViewit - wait to see what h...
Mcknight Dallas Real Es this, what's ...
Hello John Pankauski, \ party of all...
► August(3)
► July(1)
► June(4)
► May(22)
► April(63)
► March(8)
► February(7)
► January(8)
► 2014(248)
► 2013(31)

## Hello Pam, so ya ready to tell the TRUTH, the whole Truth and nothing but the TRUTH about Ted and Alan Rose or go to the BIG HOUSE with em?

| Visitor Analysis & System Spec | | | |
|---|---|---|---|
| Search Referral: | https://www.google.com/ (Keywords Unavailable) | | |
| Host Name: | c-73-22-164-177.hsd1.il.comcast.net | Browser: | Chrome 45.0 |
| IP Address: | 73.22.164.177 — [Label IP Address] | Operating System: | Win8.1 |
| Location: | Northbrook, Illinois, United States | Resolution: | 1920x1080 |
| Returning Visits: | 0 | Javascript: | Enabled |
| Visit Length: | 41 seconds | ISP: | Comcast Cable |

### Navigation Path

| Date | Time | WebPage |
|---|---|---|
| | | https://www.google.com/ (Keywords Unavailable) |
| 5 Sep | 20:09:52 | tedbernsteinreport.blogspot.com/2014/06/stp-enterprises-inc-pamela-simon.html |
| 5 Sep | 20:10:22 | investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=30771400 **(Exit Link)** |
| | | https://www.google.com/ (Keywords Unavailable) |
| 5 Sep | 20:10:33 | tedbernsteinreport.blogspot.com/2014/06/stp-enterprises-inc-pamela-simon.html |

Posted byCrystal L. Coxat11:19 PM No comments: G+1 Recommend this on Google

## Oppenheimer iViewit - Gee can't wait to see what happens.. oh ya the TRUTH coming soon to a court near you.

| Visitor Analysis & System Spec | | | |
|---|---|---|---|
| Search Referral: | https://www.google.com/ (Keywords Unavailable) | | |
| Host Name: | c-50-186-203-60.hsd1.fl.comcast.net | Browser: | Chrome 44.0 |
| IP Address: | 50.186.203.60 — [Label IP Address] | Operating System: | Win10 |
| Location: | Boca Raton, Florida, United States | Resolution: | 1600x1200 |
| Returning Visits: | 0 | Javascript: | Enabled |
| Visit Length: | Multiple visits spread over more than one day | ISP: | Comcast Cable |

### Navigation Path

| Date | Time | WebPage |
|---|---|---|
| | | https://www.google.com/ (Keywords Unavailable) |
| 25 Aug | 12:28:57 | tedbernsteinreport.blogspot.com/ |
| | | https://www.facebook.com/ |
| 25 Aug | 12:29:38 | tedbernsteinreport.blogspot.com/ |
| | | nortonsafe.search.ask.com — oppenheimer iviewit |
| 6 Sep | 11:48:08 | tedbernsteinreport.blogspot.com/2014/07/what-really-happened-in-sudden-death-of.html |
| | | tedbernsteinreport.blogspot.com/2014/07/what-really-happened-in-sudden-death-of.html |
| 6 Sep | 11:48:11 | tedbernsteinreport.blogspot.com/ |
| | | https://www.google.com/ (Keywords Unavailable) |
| 8 Sep | 09:04:00 | tedbernsteinreport.blogspot.com/2014/06/stp-enterprises-inc-pamela-simon.html |
| 8 Sep | 09:04:15 | investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=30771400 **(Exit Link)** |
| | | https://www.google.com/ (Keywords Unavailable) |
| 8 Sep | 09:04:26 | tedbernsteinreport.blogspot.com/2014/06/stp-enterprises-inc-pamela-simon.html |

Posted byCrystal L. Coxat11:14 PM No comments: G+1 Recommend this on Google

## Mcknight Dallas Real Estate - who is this, what's up?

| Visitor Analysis & System Spec | | | |
|---|---|---|---|
| Search Referral: | www.google.com/ (#1) (Keywords Unavailable) | | |
| Host Name: | 208_86_164_214.marketscout.com | Browser: | IE 11.0 |
| IP Address: | 208.86.164.214 — [Label IP Address] | Operating System: | Win7 |
| Location: | Dallas, Texas, United States | Resolution: | 1366 x768 |
| Returning Visits: | 0 | Javascript: | Enabled |
| Visit Length: | Not Applicable | ISP: | Mcknight Dallas Real Estate, Lp |

### Navigation Path

| Date | Time | WebPage |
|---|---|---|
| | | www.google.com/ (#1) (Keywords Unavailable) |
| 11 Sep | 15:02:39 | tedbernsteinreport.blogspot.com/ |

Posted byCrystal L. Coxat11:07 PM No comments: G+1 Recommend this on Google

## Hello John Pankauski, YOU are still a party of all this. Maybe it's time to come clean on what you know about Ted Bernstein and Alan Rose. The TRUTH will come out in the right court, an honest court one day.

| Visitor Analysis & System Spec | | | |
|---|---|---|---|
| Search Referral: | https://www.google.com/ (Keywords Unavailable) | | |
| Host Name: | cpe-24-164-135-152.nyc.res.rr.com | Browser: | Safari 8.0 |
| IP Address: | 24.164.135.152 — [Label IP Address] | Operating System: | OS X |
| Location: | New York, United States | Resolution: | 1600 x900 |
| Returning Visits: | 0 | Javascript: | Enabled |
| Visit Length: | 35 mins 36 secs | ISP: | Time Warner Cable |

### Navigation Path

| Date | Time | WebPage |
|---|---|---|
| | | https://www.google.com/ (Keywords Unavailable) |
| 11 Sep | 22:21:22 | tedbernsteinreport.blogspot.com/2014_05_01_archive.html |
| | | https://www.google.com/ (Keywords Unavailable) |
| 11 Sep | 22:49:25 | tedbernsteinreport.blogspot.com/ |
| | | tedbernsteinreport.blogspot.com/ |
| 11 Sep | 22:50:08 | tedbernsteinreport.blogspot.com/2014/06/john-pankauski-pankauski-law-firm-alan.html |
| | | https://www.google.com/ (Keywords Unavailable) |
| 11 Sep | 22:50:31 | tedbernsteinreport.blogspot.com/ |
| | | tedbernsteinreport.blogspot.com/ |
| 11 Sep | 22:50:57 | tedbernsteinreport.blogspot.com/2014/02/alan-rose-esq-john-j-pankauski.html |
| | | https://www.google.com/ (Keywords Unavailable) |
| 11 Sep | 22:51:22 | tedbernsteinreport.blogspot.com/ |
| | | https://www.google.com/ (Keywords Unavailable) |
| 11 Sep | 22:56:58 | tedbernsteinreport.blogspot.com/2014/06/so-what-perp-do-we-have-at-proskauer.html |

Posted byCrystal L. Coxat11:04 PM No comments: G+1 Recommend this on Google

Case: 1:13-cv-03643 Document #: 297-11 Filed: 11/09/17 Page 76 of 76 PageID #:15206

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE DIVISION "IH"

Case No. 50 2012-CP-4391 XXXX NB

IN RE: THE ESTATE OF:
**SIMON BERNSTEIN,**
Deceased.
_____/

**ORDER SETTING MARCH 16, 2017 HEARING FROM 2:00 TO 4:00 AND ESTABLISHING PROCEDURE**

**THIS MATTER** came before the Court February 16, 2017 and March 2, 2017 on the following matters:

1. October 7, 2016, D.E. 496, Stansbury's Motion to Vacate in Part the Court's Ruling on September 7, 2016, and/or Any Subsequent Order, Permitting the Estate of Simon Bernstein to Retain Alan Rose and Page, Mrachek, Fitzgeral, Rose, Konopka, Thomas & Weiss, P.A. as Legal Counsel and Motion for Evidentiary Hearing to Determine Whether Rose and Page, Mrachek are Disqualified from Representing the Estate Due to an Inherent Conflict of Interest.

2. November 28, 2016, D.E. 507, Stansbury's Motion to Disqualify Alan Rose and Page, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. as Legal Counsel for the Estate of Simon Bernstein Due to an Inherent Conflict of Interest.

Present before the Court were Peter Feaman, Esquire on behalf of William Stansbury; Alan Rose, Esquire on behalf of Ted Bernstein, Trustee, Brian O'Connell as Personal Representative, Eliot Bernstein as interested party.

At the beginning of the February 16, 2017 the Court advised from this point forward pleadings and filings shall consist only of a Motion / Petition; Response; and, Reply. No additional filings shall be presented without leave of court.

At the conclusion of the hearing March 2, 2017 the Court ordered closing arguments of no more than 10 double spaced pages should be submitted to the Court no later than March 9, 2017 on the above two issues.

**The Court is also ordering no further pleadings or filings exceed 10 double spaced pages without requesting leave of Court.**

In open Court the Court advised that on March 16, 2017 the Court shall hear the following matters:

1. Trustee's Motion to Approve Retention of Counsel and to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim Against Estate by William Stansbury [D.E. 471]

2. Stansbury's Motion of Creditor for Discharge from Further Responsibility for the Funding of the Estate's Participation in the Chicago Life Insurance Litigation and for Assumption of Responsibility by the Estate and for Reimbursement of Advanced Funds [D.E.448], seeking to vacate, alter or amend Judge Colin's Order [D.E. 133: Order Appointing Administrator Ad Litem to Act on Behalf of Estate of Simon Bernstein etc.]

No other matters shall be heard by this Court on March 16, 2017 without Court approval and a revised order being issued.

**The Court has previously given all parties and counsel opportunity to provide materials on the above issues to the Court. Since these matters have been set two other times, and the Court has received no less than one large binder from each party, the Court will receive no further filings / pleadings / case law on these matters prior to March 16, 2017.**

**DONE AND ORDERED** in Palm Beach Gardens, Palm Beach County, Florida this 3rd day of March, 2017.




**ROSEMARIE SCHER**, Circuit Judge

Copies furnished:

***Peter M. Feaman, Esq.**, PETER M. FEAMAN, P.A., 3695 W. Boynton Beach Blvd., Suite 9, Boynton Beach, FL 33436, pfeaman@feamanlaw.com; service@feamanlaw.com;*
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***Gary Shendell, Esq.**, SHENDELL & POLLOCK, P.L., 2700 North Military Trail, Suite 150, Boca Raton, FL 33431; gary@shendellpollock.com; ken@shendellpollock.com; britt@shendellpollock.com; grs@shendellpollock.com*
***Diana Lewis, Guardian Ad Litem,** 2765 Tecumseh Drive, West Palm Beach, FL 33409; dzlewis@aol.com*
***Jeffrey Friedstein and Lisa Friedstein**, 2142 Churchill Lane, Highland Park, IL 60035; lisa@friedsteins.com; lisa.friedstein@gmail.com*
***Pamela Beth Simon**, 950 North Michigan Avenue, #2603, Chicago. IL 60611; psimon@stpcorp.com*

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE DIVISION "IH"

Case No. 50 2012-CP-4391 XXXX NB

IN RE: THE ESTATE OF:
**SIMON BERNSTEIN,**
Deceased.
_____/

**ORDER DENYING MOTION TO VACATE AND DENYING MOTION TO DISQUALIFY FOR INAPPROPRIATE JURISDICTION, ALTERNATIVELY, DENYING ON ITS MERITS, AND ORDER DENYING APPOINTMENT OF TED BERNSTEIN AS ADMINISTRATOR AD LITEM**

**THIS MATTER** came before the Court February 16, 2017, March 2, 2017, and March 16, 207 on the following matters:

1. October 7, 2016, D.E. 496, Stansbury's Motion to Vacate in Part the Court's Ruling on September 7, 2016, and/or Any Subsequent Order, Permitting the Estate of Simon Bernstein to Retain Alan Rose and Page, Mrachek, Fitzgeral, Rose, Konopka, Thomas & Weiss, P.A. as Legal Counsel and Motion for Evidentiary Hearing to Determine Whether Rose and Page, Mrachek are Disqualified from Representing the Estate Due to an Inherent Conflict of Interest.

2. November 28, 2016, D.E. 507, Stansbury's Motion to Disqualify Alan Rose and Page, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.[1] as Legal Counsel for the Estate of Simon Bernstein Due to an Inherent Conflict of Interest.

3. Evidentiary Hearing on Trustee's Motion to Approve Retention of Counsel and to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim Against the Estate by William Stansbury, D.E. 471, Objection to Trustee's Motion to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim Against Estate by William Stansbury, D.E. 475, and Order Granting Retention of Counsel and Deferring on Administrator Ad Litem, D.E. 495

[1] Hereafter, "Mrachek Firm" unless quoted separately from an Order or document.

Present before the Court were Peter Feaman, Esquire on behalf of William Stansbury (hereafter "Stansbury"); Alan Rose, Esquire on behalf of Ted Bernstein, Trustee, Brian O'Connell as Personal Representative of the Estate of Simon Bernstein, Eliot Bernstein as interested party. The parties presented their testimony and evidence. Thereafter, pursuant to the Court's March 3, 2017 Order, the parties were to submit written closing arguments and proposed orders no later than March 9, 2017[2].

The Court carefully evaluated and weighed the testimony presented, considering the intelligence, frankness, credibility, plausibility, character, and competence of each witness, all the while being cognizant of the interests of the parties in the outcome of the case. Based on the forgoing, giving the evidence and testimony the weight it deserves, the Court has resolved any conflicts in the evidence. After evaluating the witnesses' testimony, exhibits, and the applicable law, and being otherwise informed in the premises, the Court makes the following findings of fact:

1. On July 24, 2014, "the parties having agreed to the appointment," this Court entered an Order Appointing Successor Personal Representative, Brian M. O'Connell, Esquire, D.E. 219. The letters issued on July 24, 2014 give Brian O'Connell, as the Personal Representative of the Estate of Simon Bernstein, the "full power to administer the estate according to law; to ask, demand, sue for, recover . . . ."
2. Pursuant to Fl. Stat. 733.612(19), ***without court order***, a personal representative acting reasonably for the benefit of the interested persons may properly employ persons, including, but not limited to, attorneys. Moreover, pursuant to 733.612(20) the Personal Representative, ***without court order,*** has the power to prosecute or defend claims or

[2] On March 10, 2017 Eliot Bernstein filed a motion to accept a late filing in excess of the given page limit. While the Court acknowledges the late filing and will give it the weight appropriate, this Court will not condone or excuse violations of its Order.

proceedings in any jurisdiction for the protection of the estate and of the personal representative.

3. On September 1, 2016 the parties presented to the Court on Successor Trustee's [Brian O'Connell's] Motion to Approve Retention of Counsel AND, to Appoint Ted S. Bernstein as Administrator Ad Litem to Defend Claim Against Estate by William Stansbury.

4. On September 29, 2016, D.E. 495, this Court entered its Order Approving Retention of Counsel and Deferring Ruling on Appointment of Ted S. Bernstein as Administrator Ad Litem to Defend Claim Against Estate by William Stansbury. This Order states, "The Court, having reviewed the Motion and the record, ***having been advised in the Motion that the PR and the beneficiaries of the Estate believe this relief will result in a benefit to the Estate, having been advised that William Stansbury has filed a written objection to Ted S. Bernstein serving as Administrator. . . .***" (emphasis added).

5. Notwithstanding the Personal Representative's statutory right to retain counsel without court approval, the September 29, 2016 Order then grants in part and defers in part, stating as follows:

> 2. The Court approves the retention of the law firm Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. ("Mrachek-Law") to serve as counsel for Brian O'Connell, as Personal Representative of the Estate of Simon L. Bernstein, for the purpose of defending the Estate in an independent action brought by William Stansbury. The reasonable costs and attorneys' fees incurred by Mrachek-Law in defending the claim shall be paid by the Estate.
>
> 3. Unless Stansbury withdraws his objection, the Court will need to conduct an evidentiary hearing on that portion of the motion which seeks the appointment of an administrator

ad litem. The Court will determine at the evidentiary hearing whether to appoint Ted S. Bernstein as administrator ad litem under Rule 5.120, which provides that when necessity arises, "the court may appoint an administrator ad litem . . . without bond or notice for that particular proceeding." Until the evidentiary hearing, the Court defers ruling on the administrator ad litem issues.

6. Noteworthy is the fact that in the Court's Order appointing the Mrachek Firm, no objection from Stansbury was noted; the only objection noted is to appointment of Ted as administrator ad litem to which an evidentiary hearing would be required.

7. The 2012 independent action brought by William Stansbury referenced in the Court's Order cited above is a 2012 case pending in the Civil Division, 50-2012-CA-013933, Division AN, wherein Stansbury seeks to recover in excess of $2.5 million from the Estate of Simon Bernstein based upon alleged misconduct of Simon Bernstein. (After Simon's death the Personal Representative of the Estate was substituted as the real party in interest.)

8. Stansbury's claims arise from Stansbury's part ownership and employment with LIC Holdings, Inc. ("LIC") and Arbitrage International Management, LLC ("AIM"), two companies founded by Simon and Ted Bernstein. Stansbury has asserted claims against the Estate of Simon Bernstein for breach of contract, fraudulent inducement, conspiracy, equitable lien, and constructive trust. Stansbury is a claimant, not a creditor, against the Estate. On June 23, 2014 in the independent civil case, 50-2012-CA-013933, the Court entered an Order of Dismissal with Prejudice of Certain Parties and Claims; specifically, the Court dismissed Defendants, Ted S. Bernstein, individually, LIC Holdings, Inc., Arbitrage International Management, LLC, f/k/a Arbitrage International Holdings, LLC and the Shirley Bernstein Trust Agreement dated May 20, 2008, D.E. 214.

9. Pending ending in Illinois is the case of *Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95, Ted Bernstein, et al. v. Heritage Union Life Insurance Company, et al.*, Case No. 13

CV 3643, United States District Court for the Northern District of Illinois (the "Insurance Litigation"). This case commenced after Simon's death and seeks to have the Court determine the rightful owners of Simon's 1.7 million dollar life insurance death benefit proceeds. Ted Bernstein, individually, and as an alleged Trustee of a purported lost trust document, and his siblings, Pamela Simon, Jill Iantoni, and Lisa Friedstein, as Plaintiffs, seek to recover the $1.7 million dollar life insurance proceeds for the ultimate benefit of Simon Bernstein's adult children.

10. The Simon Trust is the primary beneficiary of the Estate via a pour over will. The beneficiaries of the Trust are Simon's ten grandchildren. Initially, the Estate was not a party to the Insurance Litigation. The Illinois Court denied Stansbury the right to intervene in the Insurance Litigation. Subsequently, the Estate, at the request of Stansbury in the instant probate litigation, intervened. Stansbury is funding the Estate's costs and fees in the Illinois litigation based on this Court's dated May 23, 2014. Clearly, Stansbury, as a claimant of the Estate, seeks to benefit from the Estate's collection of the insurance proceeds *if* Stansbury prevails in his civil independent action against the Estate.

11. Stansbury argues that Mrachek Firm represented Ted in his deposition in the Insurance Litigation in Illinois. Illinois counsel for Ted as the Plaintiff attended the deposition. Apparently, O'Connell agreed not to attend the trial to save money. Mrachek Firm never filed a notice of appearance in the Illinois Court. It is undisputed that Elliot and Stansbury were present during that deposition. Ted was examined extensively by counsel for the Estate. Mrachek Firm objected approximately four times. The deposition was taken prior to the trial in Palm Beach County to determine the validity of the will and trusts. There is no indication that Mrachek Firm was acting in any capacity other than on behalf of Ted as Trustee in an effort to protect any interests in the validity dispute.

12. On October 7, 2016, D.E. 496, in the instant probate action Stansbury filed his Motion to Vacate in Part the Court's Ruling on September 7, 2016, and/or Any Subsequent Order, Permitting the Estate of Simon Bernstein to Retain Alan Rose and Page, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. as Legal Counsel and Motion for Evidentiary Hearing to Determine Whether Rose and Page, Mrachek are Disqualified from Representing the Estate Due to an Inherent Conflict of Interest.

13. In D.E. 496, Stansbury's Motion to Vacate, Stansbury states as follows:

> 1. Stansbury filed a lawsuit styled *William E. Stansbury v. Ted Bernstein, et al,* Case No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida against Simon Bernstein ("Simon"), Ted Bernstein ("Ted") and several corporate defendants in August of 2012 to collect compensation, and other damages due Stansbury arising out of an insurance business in which Stansbury, SIMON and TED were principals. Stansbury asserted claims against Simon and Ted both as agents of the corporate defendants and in their individual capacities (the claims against TED and the companies have settled). The Shirley Bernstein Trust was dropped as a Party.

14. After Simon died, the Estate was substituted into the lawsuit; Ted Bernstein serves as Trustee of the July 25, 2012 "Simon Trust". It is undisputed that Stansbury has settled the claims against Ted, individually, and as to the corporate defendants. It is undisputed that Mrachek Firm represented some of the dismissed corporate defendants in the civil independent lawsuit set forth above.

15. Mrachek Firm represents Ted Bernstein, as Trustee of the Simon Trust, the sole residuary beneficiary of the Estate with the exception of certain personal property, in the current probate litigation involving the Estate of Simon, 50-2012-CP-4391. The Simon Trust is a pour over trust and Simon's ten grandchildren are the beneficiaries of the Simon Trust.

16. On November 28, 2016, D.E. 507, Stansbury filed his Motion to Disqualify Alan Rose and Page, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. as Legal Counsel for the Estate of Simon Bernstein Due to an Inherent Conflict of Interest.
17. Elliot Bernstein joins Stansbury's opposition to the appointment of Mrachek Firm. Elliot is a residuary beneficiary of any tangible property of the Estate. All other beneficiaries (Trust Beneficiaries) approve the retention of the Mrachek Firm.
18. Stansbury's Motion to Vacate, D.E. 496, and Stansbury's Motion to Disqualify, D.E. 507, are ***not*** based on perceived conflict arising out of the Mrachek Firm and alleged association or representation of William Stansbury, Plaintiff in the civil suit. ***It is undisputed that the Mrachek Firm never represented Stansbury, obtained any confidential information from Stansbury, or attempted to use, obtained, or are in possession of privileged information regarding Stansbury and now must be disqualified.*** In fact, there was no evidence that Mrachek has obtained or used any information that would prejudice a current or former client.
19. Stansbury is objecting to the Personal Representative's choice of counsel for the Estate based on a perceived conflict from Mrachek's Firm's representation of Ted as Trustee of the Simon Trust.
20. With regard to the Motion to Vacate Judge Phillip's Order, the Court finds, without court order, the Personal Representative has the right to retain counsel to defend lawsuits. Independent of the same, after a hearing wherein no objection was raised, Judge Phillips granted the retention of the Personal Representative's choice of counsel. This Court denies the motion to vacate.
21. With regard to the Motion to Disqualify, the parties have all stipulated and agreed that the undersigned judge should decide this matter versus the civil judge in the probate proceeding.

The parties' rationale is that since the prior judge approved the retention of counsel by the Personal Representative, this Court should make the decision on whether to disqualify Mrachek Firm from another judge's case. Stansbury is objecting ***as the Plaintiff*** in the civil lawsuit to the Defendant's choice of counsel. Specifically, Stansbury, Plaintiff, objects to the Defendant, Estate's choice of counsel via the Personal Representative of the Estate. Elliot believes there has been a continuing fraud being perpetrated by the Court and Ted; Elliot joins Stansbury's objection.

22. Despite the parties' stipulation allowing this Court to decide whether Mrachek Firm should be disqualified from representing the Estate in the civil case, this Court is hard pressed to see how this Court can rule on a matter in a separate case without the other judge's approval / acquiesce of the same. This Court hereby finds this Court is not the proper forum and the matter should be heard in the civil litigation. However, if in fact the other Court chooses to accept this Court's findings in order to conserve judicial resources and the efficiency of justice, since this Court heard in excess of six hours of evidence and testimony, this Court would deny the motion to vacate and to disqualify on the merits.

23. Stansbury has alleged disqualification of Mrachek Firm is appropriate under Florida Rule Regulating the Florida Bar, 4-1.7(a):

Rule 4-1.7. Conflict of Interest; Current Clients

**(a) Representing Adverse Interests.** Except as provided in subdivision (b), a lawyer must not represent a client if:
(1) the representation of 1 client will be directly adverse to another client; or
(2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
**(b) Informed Consent.** Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
(2) the representation is not prohibited by law;
(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and
(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.
**(c) Explanation to Clients.** When representation of multiple clients in a single matter is undertaken, the consultation must include an explanation of the implications of the common representation and the advantages and risks involved.

24. Again, Stansbury is not asserting Mrachek Firm ever represented Stansbury. The Personal Representative of the Estate, Brian O'Connell, executed the PR's Statement of Its Position That There is No Conflict and His Waiver of Any Potential Conflict. Mr. O'Connell also testified that it is his opinion that the Estate would be best served by the Mrachek Firm being retained.

25. The comment Rule 4-1.7 states as follows:

**Conflict charged by an opposing party**

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment. See scope.

26. The Court has reviewed all the testimony, case law, positions of the parties, and considered the position of the Estate as expressed by the Personal Representative, an experienced Estate and Probate Attorney.

27. The Estate's goal in the Stansbury litigation is to defend against Stansbury's claim and minimize Stansbury's recovery. The Mrachek Firm has extensive knowledge of this lawsuit. Given Stansbury is the Plaintiff in that lawsuit, the Court embraces the Comment to Rule 4-1.7 and heeds its warning. The Court finds no conflict in affirming the Personal Representative's choice of counsel, the Mrachek Firm, to defend the Estate in the Stansbury litigation. Additionally, this Court finds that if in fact there is a conflict, it has been waived by the Personal Representative.

28. The Court now turns to the question of whether Ted Bernstein should be appointed by the Court as an Administrator Ad Litem on behalf of the Estate in the Stansbury litigation.

29. Florida Statute 733.308 Administrator ad litem states as follows:

> When an estate must be represented and the personal representative is ***unable to do so***, the court shall appoint an administrator ad litem without bond to represent the estate in that proceeding. The fact that the personal representative is seeking reimbursement for claims against the decedent does not require appointment of an administrator ad litem.

(emphasis added).

30. Brian O'Connell testified in Court that it is his position that the appointment of Ted would be in the best interest of the Estate for the following reasons: Ted has the most knowledge of the claims; Ted will not charge the estate and Mr. O'Connell would charge for his time; the appointment is limited to the civil litigation and has no overlap with the Insurance Litigation in Illinois; Mr. O'Connell's busy schedule would delay the litigation's progress; and, he would still be intricately involved with any negotiations on behalf of the Estate. There is no indication that Mr. O'Connell is unable to represent the Estate.

31. The parties stipulated to the March 13, 2017 deposition of Brian O'Connell coming into evidence. Stansbury's counsel, Mrachek Firm, and Elliot all had the opportunity to question Mr. O'Connell regarding his positions regarding the Estate being represented by Ted as administrator ad litem. Additionally, all parties questioned Mr. O'Connell regarding his

position on whether the Estate should continue in the Insurance Litigation. It is Mr. O'Connell's position that the Estate should continue its positions in the Insurance Litigation.

32. The Court finds Mr. O'Connell to be credible. Conserving the Estate's assets by not having to pay the Personal Representative to be involved in the Stansbury litigation is a laudable goal; nonetheless, the Court cannot ignore the fact that the Estate and Ted are adverse in the Illinois lawsuit. Moreover, Mr. O'Connell is capable of representing the Estate. While the Illinois action is still pending, the Court declines to appoint Ted as Administrator Ad Litem.

**IT IS ORDERED AS FOLLOWS:**

The Court **DENIES** Stansbury's motions seeking to vacate the retention order of September 7, 2016, and to disqualify the Mrachek Firm. The Court **DENIES** appointment of Ted Bernstein as Administrator Ad Litem.

DONE AND ORDERED in Chambers, North County Courthouse on April 27, 3rd, 2017.

HONORABLE ROSEMARIE SCHER

cc: All parties on the attached service list

IN RE: Estate of SIMON L. BERNSTEIN
File No.: 502012CP004391XXXXNB IH
Notice of Hearing for 3/21/17
_____/

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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT

IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

CASE NO: 502012CP004391XXXXNB(IH)

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

Deceased.

/

Proceedings before the Honorable

ROSEMARIE SCHER

Volume I

Friday, June 2, 2017

3188 PGA Boulevard

North County Courthouse

Palm Beach Gardens, Florida 33410

1:53 - 3:30 p.m.

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

APPEARANCES:

On behalf of William E. Stansbury:
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Also present: William Stansbury

On behalf of Ted Bernstein:
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BY: ALAN B. ROSE, ESQUIRE
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BY: THE HONORABLE DIANA LEWIS
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On behalf of himself:
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(Iviewit@iviewit.tv)



- - -

I N D E X

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P R O C E E D I N G S

- - -

BE IT REMEMBERED that the following proceedings were had in the above-styled and numbered cause in the North County Courthouse, City of Palm Beach Gardens, County of Palm Beach, in the State of Florida, by Lisa Mudrick, RPR, FPR, before the Honorable ROSEMARIE SCHER, Judge in the above-named Court, on June 2, 2017, to wit:

- - -

**THE COURT:** All right. Let's have a seat everyone. And let's do general appearances for the record if we can for the court reporter.

We'll start with Ms. Crispin on the far right.

**MS. CRISPIN:** Yes, good afternoon, Your Honor. Ashley Crispin on behalf of Brian O'Connell, the personal representative of the Estate of Simon Bernstein. And he is in the back.

**THE COURT:** Okay.

**MR. ROSE:** Alan Rose, Your Honor. I represent Ted S. Bernstein as successor trustee of the Simon Bernstein Trust, which is the sole residuary beneficiary of this estate.

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**THE COURT:** Okay.
**MR. ELIOT BERNSTEIN:** Eliot Bernstein, pro se.
**MR. FEAMAN:** Peter Feaman on behalf of Mr. Stansbury. With me in the court today is Mr. Stansbury.
**THE COURT:** Thank you.
**MR. FEAMAN:** Also with me is one of my law partners who may be participating today depending on what happens, Jeff Royer. Thank you.
**THE COURT:** Okay. All right. Mr. Feaman, this is your client's motion --
**MR. FEAMAN:** Thank you.
**THE COURT:** -- so you may begin.
**MR. FEAMAN:** Thank you. Brief opening statement, Your Honor, if I may.
First, I am gratified that we had the previous hearings concerning the conflict allegations because Your Honor had a chance to become familiar with what's going on in Chicago. And so I would request first that Your Honor try your best to harken back to some of that knowledge and some of those documents may be repetitive, but I am glad we have that

13:54:56-13:56:05 Page 7

basis to go forward.
The first part of this motion, Your Honor, should be the easiest, and that's to discharge Mr. Stansbury from any further responsibility of funding the Illinois litigation on behalf of the Estate of Simon Bernstein. There's no authority that I am aware of nor have I been cited to by anyone else that a claimant can be forced to fund litigation that benefits the estate. That's number one.
Number two, the previous orders that began this train going down this track of Mr. Stansbury funding the Chicago litigation, both of whom -- both orders said "initially." One said initially, the one that Judge Colin entered the day of the hearing on May 23rd. And then the second order that came out about three weeks later Judge Colin actually wrote in "initially" in his order.
And then thirdly, Your Honor, which we'll bring to the Court's attention when we put in our evidence, the personal representative has filed two motions in this estate saying that they would like to take over, they can take over the funding of the litigation either on an

13:56:20-13:57:16 Page 8

hourly or contingency fee basis which has been offered by counsel up in Chicago. And that they state that it's in the best interests of the estate to continue with the litigation up in Chicago.
When we first had the hearing in front of Judge Colin back in May 2014, Your Honor, which is now three years ago, there was some question raised by the parties in that room at that time as to whether this was going to be a wild goose chase. And so Judge Colin -- and by the way, we did a notice of filing the entire transcript, Your Honor, which I will give to you at today's hearing if there's not a ruling for Your Honor to review. Because only parts of it have been cited by opposing counsel. It can be somewhat misleading to the Court.
But there the question was and the issue was should the judge appoint Mr. Stansbury as administrator ad litem to pursue this. The Court said, well, I don't want it to be Mr. Stansbury because he is a claimant, but I can appoint somebody independent. But because there were arguments made that this was not in the best interests of the estate, Mr. Stansbury

13:57:31-13:58:35 Page 9

volunteered to front the costs. And so that's how we went forward. And now here we are three years later. It's clear that the evidence will show that the estate does want to proceed with this action and a benefit has been conferred, which gets to the second part of the motion, which is Mr. Stansbury should be reimbursed now for his expenses that he has incurred.
The third part of the motion, Your Honor, is the actual costs and expenses and fees that Mr. Stansbury has paid. And Mr. O'Connell and Mr. Rose and I have stipulated that if there's a ruling that Mr. Stansbury has benefitted the estate, then we would have a separate evidentiary hearing if we can't otherwise agree on the amount of the fees. Because we want to at least get done today what we can get done with regard to Mr. Stansbury's right to be discharged from funding the estate and whether Mr. Stansbury has conferred a benefit so that he would -- at this time so that he would be entitled to reimbursement of his costs.
**MR. ROSE:** Just for the record, that's not the stipulation. The only thing we stipulated was we don't have to do today the amount. I

13:58:48-13:59:33 Page 10

certainly don't agree that if you discharge him he gets anything until there's been a benefit to the estate. I can argue that. I didn't want the record to be unclear that I by silence stipulated to something that's not true.

**MR. FEAMAN:** I didn't mean to imply that, Your Honor.

**THE COURT:** I honestly did not think that you agreed to -- I understood.

**MR. ROSE:** We'll do the amount at another time if you are going to award something.

**THE COURT:** I understood. Let me let Mr. Feaman when he has completed his opening I am going to ask the parties questions. So continue.

**MR. FEAMAN:** Okay. Now, in regard to the benefit that Mr. Stansbury has conferred upon the estate, the evidence will show that the original personal representatives, Messrs. Tescher and Spallina, the disgraced attorneys, had no intention of trying to recover this money on behalf of the estate, the life insurance proceeds. They were friends with Ted Bernstein. And their loyalty was not first to the estate, it was to Ted Bernstein

13:59:46-14:00:50 Page 11

who is the plaintiff in that action. In fact, they actively tried to keep the money out of the estate, in clear violation of their duties as PR.

At first Mr. Spallina, who was the PR representative, said to the insurance company claims department that he was the trustee of the life insurance trust that's the plaintiff up there. And when he could not prove that that was the case, because they've never come up with a copy of the alleged trust, then they went to plan B.

And then Mr. Bernstein is now the plaintiff, Ted Bernstein, in that Chicago action saying he is the trustee of the trust that's the plaintiff. So the insurance company just interplead the funds.

Now, it wasn't until the PRs had to resign from the estate in January of 2014 that then it became obvious that there's going to be administrator ad litem, a curator, and that's when Mr. Stansbury said, okay, now that we need a new PR, let's appoint somebody to go and get that money, if possible.

And so before that Mr. Stansbury had filed

14:01:05-14:01:50 Page 12

in Chicago his own motion on his own behalf as a claimant to the Bernstein estate to intervene. That motion was denied. But then we had the hearing in May -- first we had Mr. Stansbury filed a motion to appoint an administrator ad litem or a curator for the estate --

**THE COURT:** That was Mr. Brown; am I correct?

**MR. FEAMAN:** And that was Mr. Brown. And then once Mr. Brown was in place, then Mr. Stansbury moved and said, okay, I would like to intervene, because Mr. Brown said, I don't know, I don't really know enough. So Mr. Stansbury said, well, I will move. And then we had the hearing on the 23rd.

The hearing on the 23rd then it was interesting because it was opposed by Ted Bernstein. It was opposed by some of the other attorneys. And Mr. Brown really was kind of neutral. It was before Mr. O'Connell got into that -- became the successor personal representative.

So Mr. Stansbury at that hearing through me volunteered to front the fees and costs

14:02:04-14:03:02 Page 13

because we wanted to make sure the estate would get in there. And so Judge Colin was gratified that that was happening. So he signed both those orders.

He signed the one order that said in paragraph three that Mr. -- I have that here. This was the order signed on the day of the hearing by the judge. It is attached to our submission.

And in paragraph three it says that Mr. Stansbury will, quote, initially the costs will initially be borne by William Stansbury, close quote. Then in paragraph three, the Court will consider any subsequent petition for fees and costs by William Stansbury as appropriate under Florida law.

It's the second order that was cited by counsel for the trustee which then says that, well, you are not entitled to, A, get out. And I would disagree with that interpretation of the second order. And that certainly you are not entitled to any fees until such time as there's an actual money judgment, or recovery of money, I should say, under paragraph three.

Now, we take issue with that. That's not

14:03:21-14:04:11 Page 14

Florida law. And, most importantly, when it comes time the hearing itself was not about the circumstances under which Mr. Stansbury would eventually be reimbursed. And that was sort of an add-on after the fact, which we'll get into more later, but in the interests of time because we do want to try to finish today.

So I have created a timeline, Your Honor, so that you can get familiar. And if I may approach?

**THE COURT:** You may.

**MR. FEAMAN:** Thank you.

**THE COURT:** Thank you.

**MR. FEAMAN:** You are welcome.

**THE COURT:** Does everybody have a copy of the timeline? Thank you. This is just for demonstrative purposes for the Court?

**MR. FEAMAN:** Yes, Your Honor. I am not offering this.

**THE COURT:** Thank you.

**MR. FEAMAN:** And the timeline shows that in February of 2014, now that the personal representatives Spallina and Tescher are out, Mr. Ted Bernstein had moved to be appointed as independent curator or successor PR.

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Mr. Stansbury opposed that for the same reasons that we opposed Mr. Ted Bernstein in connection with being administrator ad litem in connection with his action which we were here last month on. And instead, the Court on the 25th appointed independent curator Ben Brown. That's item number two.

Entry number three -- and the docket entries are there as well, Your Honor, so you can look those up.

**THE COURT:** Thank you.

**MR. FEAMAN:** In March Mr. Stansbury then filed his petition as administrator ad litem to protect the interests of the estate in the Illinois litigation. And then, as I just mentioned, in May the order granting that petition was entered. And then on June 5th in fact the motion to intervene was filed by Mr. Stamos in Chicago. And in about seven weeks, six weeks later, the Court on July 28th, 2014, granted the estate's motion to intervene.

Having perceived that we had performed what we intended to perform, I then filed on behalf of Mr. Stansbury, Your Honor, as you can see on the timeline, in October of that year

14:05:46-14:06:44 Page 16

his motion to be discharged arguing in that motion that we did what we were required to do, the estate's in, and it's time to let the estate bear the burden going forward.

That was then, as Your Honor can see in those docket entries there, set for hearing seven times. I think Your Honor having observed this case for the short time that you have can understand why we never got to actually hear that, as there's always so much going on in this case for better or for worse.

And so then Judge Phillips came on the case, and so in May we re-filed our motion of 2016, we re-filed our motion to have Mr. Stansbury discharged and for reimbursement. And as Your Honor is aware, that's been noticed three or four times. And here we are, thank you, Your Honor.

**THE COURT:** Thank you. Can I ask a question before we proceed further?

**MR. FEAMAN:** Yes.

**THE COURT:** I just want to know. I don't want argument on it. I just want yes or no. I will start with Ms. Crispin. Do you oppose the discharge of Mr. Stansbury at this point from

14:06:58-14:07:46 Page 17

paying fees?

**MS. CRISPIN:** Your Honor, it's complicated for me to answer yes or no because Mr. O'Connell was not present at the hearing. He does read the transcript to interpret that there was an agreement reached where Mr. Stansbury would pay for the costs of this litigation. He has taken that position. He is more primarily worried about if he is discharged then what happens then. So really I think we are not really taking a position per se about whether or not he should or shouldn't be discharged.

But if he is called to testify, I want Your Honor to understand what his position would be on the stand.

**THE COURT:** I think I understand.

Mr. Rose?

**MR. ROSE:** We oppose the relief they are seeking.

**THE COURT:** So you oppose allowing him not to fund the litigation anymore?

**MR. ROSE:** The short 30 second legal position is we have a valid court order. It was not appealed. There's now an amended order

14:08:00-14:08:34 Page 18

which superseded the original order. So we have an amended order we are traveling under that's crystal clear, a transcript which backs it up, and we -- and that order has not been complied with.

So our first position in our paper was he is seeking relief from an order that he has not complied with, so he should be held in contempt of that order. And if he were not in contempt of it, the order should be enforced as written. It was a deal, a complicated deal worked out over hundreds of pages.

And we did put in our motion the entire transcript was already in the record at docket entry 148. I did reference it in my memo I submitted.

**THE COURT:** I know.

**MR. ROSE:** So I wasn't hiding anything. I just gave you the short --

**THE COURT:** You need not worry about it. Give the Court a little credit that I read everything, okay?

**MR. ROSE:** I was giving you the excerpted pages that were relevant to my argument.

**THE COURT:** Thank you.

14:08:41-14:09:20 Page 19

**MR. ROSE:** Our position is that the motion should be denied.

**THE COURT:** Okay. Mr. Eliot?

**MR. ELIOT BERNSTEIN:** I am opposing certain acts here.

**THE COURT:** Okay. Thank you.

**MR. ELIOT BERNSTEIN:** And I will get to those, I guess, when I get to speak. Okay.

**THE COURT:** All right. Thank you.

Mr. Feaman?

**MR. FEAMAN:** So my next paragraph is why should Mr. Stansbury be discharged at this time?

**THE COURT:** Okay. I am going to need you to shorten up your opening because we don't have a tremendous amount of time.

**MR. FEAMAN:** Thank you. Okay. First, he did his job. He fronted the fees and costs. The estate has been allowed to intervene. And it now stands to reap a financial windfall as a result of Mr. Stansbury's efforts. But for Mr. Stansbury's efforts and Mr. Stansbury's efforts alone, the estate would not be a party and the estate would not be in a position now to reap hundreds of thousands of dollars as a

14:09:34-14:10:30 Page 20

benefit.

Plus, there is no authority to force a claimant to fund attempts to pursue assets of the estate in accordance with Bookman V Davidson, which we cited. And in the interests of time I won't go through it except to say that that case says a personal representative of an estate is required to pursue, is required by law to pursue assets and claims of the estate.

Now, why is Stansbury -- so we think that's pretty clear, that part of the motion, respectfully.

The second part of the motion is why is Mr. Stansbury entitled to get reimbursed now as opposed to sometime in the future? And our argument there, Your Honor, is that a benefit has been conferred on the estate and therefore his duty should end and he should be paid.

Now, why has he conferred benefit? Because as we cite in our papers in the Estate of Wejanowski, the court held that the trial court could not require an executor to demonstrate a monetary benefit before allowing the expenditure of estate funds. And that the

14:10:44-14:11:42 Page 21

true benefit to an estate provided by an appellate attorney for purposes of entitlement to payment of appellate fees and costs out of estate assets is the presentation of a good faith appeal and its ultimate resolution.

Here, Your Honor, we presented a good faith motion to intervene. The estate is now well positioned. He should get out and he should get paid.

Finally, Your Honor, with regard to the trustee's arguments that have been presented to you briefly, and then I will be done, the trustee, first of all, as Your Honor has already found, he is adverse to the estate. So I think Your Honor needs to take into account what weight it will assign to the argument and evidence that the trustee puts in.

Secondly, they are arguing that no benefit has arisen to the estate until money is actually recovered.

First of all, with regard to that paragraph in Judge Colin's order, that's not --

**THE COURT:** I don't think I found that he -- I don't think I made a finding that he was adverse to the estate.

14:11:49-14:12:33 Page 22

**MR. FEAMAN:** Okay. I am not going to argue with Your Honor.
**THE COURT:** No, no, no.
**MR. FEAMAN:** It's a side argument at this point.
**THE COURT:** Okay. I just wanted -- like if I had put that wording in the order I wanted to go back and look. Okay. Thank you for saying. All right. Move on.
**MR. FEAMAN:** It was a finding in connection with his appointment to be administrator ad litem.
**THE COURT:** Yes, I didn't think it was appropriate.
**MR. FEAMAN:** We have moved past Mr. Rose's argument. That's been argued and done.
**THE COURT:** Okay.
**MR. FEAMAN:** Now, has Mr. Stansbury conferred benefit to the estate? We say at this point absolutely, the Court need go no further and can say, yes, you are entitled to be reimbursed. And we cite two cases which if I have time I will argue at the end.
And I mention first the Wejanowski case which I have just mentioned. And then we

14:12:47-14:13:43 Page 23

actually found, Your Honor, and I have to give kudos to one of my law partners, an 1882 case by the Supreme Court. But the language was appropriate, and it says, if under the circumstances the litigation was just and proper and apparently for the benefit of the estate, and brought bona fide, he is entitled to credits for costs and charges and for services rendered in connection with the litigation.
And that's the Sherrell versus Shepard case, 19 Florida 300. And that's the first time in my career I have been able to cite a case from the 1800s, so I am kind of actually excited about that, Your Honor, because it seems to be right on point.
In a more serious vein, Your Honor, for Judge Colin to have ordered what he did in that last paragraph of what I call the rogue order, the second line, first, he did not revoke his first order, but, secondly, that was not part of the hearing.
And we say that Your Honor is free to modify that order and vacate those orders, but especially with regard to reimbursement now,

14:14:00-14:15:01 Page 24

because under the Mills V Martinez case, 909 So.2d 340, that court held that an order that merely grants or denies a motion does not resolve -- and does not resolve the issue conclusively, a trial court has the authority to modify that order before entering a final judgment.
Why is this important? Because in that transcript -- and then I am done, Your Honor, in the interests of time. In that hearing at page 22, line six, the court stated the issue. The court said, quote, So the question is should the claimant be declared here as administrator ad litem for the purposes of being permitted to ask the court to be able to intervene which the court may or may not do?
And after he stated the issue thusly, he then repeated it, Judge Colin at page 23, because he started to move away from Mr. Stansbury and moved into appointing Ben Brown to be the one to intervene on behalf of the estate. And the court said at page 23, line 15, quote, I will allow someone else to intervene to appropriately determine whether the estate has an interest in this money or

14:15:16-14:16:12 Page 25

not. That's the issue, correct? At which point I said yes.
And so when we are dealing with that issue the Court, this Court now subsequently is not bound by that last paragraph in that what I call rogue order when we never had a chance to argue when Mr. Stansbury would be entitled to reimbursement.
Now, they latched on to that gratuitous language at the end, but that wasn't before the Court. It is before the Court now and we are making that argument.
So we respectfully suggest that the Court is not bound by that language if it were to decide that not only can Mr. Stansbury get discharged but that he should be compensated. At the very least he should be discharged, Your Honor. And then to end the litigation concerning his compensation we are respectfully requesting that you also order that he is entitled to compensation and reserve on an amount pending discussions with the parties which we have stipulated to. Thank you.
**THE COURT:** Thank you. I am going to let Mr. Eliot go next, please.

14:16:24-14:17:29 Page 26

**MR. ELIOT BERNSTEIN:** Don't want Mr. Rose to go?
**THE COURT:** No, I am letting you go next.
**MR. ELIOT BERNSTEIN:** Okay. Well, just to make clear, Mr. Rose admitted himself today to the Court as representing Ted Bernstein as successor trustee to the Simon trust, correct?
**THE COURT:** The record stands for itself.
**MR. ELIOT BERNSTEIN:** Okay. And I believe that's what's in there. And I believe we just went through two hearings for Mr. Rose to represent the Stansbury litigation whereby he stated to this Court repeatedly on the record as a witness, et cetera, that he had nothing to do with the Illinois litigation at all, him and his client. They had no involvement in this litigation whatsoever. But yet Mr. Feaman just explained to you three years of this Illinois litigation where Mr. Rose is making opposition in all kinds of things to interfere with the estate's hiring of counsel, et cetera, which is exactly opposite of what he told the Court on the record just in those last hearings, which is further, like Mr. Feaman put in his closing statement for those hearings, that Mr. Rose

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misrepresented the record and was misrepresenting things to the Court. Well, here he just filed a pleading in this case representing Ted Bernstein in the Illinois insurance litigation. And I believe your order says they are conflicted there.
**MR. ROSE:** I object.
**MR. ELIOT BERNSTEIN:** And this would be --
**THE COURT:** Hold on.
**MR. ELIOT BERNSTEIN:** And this would be -- I thought this was my opening.
**THE COURT:** Yes.
**MR. ELIOT BERNSTEIN:** Okay.
**THE COURT:** But I get to hear a legal objection.
**MR. ELIOT BERNSTEIN:** Okay.
**MR. ROSE:** I think that, first of all, it's improper argument. It's not really an opening statement. And it's getting to be borderline offensive.
**THE COURT:** Overruled. You won't insult Mr. Rose. But other than that, overruled.
**MR. ELIOT BERNSTEIN:** Okay. But I will call a fraud a fraud.
**THE COURT:** Go ahead.

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**MR. ELIOT BERNSTEIN:** Okay. And as I understand it from the documents filed by Mr. Rose on behalf of Ted Bernstein and from the appearance made on the record today, Alan Rose is appearing for Ted who Your Honor found in conflict of interest with the estate in relation to the Illinois litigation as indicated in your April 27th order. And Rose gave oral testimony and in statements in relation to trying to represent the estate against William Stansbury that he has no involvement with the Illinois insurance litigation. But his precise filing as an attorney for a Ted, filing number 56988413, e-filed 5/26 in this court, is directly about the Illinois insurance litigation. And again, all three years he's been representing the Illinois insurance litigation issues that he told you he had nothing to do with. Clearly repeated, and that's why you allowed him to represent in that other case.
So this all contradicts his testimony and your findings, which is the basis to reopen and amend the April 27th order in itself. And I also know that I filed for an extension for

14:19:29-14:20:12 Page 29

rehearing of this order.
**THE COURT:** No, we are here on today's motion.
**MR. ELIOT BERNSTEIN:** What?
**THE COURT:** I want you to know, Mr. Eliot, I will allow you to have opening on today's motion which is whether in your position on Mr. Stansbury's motion. That is what we are going to limit this argument to.
**MR. ELIOT BERNSTEIN:** That's all I am arguing, meaning --
**THE COURT:** Okay. I must have misunderstood.
**MR. ELIOT BERNSTEIN:** Okay.
**THE COURT:** So please continue, limiting it to that issue.
**MR. ELIOT BERNSTEIN:** Okay. What's really going on here is more direct frauds upon the Court, and Ted Bernstein and Alan Rose trying to control the Illinois litigation by controlling the counsel for the estate in efforts to cover up frauds. Not to mention the fact that Alan Rose's papers show further collusion with the former PRs Tescher and Spallina who were central to all the original

14:20:27-14:20:56 Page 30

frauds in this court and in the Illinois court.
And I can say that to my knowledge there's been no filing or docket entry in the Illinois case since the fraud of Rose and O'Connell in denying me for over a year as a beneficiary in Simon's estate, has now been admitted.
**MR. ROSE:** Objection.
**MR. ELIOT BERNSTEIN:** And I have already called upon the court --
**MR. ROSE:** This is beyond the scope of the motion we are here for.
**THE COURT:** Sustained.
**MR. ELIOT BERNSTEIN:** All related --
**THE COURT:** Sustained.
**MR. ELIOT BERNSTEIN:** -- to the Illinois insurance.
**THE COURT:** Sustained. Let's stay on point.
**MR. ELIOT BERNSTEIN:** Okay. Called upon this court to confirm --
**THE COURT:** No, that doesn't mean you keep the sentence going. Sustained. Move on to your point. Stay focused.
**MR. ELIOT BERNSTEIN:** Okay. So nothing should be in my view on this motion should be

14:21:06-14:21:50 Page 31

happening here today other than scheduling hearings to unravel the fraud that are going on.
**THE COURT:** Okay.
**MR. ELIOT BERNSTEIN:** Meaning you just saw an attorney tell you he had nothing to do with this thing, and now we have heard he has been objecting to this litigation, filing opposition papers two or three years. And let me explain why.
This whole issue starts really, and you weren't here for it, and why Mr. Stansbury is paying, Mr. Feaman kind of touched on, but I want to explain.
**THE COURT:** I just want your position on whether he should continue to pay or not continue to pay, because that is what the opening is about, and you have got two more minutes.
**MR. ELIOT BERNSTEIN:** Well, it's also about this hearing has been improperly --
**THE COURT:** No.
**MR. ELIOT BERNSTEIN:** -- conducted.
**THE COURT:** It is --
**MR. ELIOT BERNSTEIN:** Is he in conflict --

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**THE COURT:** No. What you are raising are not issues before the Court today, so please stay focused.
**MR. ELIOT BERNSTEIN:** Okay. Well, everybody else has been able to give a little history, and Mr. Feaman was allowed that latitude.
**THE COURT:** Mr. --
**MR. ELIOT BERNSTEIN:** So I would like to explain the opening in my view, meaning give the background a little bit of why we are here today and why I believe that Mr. Stansbury should be recuperating his costs for the fraud that's cost him all this money and all of us.
Meaning the real victims here are Mr. Stansbury and me who were victims of the original fraud that started this case.
The Illinois insurance litigation was started by Robert Spallina filing a fraudulent claim for life insurance benefits, as Mr. Feaman noted. He did that at a time that my brother, who he was representing, had notified the police, the sheriff, and the coroner that my father might have been murdered by poisoning. And they tried to collect that

14:23:04-14:23:56 Page 33

death benefit without telling anybody. And they got denied because they couldn't prove that they had -- that Spallina was trustee of the trust he never had. And that's all in the records here. And I'm sure you've been reading about it.
And what we have is then Ted Bernstein suing the life insurance company for failure to pay a claim to Robert Spallina as trustee. What he did was he sued though as trustee of the trust Spallina said he was trustee of.
And then he wouldn't represent -- have the estate represented in these matters, because if the estate was represented by competent counsel, they immediately would have identified the fraud going on in the filing of claims by Mr. Spallina.
**THE COURT:** I did make the finding, Mr. Feaman, you are absolutely correct.
**MR. FEAMAN:** Okay.
**THE COURT:** You may continue, Mr. Eliot.
**MR. ELIOT BERNSTEIN:** And I think that goes to why Mr. Rose shouldn't be representing in conflict and that might be some sanctionable actions to take, you know, for him even

14:24:12-14:25:03 Page 34

appearing here after telling the Court he has nothing to do with this stuff.

But Mr. Spallina then failed to represent the estate's interest in the Illinois insurance litigation because it would have proven out that he committed fraud. So when we got rid of him after he admitted and his law firm admitted submitting fraudulent forged documents here, he abdicated from the Illinois litigation representing my brother in any way. And then we had to find new counsel. So Mr. Feaman brought in Mr. Stamos. And the Court was kind of forced to make a decision here of why isn't the estate representing --

**MR. ROSE:** Your Honor?

**MR. ELIOT BERNSTEIN:** -- on the interests in a policy that has different beneficiaries.

**THE COURT:** No, he has got two more minutes. Hold on one second, please. He has got two more minutes. I am going to let him complete his opening, at which point you will be entitled to your opening.

**MR. ELIOT BERNSTEIN:** Okay.

**THE COURT:** You've got until exactly 20.

**MR. ELIOT BERNSTEIN:** Well, he got like

14:25:07-14:26:02 Page 35

25.

**THE COURT:** He has the burden.

**MR. ELIOT BERNSTEIN:** Oh, okay.

**THE COURT:** You do not.

**MR. ELIOT BERNSTEIN:** So I get half the time? Okay.

**THE COURT:** So you get two more minutes.

**MR. ELIOT BERNSTEIN:** I will let it go.

I was thrown out of the Illinois litigation, and I have advised the Court. And I would like to enter into the evidence today a letter --

**THE COURT:** This is not the appropriate time. This is opening.

**MR. ELIOT BERNSTEIN:** Oh, okay. So I was thrown out of the Illinois litigation because they told that court that I was not a beneficiary of my father's estate and I had no standing. And Judge Blakey relied on this Court's statement that I was not a beneficiary and had no standing in my father's estate to throw me out on a summary judgment, saying I had no standing and therefore in Florida res judicata and yada yada yada.

The bottom line is that was all

14:26:15-14:27:07 Page 36

orchestrated. This whole Florida court is being manipulated to create another fraud on a federal court. And everybody who is aware that I am a beneficiary with standing should have already notified federal Judge Blakey that Mr. Rose misled this Court to gain those orders by Judge Phillips. And that's where I will close it up.

**THE COURT:** And that's good.

Mr. Rose, you may proceed.

**MR. ROSE:** Thank you. Good afternoon, Your Honor.

**THE COURT:** Good afternoon.

**MR. ROSE:** I just need to go back on a couple of points that were raised. Number one, the trust that exists under which my client is appointed has a specific provision that says if you are the trustee of one trust it does not preclude you from being the trustee of separate trust.

I do not represent Ted Bernstein in connection with the Illinois litigation. We have been down that road. Your Honor ruled what you ruled and that was that Mr. Bernstein --

14:27:18-14:28:09 Page 37

**MR. ELIOT BERNSTEIN:** Sorry.

**THE COURT:** I will not tolerate that. You know that. Thank you.

**MR. ROSE:** While the Illinois litigation is pending you declined to appoint Ted Bernstein as administrator ad litem. We have all moved past that.

Eliot Bernstein is, for the umpteenth time, a beneficiary of tangible personal property whose value after it's sold by Mr. O'Connell will probably be worth ten or 15 thousand dollars, his one-fifth share. And for that $15,000 we are spending hundreds of thousands or perhaps eventually a million dollars giving him his due process.

But let me talk about why we are here today, and I am going to go a little bit in reverse order.

And I think you were told, and someone can correct me if I am wrong, but you were told that there's a rogue order that has a provision in it that was never discussed at a hearing and was never part of an argument such that Mr. Feaman's clients were -- client was denied due process.

14:28:21-14:29:16 Page 38

Well, if you look at the whole transcript which again is docket entry 148, which also was recently re-filed by Mr. Stansbury, Mr. Stansbury's counsel, on page 35 summarizes an entire discussion between Mr. Morrissey, who represents four of the ten grandchildren -- I am on page 35 of the transcript. Mr. Morrissey at that time represented four of the grandchildren. The other six were unrepresented, although in my view the trustee was advocating their interests very well and got us to this point.

At the top of 35 the Court says that -- after a lengthy discussion -- I didn't put that in because I didn't think someone would get up and tell you that the issue was never raised during the hearing.

But the Court said, it would only be the case if there was a recovery for the estate to which then Mr. Stansbury would say under the statute I performed a benefit for the estate.

So we had a lengthy discussion at that hearing, pages and pages of transcript where the issue was raised, when do I get paid back. And to suggest otherwise is being untrue to the

14:29:25-14:30:06 Page 39

documents that are before you. And you can read the transcript yourself and make your own decision.

**MR. ELIOT BERNSTEIN:** Your Honor, can I object?

**THE COURT:** What's the legal objection, Mr. Eliot?

**MR. ELIOT BERNSTEIN:** That he is conflicted and shouldn't be making arguments on the Illinois insurance litigation.

**THE COURT:** Overruled. You may proceed, Mr. Rose.

**MR. ROSE:** The estate in this case is represented by counsel. No one disputes they are represented by counsel and that counsel is a fine lawyer, Mr. Stamos. The only thing we are here to decide is who should pay that expense.

Now, you've heard, and I wrote it down, there's a windfall to the estate been created by Mr. Stansbury. In fact, the evidence will demonstrate there's a liability created by Mr. Stansbury's actions. There's a lawyer in Chicago that's currently owed over $41,000 and counting that's not been paid pursuant to a

14:30:21-14:31:12 Page 40

valid unappealed order of this Court. And that's a liability.

So not only does Mr. Feaman want to be ordered repaid the 70,000 that he paid, he wants the estate to start paying the 40,000 and all the way through the trial. And guess what? If they lose -- someone is right and wrong in Illinois, and we are not here to decide that. But it's gambling. If the estate is wrong and Mr. O'Connell has spent a couple hundred thousand dollars in litigation and he loses, guess what? It's not a windfall. It's a liability. It's a detriment.

And the whole point of the grand bargain that was discussed and reached in court that day was Mr. Stansbury is the only person outside the, quote, family that can take some of this money. It's in his best interests to get that money into the estate because he is suing us for two and a half million dollars. And so he is the guy who benefits. If other than him all the money stays in the family either through the Illinois trust or through the estate it would flow into this trust to benefit the children or the grandchildren.

14:31:23-14:32:16 Page 41

So we had this lengthy thing. And what I think we are here today is decide how important are orders of this Court?

First of all, we know that an amended order supercedes the original order. So you can't tell me that the second order is a rogue order and I am going to ignore it.

But they didn't appeal either of those orders. And, you know, I understand batting 70 percent and he has paid about 70 percent of the expenses, that might be good enough to get you into the Hall of Fame in baseball or get you a lot of things. But 70 percent compliance with a court order is not acceptable to me, and I don't think it should be acceptable to this Court.

We have a valid order. And the order was not willy-nilly. If you read the transcript, and I gave you pages -- I am sorry, did you have a question?

**THE COURT:** I did. I am just thinking about whether it does the Court any good to ask it, so give me a second. Let's set aside at this moment let's set aside whether Mr. Stansbury may or may not be entitled to any

14:32:31-14:33:08 Page 42

reimbursement if money comes in. Let's just set that aside.
Why am I not allowed to let him out and let Mr. O'Connell hire a contingency, put it on contingency basis? Wouldn't that be the PR's decision as to whether or not to go forward with the claim?
**MR. ROSE:** Well --
**THE COURT:** That is the PR's right. Please address just my question.
**MR. ROSE:** I will.
**THE COURT:** That's my question.
**MR. ROSE:** Okay. Well, the answer to your question is we are here because you have power to make a ruling. No one is denying that you have the power to make a ruling.
**THE COURT:** Okay.
**MR. ROSE:** You are talking about the propriety of your ruling, the beneficiaries are very much against hiring someone on a contingency fee basis for this reason. The cost to finish the case --
**THE COURT:** Wouldn't that be -- okay. Let me listen to you. I am sorry.
**MR. ROSE:** Yeah. I understand. We put a

14:33:19-14:34:01 Page 43

lot of thought into this that goes on outside of the courtroom. We have spoken to Mr. O'Connell at length.
The agreement that you have not approved -- the agreement that you approved from the Shirley trust beneficiaries, that you have not yet considered from the Simon trust beneficiaries, which includes the four grandchildren who are represented by Mr. Morrissey, the three grandchildren who are not represented but whose parents are actively involved, and the three grandchildren who are -- whose interests are being protected by the guardian ad litem, those ten people agreed they wanted Mr. O'Connell to oppose this motion, and that those ten people agreed that if you are going to excuse Mr. Stansbury from the promise that he has made --
**MR. ELIOT BERNSTEIN:** I object, Your Honor.
**THE COURT:** Legal objection?
**MR. ELIOT BERNSTEIN:** He is misrepresenting that he has consent of all of the beneficiaries.
**THE COURT:** So noted. Go ahead.

14:34:04-14:34:47 Page 44

**MR. ELIOT BERNSTEIN:** And he was supposed to, by the way --
**THE COURT:** So noted. Move on. No, no.
**MR. ELIOT BERNSTEIN:** (Overspeaking) -- court hearing.
**THE COURT:** No, no.
**MR. ELIOT BERNSTEIN:** Oh, okay.
**THE COURT:** So noted.
**MR. ELIOT BERNSTEIN:** Okay.
**THE COURT:** You may proceed.
**MR. ROSE:** So I am not directly in the Illinois litigation, but I know specific facts about the Illinois litigation. One of the facts I asked was if there's a budget to go to trial. So I think the budget for trial is $50,000. It's going to be a one-day bench trial in Chicago. I think there's -- it's a fairly simple narrow case.
The proposed contingency fee would be $700,000 if they win. It's a light switch case, I call it a light switch case; you flick it up or you flick it down. There's no carving in the middle. You can't say, well, we are going to --
**THE COURT:** I understand. Either they get

14:34:54-14:35:30 Page 45

the money --
**MR. ROSE:** Right.
**THE COURT:** The insurance trust gets the money or the estate gets the money. It's A or B.
**MR. ROSE:** Right.
**THE COURT:** I got it.
**MR. ROSE:** At a loss, it's a loss. At a win, it's $700,000 to the lawyer on a contingency fee when he has told us his hourly rates are going to be 50. And in addition, paying back Mr. Stansbury the 70 he has already put out would mean that the total fee for this litigation would be $770,000. Everyone has agreed if Your Honor is going to excuse Mr. Stansbury, which we would request you not do, that the estate is going to handle the matter on an hourly rate basis, or that's the preference of the people that will have to make the decision afterwards.
One of the decisions -- some of the decisions are going to be, do I pursue the case or not. Another decision is do I settle the case or not. But that's for Mr. O'Connell.
**THE COURT:** Okay.

14:35:37-14:36:25 Page 46

**MR. ROSE:** The specific answer to your question --

**THE COURT:** You did.

**MR. ROSE:** -- you clearly have the power to do something. We are here asking you not to change the order. Because if you read what Judge Colin did, it was very, very specific. And it was not a five-minute hearing. It was a lengthy hearing.

And, you know, the specific thing he says on paragraph two, for the reasons subject to the conditions stated on the record, all attorney's fees and costs incurred shall be initially borne by Mr. Stansbury. He has not borne the expenses. He is in violation of the order.

Florida law is very clear that if you are in violation of an order you should not be heard on that order. I don't know if he should be heard on any matter, but he should at a minimum he should have brought this into compliance and shown up and said I have complied with the order and would like relief from it. So we have cited the case I won't argue. It's in our brief. It's very clear to

14:36:38-14:37:39 Page 47

me under the law.

The second point, the order could not be any clearer. Mr. Stansbury shall not be reimbursed for any fees or costs incurred from either the decedent's estate or the trust which my client is the trustee of.

And as Your Honor knows, under certain circumstances if Mr. O'Connell runs out of money he can certify a need for money to the trust, and a revocable trust can be required under statute to occasionally pay money back. So some day they may come and ask my client to take money out of the trust that's designated for these ten grandchildren to fund this litigation that we -- you know, that right now is being funded perfectly fine.

But he is not to be reimbursed unless there is a recovery on behalf of the estate that results in a net benefit to the estate. That's not a rogue -- for someone to come here and -- I am not criticizing the lawyer. But the argument that is being made to you that that's a rogue order when it's an order that was never appealed, I think it is just flat out wrong.

14:37:49-14:38:34 Page 48

The other thing is Mr. Stansbury has gotten the benefit of all kinds of wonderful things in the transcript. He has got the right to talk to the lawyer in Chicago. He picks the lawyer. He consults with him. I was standing with Mr. Feaman outside --

**THE COURT:** Wrap up.

**MR. ROSE:** He gets called by the lawyer. He is in communication. That was the bargain.

So in my view it's very important that we follow court orders. It was not appealed. Everybody relied upon it. He has gotten the benefit of it.

This delay of years and years, I mean, there was nothing in the order -- at the time of this hearing we were waiting to get a permanent PR. That was on the horizon. I think the PR hearing was a few weeks after. I think, if I recall, and I don't know for sure, it was early July, like the 10th or something of July, when we had a hearing to determine the PR when Mr. O'Connell was going. That was like a week after this order.

This isn't like it was a vacuum. We knew that there was going to be a PR. And it still

14:38:49-14:39:37 Page 49

is this, that he is going to fund it. And so to suggest that this was a temporary arrangement is not correct.

Now, they had time to ask Judge Colin to reconsider the order. They had a year and a half to ask Judge Phillips. And on multiple occasions they just withdrew their motion, they would cancel their hearing. The record will speak for itself. But we are now three years down the line on an order that was never appealed. And I don't think it's appropriate to treat it like it's a worthless piece of paper. It's an order of this Court. Mr. Feaman said he never relied on a case from the 1800s. Well, I am relying on a case from this Court entered by this Court in 2014. And we would ask that you deny the motion.

Now, this is what happens if you deny the motion. Mr. Stansbury funds the litigation. Presumably everyone on that side of the table thinks it's a winning case. So he is going to fund the litigation. It's going to get tried. The estate is going to win.

There's no question that Mr. Stansbury gets paid back immediately and first from a net

14:39:49-14:40:35 Page 50

recovery. We are not going to come in here and say, well, we didn't really benefit us. And that was very clear from the beginning. That's why Judge Colin said what he said.

But if he is right about the case, he is going to finish funding it, they are going to try it and they are going to win it, and money is going to come in. He is going to get paid back every penny he is entitled to. If they are wrong and it's a loser, the estate has no harm whatsoever, no liability to a lawyer in Chicago, no outlay of funds.

And you and I and Mr. O'Connell and Mr. Feaman we are not capable of deciding who's going to get that money. That's the judge in Illinois. But we arranged -- and I realize that Mr. O'Connell wasn't here yet, Judge Lewis wasn't in the case yet. But what the people that were in that courtroom in May arranged with the judge, and I could read you the whole transcript, I have highlighted it, so I think you've got a flavor. It was hotly contested. It was compromise. And Mr. Feaman made representations on the court. And the specific thing that Judge Colin said at the end, part of

14:40:46-14:41:12 Page 51

this is the sincerity of Mr. Feaman's side, it's a good thing and they made a pledge to do it, they are not going to go back on their word.

I would ask you not to let them go back on their word.

**THE COURT:** Thank you. All right, Mr. Feaman, call your first witness.

**MR. FEAMAN:** I will move as quickly as possible.

**MR. ELIOT BERNSTEIN:** Your Honor?

**MR. FEAMAN:** I want to put some documents in before Your Honor even though they are already in the record so that you can have with you --

**THE COURT:** Thank you.

**MR. FEAMAN:** -- documents to refer to.

**THE COURT:** Do you want me to mark?

**MR. FEAMAN:** I have them marked on the back.

**THE COURT:** No. But tell me if you want them -- how you want me to handle them, evidence, they are for me?

**MR. FEAMAN:** I think evidence is the easiest way to create a record.

14:41:19-14:41:51 Page 52

**THE COURT:** So this will be Stansbury's. Okay.

**MR. FEAMAN:** And I have the -- and everybody will get copies.

**THE COURT:** Mr. Eliot, do you have an objection?

**MR. ELIOT BERNSTEIN:** No. Just clarification. Your order said this was confined, limited to one hour. Mr. Feaman sent out a letter saying that you and him had arranged that it couldn't go past 2:30. I just said to whom -- no, that's not correct?

**THE COURT:** A couple of different things.

**MR. ELIOT BERNSTEIN:** Okay.

**THE COURT:** I am proceeding right now on my hearing.

**MR. ELIOT BERNSTEIN:** Right.

**THE COURT:** Secondly, I have never had a conversation with Mr. Feaman ever outside of this courtroom.

**MR. ELIOT BERNSTEIN:** I meant with your clerk, with your J.A.

**THE COURT:** My J.A.

**MR. ELIOT BERNSTEIN:** Correct, in scheduling this.

14:41:56-14:42:19 Page 53

**THE COURT:** So I am going to proceed right now.

**MR. FEAMAN:** I have never had a conversation with your J.A., Your Honor.

**THE COURT:** Thank you.

**MR. ELIOT BERNSTEIN:** Or somebody did.

**MR. FEAMAN:** Exhibit 1 --

**THE COURT:** Thank you.

**MR. FEAMAN:** -- is the first order of May 23rd.

**THE COURT:** Okay. You are asking that this be placed in evidence or Court take judicial notice?

**MR. FEAMAN:** Exhibit 1 it's stamped on the back, Your Honor.

**THE COURT:** Any objection?

**MR. ROSE:** I don't think it needs to be in evidence, but I don't have any objection.

**THE COURT:** Okay.

**MR. FEAMAN:** Your Honor, it doesn't need to be in evidence.

**THE COURT:** I will just place it in evidence.

**MR. FEAMAN:** It's just more orderly.

**THE COURT:** Sure. Sure. Stansbury

14:42:23-14:42:52 Page 54

Petitioner's Number 1 admitted into evidence. Okay.

(Stansbury's Exb. No. 1, Order Appointing Administrator Ad Litem, 5/23/14.)

**MR. FEAMAN:** Then Number 2, Your Honor, is the second order --

**MR. ROSE:** No objection.

**MR. FEAMAN:** -- referred to.

**THE COURT:** Thank you.

**MR. FEAMAN:** I have an exhibit list.

**MR. ROSE:** No objection to 2.

**MR. FEAMAN:** Thank you.

**THE COURT:** Thank you.

(Stansbury's Exb. No. 2, Amended Order Appointing Administrator Ad Litem, 6/16/14.)

**MR. FEAMAN:** Do you need a copy or are you okay?

**MR. ROSE:** Why don't I have a copy?

**MR. FEAMAN:** I am trying to move quickly, Your Honor.

**THE COURT:** That's okay.

**MR. ELIOT BERNSTEIN:** Do we know how long this hearing will go so we can --

**THE COURT:** You know, that's very rude.

**MR. ELIOT BERNSTEIN:** Well, excuse me.

14:42:56-14:43:29 Page 55

**THE COURT:** I am just saying you don't just --

**MR. ELIOT BERNSTEIN:** I've got kids. And in the order --

**THE COURT:** You need to stop.

**MR. ELIOT BERNSTEIN:** The order said --

**THE COURT:** No, no, no. When I say you need to stop, you need to stop talking.

**MR. ELIOT BERNSTEIN:** Okay.

**THE COURT:** Whose phone is going off?

**MR. FEAMAN:** Your Honor, I apologize to the Court.

**THE COURT:** That's okay. That's all right. Thank you.

I have entered an order in these cases indicating, while I indicated it would be an hour, that is no promise that the hearings will end exactly in an hour.

**MR. ELIOT BERNSTEIN:** In this order you said limited to one hour.

**THE COURT:** And there was an order entered after indicating --

**MR. ELIOT BERNSTEIN:** That's what I said to Mr. Feaman.

**THE COURT:** There was a subsequent order

14:43:36-14:44:12 Page 56

that was entered.

**MR. ELIOT BERNSTEIN:** That that would override this. Okay. I should have brought a pillow.

**THE COURT:** My court reporter is really having a hard time. I apologize. I will try to be more aware. I apologize very much to you.

Okay. You may proceed.

**MR. FEAMAN:** Exhibit 3 is the motion to intervene filed by the estate in the United States District Court for the Northern District of Illinois.

**MR. ROSE:** No objection.

**THE COURT:** So entered.

(Stansbury's Exb. No. 3, Motion to Intervene.)

**MR. FEAMAN:** Exhibit 4 is the verified copy of the order granting the motion to intervene by the United States District Court Northern District of Illinois.

**THE COURT:** Thank you.

**MR. ROSE:** No objection to 4.

**THE COURT:** Thank you.

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(Stansbury's Exb. No. 4, Verified Copy of Order Granting Motion to Intervene.)

**MR. FEAMAN:** Exhibit 5 is the first motion by successor personal representative Brian O'Connell, docket entry 403, for authorization to enter into a contingency agreement with Illinois counsel in the pending life insurance litigation.

**THE COURT:** I am happy to take that in since that's the way we are doing it. I did notice that you filed a notice for judicial --

**MR. FEAMAN:** Yes.

**THE COURT:** But I will just go ahead and continue the flow.

(Stansbury's Exb. No. 5, Petition for Authorization to Enter into Contingency Agreement, Docket Entry 403.)

**MR. FEAMAN:** And the purpose of the -- don't mean to address the Court with my back to it.

**THE COURT:** That's okay.

**MR. FEAMAN:** The purpose of this, Your Honor, is for the Court to note in paragraph five where it says as of the date of the filing of this motion, which is December 2015,

approximately a year and a half after the entry of the order ordering Mr. Stansbury to pay, it says, quote, The legal fees to date in the life insurance litigation have been paid by William Stansbury.

And then paragraph seven, the successor personal representative believes that it is in the best interests of the estate to continue with the life insurance litigation.

And then paragraph eight, Illinois counsel has agreed to waive the outstanding balance currently due and enter into a contingency agreement.

**MR. ROSE:** Are we here to --

**MR. FEAMAN:** Exhibit 6, Your Honor --

**THE COURT:** Now why are you interrupting?

**MR. ROSE:** No, no. Are we doing argument on each of these exhibits or just going to have them come in?

**MR. FEAMAN:** I wasn't arguing.

**THE COURT:** Please have a seat. He is just handing me the exhibits.

**MR. FEAMAN:** Just reading. Exhibit 6 is docket entry 405 which is Mr. O'Connell's amended petition for authorization. And the



amended petition contains the same language as Exhibit 5.

(Stansbury's Exb. No. 6, Amended Petition for Authorization to Enter into Contingency Agreement, Docket Entry 405.)

**THE COURT:** All right. I don't want you to annotate the exhibits.

**MR. FEAMAN:** Okay.

**THE COURT:** Just if you want to bring something to the Court's attention on it, then I will entertain anything else anyone else wants to bring to my attention.

**MR. FEAMAN:** Okay. Just the only thing different is there's a new paragraph nine saying that there's also an hourly fee arrangement offered to the personal representative by Chicago counsel.

And then, finally, Exhibit 7 is the inventory filed by Mr. O'Connell as successor personal representative dated December 1st, 2014, showing the claim for the insurance proceeds in Chicago as an asset of the estate value unknown.

(Stansbury's Exb. No. 7, Inventory 12-1-14.)



**MR. FEAMAN:** Now I would call Mr. Stansbury to the stand.

**THE COURT:** All right.

**MS. CRISPIN:** I just want to interject quickly. I know you asked the estate's position on whether or not Mr. Stansbury should be discharged.

**THE COURT:** Yes.

**MS. CRISPIN:** There was a second component to that, which was should he be reimbursed for what he has already paid. And I did want the Court to know that Mr. O'Connell's position is similar to that of Mr. Rose's, which is notated on page 35 of the transcript, is that until there is a net recovery to the estate it should not be repaid.

**THE COURT:** Okay. Thank you.

**MS. CRISPIN:** Thank you.

**THE COURT:** Thank you, Ms. Crispin. All right, go ahead.

As I do in all the hearings, I will keep the evidence up here for anybody to reference, my very complicated evidence label.

- - -

Thereupon,



WILLIAM STANSBURY,

a witness called on behalf of himself, being by the Court duly sworn, was examined and testified as follows:

**THE WITNESS:** I do.

**THE COURT:** Thank you. Please have a seat.

**MR. FEAMAN:** Permission to lead the witness to go through some background information, Your Honor?

**THE COURT:** I think that in this case we better just go with the standard.

**MR. FEAMAN:** Thank you.

DIRECT (WILLIAM STANSBURY)

**BY MR. FEAMAN:**

**Q. Please state your name and address.**

A. William Stansbury. 6920 Caviro Lane, Boynton Beach, Florida.

**Q. And you are presently a claimant against this Estate of Simon Bernstein, and you have brought an action against the estate seeking the recovery of money; is that correct?**

A. It is, yes.

**Q. What's the approximate value of your claim?**

14:50:06-14:51:05 Page 62

A. Approximately 2.5 million.
**Q. And when did you first obtain knowledge that there was a life insurance policy that was in effect at the time of Simon Bernstein's death where death benefits of which might rightfully belong to the Estate of Simon Bernstein?**
A. I first became aware of the life insurance policy in the fall of 2011.
**Q. How was that?**
A. Inadvertently, I suspect, that the life insurance policy on Mr. Bernstein lapsed. And there was a great deal of panic in the office. There were concerns about his health and the fact that there may not be an opportunity to get the policy benefit back alive. And because of my 40 years of experience in the insurance industry, I was consulted with to see if there was anything that I could suggest or recommend that might help to re-establish the benefit for Mr. Bernstein who was the owner of the policy at that time.
**Q. Is that the same policy that's at issue in the Chicago litigation?**
A. It is.
**Q. And were you successful in getting the policy reinstated?**

14:51:14-14:52:25 Page 63

A. I was.
**Q. And you were working with Mr. Simon Bernstein at that time?**
A. I was.
**Q. And now Mr. Bernstein passed away in, I believe, the fall of 2012; is that correct?**
A. September of 2012, yes.
**Q. Okay. How did you learn that there had become an issue as to who or what the beneficiary of that life insurance policy was?**
A. There was a lot of e-mailing and things going back and forth that I became aware of. And the fact that the life insurance policy was being submitted to the insurance company with a claim being made by a trustee who wasn't the trustee of the life insurance policy that was described in the benefit as being a beneficiary.
**Q. Was that Mr. Spallina?**
A. It was.
**Q. Did you become aware subsequently that then a lawsuit had been filed in Illinois involving the death benefits of that policy?**
A. Yes.
**Q. And how much are those death benefits as far as you know?**

14:52:36-14:53:37 Page 64

A. It's in the 1.6, 1.7 million dollar range, something in that vicinity.
**Q. And did there come a time when you learned that there was a disagreement over who the beneficiary of that policy is?**
A. Yes.
**Q. Did you make inquiries as to whether the estate was involved at that time in the litigation that was pending in Chicago?**
A. Yes.
**Q. And what did you find out?**
A. I found out that they were not being represented at all in that litigation.
**Q. Did that concern you?**
A. It did.
**Q. Why?**
A. Well, on a number of levels. First of all, you know, obviously, if I can bring additional liquidity into the estate that tends to help not just the estate but potentially any claim that I might be awarded, so there was an interest there.
I am -- I was at that time 40 years in the life insurance profession, and I ran large offices and regions for major life insurance companies. And I understood from time to time that people do

14:53:53-14:54:57 Page 65

pass away and the beneficiaries are not always being -- they are not always able to be found. Businesses have been listed as beneficiaries or trusts that are no longer there and can't be proven up.
And so I know that there were opportunities for estates of others to make claims, and those estates were subsequently awarded benefits that either were paid based on the will or the intestacy laws of the state that the person resided in.
And I took it as a professional responsibility. You know, this was not just something that I was trying out. As I said, I was 40 years in the business at that point. And I had leadership positions in the community and county and nationally in the insurance business.
And so for me to observe an application for insurance to be submitted by, not the application, but the claim to be submitted by someone who really had no interest in that, and they represent to the insurance company claim department that they are the beneficiary, to me that was offensive, you know, that is somewhat in violation of I am aware of a statute in Florida

14:55:17-14:56:15 Page 66

817.234. It seems to violate that statute.
So I felt there was a responsibility to at least bring to the attention of the court for the reasons that I stated that there should be given an opportunity for the estate to have a seat at the table to at least argue a case.
**Q. So in November of 2013 did you personally hire an attorney to attempt to intervene on your behalf in that action as a claimant of the Bernstein estate?**
A. I did.
**Q. And what was the result of that?**
A. We were denied.
**Q. Now, you recall that in January of 2014 then the personal representatives, Messrs. Tescher and Spallina, resigned; is that correct?**
A. Yes.
**Q. And did you then ask the probate court here in Florida to appoint an independent curator or administrator ad litem to intervene?**
A. I did.
**Q. And the court, as you heard in opening statement, granted your motion for the appointment first of an independent curator; is that correct?**
A. Correct, yes.

14:56:26-14:57:15 Page 67

**Q. That was Mr. Brown?**
A. Correct.
**Q. Did you file then a subsequent motion to have the estate intervene in the Chicago litigation?**
A. Yes.
**Q. And your motion recited that you would be the intervenor; is that correct?**
A. Yes.
**Q. And then do you recall the hearing on May 23rd, were you there in the courtroom at that time in 2014 concerning the appointment that resulted in the orders that we have discussed this morning?**
A. Yes.
**Q. And the court obviously then granted the petition and ordered that you would initially bear the costs of the litigation, correct?**
**MR. ROSE:** Objection, the order speaks for itself.
**THE COURT:** Sustained.
**BY MR. FEAMAN:**
**Q. Now, do you know how much money at this point you have actually paid just to Mr. Stamos's law firm?**

14:57:27-14:58:47 Page 68

A. It's in the range of $70,000.
**Q. And do you recall over what period of time that is?**
A. It's from when I received his first invoice through January of this year, 2017.
**Q. Let me hand you what's been marked as Composite Exhibit 8. Can you first identify what Composite Exhibit 8 represents?**
A. They represent payments that were made to Ben Brown's firm and Mr. Stamos's firm for fees that were generated as a result of what we'll call the Chicago litigation.
**Q. Okay. And so the first check is payable to Matwiczyk and Brown. Was that Ben Brown's firm, as you mentioned?**
A. Yes.
**Q. And then there's a check -- and then there's, just in the interest of time --**
**THE COURT:** Legal objection?
**MR. ROSE:** The document is not in evidence yet. I don't have an objection to it coming into evidence, but he shouldn't be reading from a document that's not in evidence.
**THE COURT:** Are you moving it in?
///

14:58:59-14:59:40 Page 69

**BY MR. FEAMAN:**
**Q. Are those checks generated by you --**
**THE COURT:** Wait. Did you want to put it in evidence?
**MR. FEAMAN:** Yeah, I am going to lay a predicate.
**THE COURT:** He just said he didn't object.
**MR. FEAMAN:** I would move those in evidence at this time, Your Honor.
**THE COURT:** Okay. Let me just mark it.
**MR. FEAMAN:** He has the marked one, if I could, I will switch.
**THE COURT:** Thank you. I appreciate that.
**MR. ROSE:** Is that 8?
**THE COURT:** This is 8. This is Stansbury's 8.
(Stansbury's Exb. No. 8, Payment of Checks.)
**BY MR. FEAMAN:**
**Q. And in the interests of time could you just briefly list the check number and the amount and the date and the payee?**
A. Starting with Mr. Brown or going to the first?
**Q. Yes, starting with the first page and**

14:59:54-15:00:48 Page 70

**going through?**
A. I am having a difficult time seeing a check number on a cashier's check. Do you see it?
**Q. 1167815311?**
A. Oh, okay.
**Q. That's $3,401, correct?**
A. Correct.
**Q. Okay.**
A. The next check number is 1166312927.
**Q. Date?**
A. December the 18th, 2014.
**Q. Amount?**
A. $5,290.49.
**Q. Next?**
A. It's my check number 129.
**Q. Date?**
A. February 27th, 2015.
**Q. Amount?**
A. $9,551.66.
**Q. Next?**
A. Check number 134, amount --
**Q. Payee?**
A. Payee is Stamos and Trucco.
**Q. Date?**
A. The date of the check is April 24th, 2015.

15:01:05-15:02:04 Page 71

**Q. Amount?**
A. $4,107.28.
**Q. 136?**
A. Yeah, check number 136, it's dated June the 1st of 2015, anniversary date, or yesterday.
**Q. The payee?**
A. Payee is Stamos and Trucco.
**Q. Amount?**
A. $7,805.60.
**Q. The next check?**
A. Check number 139.
**Q. Payable to?**
A. Stamos and Trucco.
**Q. Date?**
A. July the 13th, 2015.
**Q. Amount?**
A. $16,936.38.
**Q. Next check?**
A. Number 154, payable to Stamos and Trucco.
**Q. Date?**
A. Date is August the 12th, 2016.
**Q. Amount?**
A. $16,585.
**Q. Next check?**
A. Check number 159, payable to Stamos and Trucco. The date is February the 13th, 2017. The amount is $10,000 even.
**Q. Okay. At the hearing back in May of 2014 why did you volunteer to pay the -- well, first, did you volunteer to pay initially the fees and costs that would be incurred by the estate in connection with the intervention?**
A. Yes.
**MS. CRISPIN:** Your Honor, objection. Transcript speaks for itself what the position was at the time of the hearing.
**THE COURT:** Overruled.
**BY MR. FEAMAN:**
**Q. Had a personal representative been appointed by the court yet at that time?**
A. No.
**Q. And after the motion to intervene was granted did you then move to be discharged from further responsibility for funding the estate?**
A. I did.
**Q. And how long after the court's granting of the estate's motion to intervene up in Chicago did you move to be discharged from further responsibility that you can recall?**
A. Seems like it was two or three months,

15:02:42-15:03:28 Page 72

15:03:38-15:04:53 Page 73

somewhere in that neck of the woods.
**Q. Okay.**
A. Two, two and a half months.
**Q. Why did you believe it appropriate to move to be discharged at that time?**
A. Well, because I did what I promised that I would do. I generated a benefit for the estate. And but for that intervention the estate may not have had a seat at the table and had any claim at all to the insurance proceeds. We were able to -- not we. The attorney was able to get, I don't know what the legal words are, but get standing to represent the estate. Summary judgments that were presented by the plaintiff were defeated. And so the estate was represented and that was a benefit.
**Q. Why do you think you should be discharged at this time from any further responsibility from funding this estate's participation in that litigation in Chicago?**
A. Well, at this time, you know, again, I did what I said I was going to do. I funded the litigation. A benefit was provided, in addition to what I just described, by Mr. Stamos who offered Mr. O'Connell the opportunity to take either a contingent or an hourly fee basis.

15:05:12-15:06:18 Page 74

So from my perspective if you have any concerns about litigation expense, a contingency fee arrangement sort of takes all of those expenses that you might incur off the table. The only thing that would result would be a benefit or no cost, which to me to is benefit.

So from my perspective that is a large benefit and one that Mr. Stamos in the pleading or filing or motion, whatever you call it that you read before, has agreed is a benefit. Whether he chooses to pay hourly or not, that's up to him. But I have certainly provided the opportunity for him to reap a benefit where the estate would lose nothing and only gain. To me that's a huge benefit.

**Q. Did Ted Bernstein, the successor trustee to the trust that's the sole residual beneficiary of the Simon Bernstein estate, did he through his counsel oppose your attempts to get the estate intervened?**

A. Yes.

**Q. Why is that, do you believe?**

A. I can't figure it out because essentially it's the parents or the plaintiffs and their children are the defendants. So it's, you know,

15:06:31-15:07:15 Page 75

parents and children trying to figure out who gets the money.

But, you know, I can't speak for why they do what they do. But, you know, my understanding from the documents that have been presented in court is that if the money goes to the estate --

**MS. CRISPIN:** Your Honor, move to strike, hearsay and speculation.

**THE COURT:** Sustained. Give me one second, please. All right. Let me just interrupt.

**MR. FEAMAN:** No further questions, Your Honor.

**THE COURT:** Oh, I am sorry, I didn't mean to interrupt. But this goes to what question Mr. Eliot was asking earlier. I did not respond because I didn't have an answer.

We will need to -- I had this set for an hour. I left it open. But I am signing judge, and I have two emergencies already going. So we can either end here -- or I'd like to complete his testimony, if possible. But I need it to be done by 3:30. So I don't know if that's possible.

**MR. FEAMAN:** I am done.

15:07:27-15:08:01 Page 76

**THE COURT:** Thank you.

Mr. Eliot, why don't you proceed?

**MR. ELIOT BERNSTEIN:** Well, first, I wasn't trying to stop the proceeding.

**THE COURT:** I know.

**MR. ELIOT BERNSTEIN:** I brought a pillow and a tent, because your order says I could be here forever, which I think prejudiced me and everybody else. But because I have kids and I got to take care of them and all those things. And I was just trying --

**THE COURT:** You can proceed with the cross-examination.

**MR. ELIOT BERNSTEIN:** I know, but --

**THE COURT:** Thank you. Now. Now. No, no, no. Thank you. Appreciate it.

**MR. ELIOT BERNSTEIN:** Don't think I have enough time in a half hour to again do what I need to do.

**THE COURT:** You don't think you have enough time in a half hour?

**MR. ELIOT BERNSTEIN:** No. I was going to call some witnesses on my own.

**THE COURT:** No. You are just -- we are going to continue the hearing, sir. This is

15:08:08-15:08:39 Page 77

just your questions for Mr. Stansbury.

**MR. ELIOT BERNSTEIN:** Oh. Will we have enough time for me to call witnesses and everything?

**THE COURT:** Today?

**MR. ELIOT BERNSTEIN:** Yes.

**THE COURT:** Please do your questioning of Mr. Stansbury. And after we are done with Mr. Stansbury we are going to recess for the day.

**MR. ELIOT BERNSTEIN:** Okay.

**THE COURT:** Okay?

**MR. ELIOT BERNSTEIN:** Yeah.

CROSS (WILLIAM STANSBURY)

**BY MR. ELIOT BERNSTEIN:**

**Q. You said you worked on the policy reinstatement in 2011; is that correct?**

A. Correct.

**Q. And that's the life insurance policy that's the subject of this hearing, correct?**

A. Yes, it is.

**Q. Okay. Did you see the policy at that time?**

A. No, I did not.

**Q. Did you see the new policy that was**

15:08:46-15:09:51 Page 78

**issued?**
A. No, I did not.
**Q. Did you get any paperwork on that?**
A. No, I didn't.
**Q. Okay. Have you notified state authorities that there was possible fraud in this insurance matter before this Court?**
A. As I mentioned earlier, I am a professional in the insurance industry. And I have a responsibility with my license to advise the Department of Insurance if I see anything that appears to be an irregularity for them to investigate. And it was my professional opinion that there was an irregularity, and I notified the Department of Insurance.
**Q. What was the irregularity?**
A. Well, the irregularity that I saw was that -- I guess there were a couple. But number one was the fact that a claim was made on a policy by an individual representing himself as the trustee of a trust where he wasn't the trustee of the trust.
**Q. Who was that individual?**
A. Robert Spallina.
**Q. And he was who?**
A. He was -- well, he was a number of things.

15:10:08-15:11:02 Page 79

He was a friend of Ted Bernstein's. He was a lawyer. And he was the PR. And I think he also wore the hat of trustee of the trust. So he was wearing a lot of hats.
**Q. Okay. And did you contact or have your attorney contacted the FBI regarding matters involving this insurance?**
**MS. CRISPIN:** Objection, relevance.
**MR. FEAMAN:** Objection, calls for attorney/client privileged information.
**THE COURT:** Sustained.
**MR. ELIOT BERNSTEIN:** So don't ask him again? Okay. Okay.
**THE COURT:** Sustained on the attorney/client privilege.
**MR. ELIOT BERNSTEIN:** Okay.
**BY MR. ELIOT BERNSTEIN:**
**Q. Are you aware that in the Illinois litigation that there was a summary judgment against my rights stating that I wasn't a beneficiary and have standing in Simon Bernstein's estate?**
**MR. ROSE:** Objection, relevance, materiality.
**THE COURT:** Sustained.

15:11:16-15:12:16 Page 80

**BY MR. ELIOT BERNSTEIN:**
**Q. Are you aware that Simon Bernstein has you as the successor trustee of his trust at one point, and you would have been in charge of this insurance litigation?**
**MR. ROSE:** Objection.
**THE WITNESS:** Yes, I am aware of that.
**BY MR. ELIOT BERNSTEIN:**
**Q. Okay. Are you aware that when Robert Spallina filed that fraudulent insurance claim that there was an investigation started at that time into my father's death being from poisoning?**
**MR. ROSE:** Objection, relevance.
**MS. CRISPIN:** Join.
**THE COURT:** Sustained.
**BY MR. ELIOT BERNSTEIN:**
**Q. Well, I know -- well, let me ask you this. Mr. Spallina failed to represent the estate's interest in the Illinois insurance litigation; is that correct?**
A. Not only failed to represent it; it appeared to me that he was actually working adverse to the estate.
**Q. Okay. And --**
**MR. ROSE:** Objection, move to strike,

15:13:09-15:14:20 Page 81

nonresponsive.
**THE COURT:** Can I please have the response read back to me and the question?
(The following portion of the record was read back.)
"Q. Well, let me ask you this. Mr. Spallina failed to represent the estate's interest in the Illinois insurance litigation; is that correct?
"A. Not only failed to represent it; it appeared to me that he was actually working adverse to the estate."
**THE COURT:** Sustained. Next question.
**BY MR. ELIOT BERNSTEIN:**
**Q. Did you have to pay for this counsel, Mr. Stamos, due to the fact that the estate had not paid -- would not enter the case without your payment? Is that why you are paying this?**
A. Yes.
**Q. You said you have some other irregularities in the insurance policy in this litigation that you brought to the attention of the state. What were some of the other irregularities you found in the insurance?**
A. Well, I am not sure that I would call them

15:14:42-15:15:45 Page 82

irregularities with the insurance, Eliot, but things that I thought needed to be explored. I mentioned one. The other is that as the claim was denied from Heritage Life Insurance Company that Robert Spallina submitted as the trustee of the trust, that after that time Ted Bernstein submitted or filed a lawsuit as a plaintiff claiming that he was the trustee of the trust, all the while knowing that Robert Spallina had filed a claim saying he was the trustee of the trust.

And so the irregularity, again from my perspective understanding insurance, is that a licensed insurance agent, that being Ted Bernstein, was aware that another person was making a claim to be a trustee of a trust on a claim form when he knew that that couldn't be if he was then subsequently filing a lawsuit saying that he was the plaintiff.

**MR. ROSE:** Objection, move -- sorry, I thought he was finished.

**THE WITNESS:** I am saying that he was a plaintiff in a lawsuit claiming that he was the trustee of the trust that Spallina said that he was the trustee of the trust on.

So again, it was just something that I

15:15:58-15:17:12 Page 83

thought as a licensed insurance person should know that you don't participate in things that may not be true when you are dealing with claims to insurance companies.

**MR. ROSE:** Objection, move to strike, nonresponsive, speculation, conjecture, not based on any fact in the record or outside of the record.

**THE COURT:** Can I have the question again, madam court reporter, please.

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

"Q. You said you have some other irregularities in the insurance policy in this litigation that you brought to the attention of the state. What were some of the other irregularities you found in the insurance?"

**THE COURT:** Overruled. Next question.

**BY MR. ELIOT BERNSTEIN:**

**Q. In the Illinois insurance litigation I was the only party prior to you getting the estate to intervene who was representing, to the best of your knowledge, the estate's interest and basically everybody else's interest, my children's interest, et cetera; is that correct?**

15:17:34-15:18:12 Page 84

A. As far as I know.

**Q. Okay. And now that you've intervened in the Illinois insurance litigation, you came in amidst the prior personal representative's leaving in fraud and failing to represent the estate in the insurance litigation?**

**MR. ROSE:** Objection, argumentative.

**MS. CRISPIN:** Misstates the facts in evidence.

**THE COURT:** Sustained.

**MR. ELIOT BERNSTEIN:** Got to think that one.

**BY MR. ELIOT BERNSTEIN:**

**Q. Are you aware that I am the beneficiary of the Stanley and Simon estates?**

**MR. ROSE:** Objection, calls for legal conclusion, irrelevant, immaterial.

**THE COURT:** Sustained.

**BY MR. ELIOT BERNSTEIN:**

**Q. Are you aware it was alleged that I was not a beneficiary with standing in the estate of my father?**

**MR. ROSE:** Same objection.

**THE COURT:** Sustained.

///

15:18:44-15:19:26 Page 85

**BY MR. ELIOT BERNSTEIN:**

**Q. Are you aware that my standing as a beneficiary in the Illinois litigation made in part the need for legal counsel that you would possibly depending on the Court's ruling have to continue to pay for?**

**MS. CRISPIN:** Objection, Your Honor, form, complex, compound.

**THE COURT:** Sustained.

**MR. ELIOT BERNSTEIN:** I will let it go for now. I am done.

**THE COURT:** Thank you.

**MS. CRISPIN:** Mine will be short.

**MR. ROSE:** Right.

CROSS (WILLIAM STANSBURY)

**BY MS. CRISPIN:**

**Q. Mr. Stansbury, I am Ashley Crispin. I represent Mr. O'Connell. Nice to make your acquaintance.**

A. Thank you. Nice to meet you.

**Q. After the May 2014 hearing your lawyer negotiated for you during that hearing some additional terms and things that you were going to be able to get out of the payment towards the fees of Mr. Stamos.**

15:19:39-15:20:46 Page 86

**For example, isn't it true that you were able to contact Mr. Brown at the time and Mr. O'Connell to discuss strategy that you had with respect to the case?**

**MR. FEAMAN:** Objection to the form of the question as to my negotiating at the hearing. The transcript speaks for itself.

**THE COURT:** Overruled.

**MR. FEAMAN:** Objection, relevancy.

**THE COURT:** Overruled.

**BY MS. CRISPIN:**

**Q. As part of your agreement -- I will rephrase the question. As part of your agreement to make the payment to Mr. Stamos you also had the ability, and this was part of what you received at the hearing, to contact the counsel in Chicago and say, hey, have you considered this, I have information to help your case? Is that true?**

A. It's not the way I understood it. The arguments that were going back and forth, and again I am going from my recollection, were privy, I think was the word that Mr. Morrissey was using, and what I should and should not be privy to.

And I think Judge Colin had suggested that attorneys talk about cases all the time. I am not

15:21:08-15:21:50 Page 87

sure that it was discussed or agreed to, although that's just my recollection, that we had any input with regard to direction, strategy or anything along those lines. That Mr. Brown at that time was the client and that Mr. Stamos was the attorney, and that was the relationship.

**Q. Mr. Feaman represented you at that hearing, correct?**

A. He did.

**Q. And his positions that he put before the court were your positions, correct?**

A. Yes.

**Q. So is it true that he asked for the ability as pursuant to the agreement that you were going to make to pay for the Illinois litigation, that he asked for you to be able to pick up the phone and call counsel in Chicago and say, hey, have you considered this, I have information that might help your case?**

**MR. FEAMAN:** Objection.

**MS. CRISPIN:** That was my question.

**MR. FEAMAN:** A, the transcript speaks for itself. And B, he should be able to read page and line of the transcript if he is being asked to comment on something I said at the hearing.

15:22:02-15:22:45 Page 88

**THE COURT:** I need to hear the question again.

**MS. CRISPIN:** Your Honor, I will rephrase.

**THE COURT:** I was going to say, ask him what you want to know. Yeah, I am just missing it.

**BY MS. CRISPIN:**

**Q. Did your counsel at the hearing negotiate as part of you paying for the Chicago litigation the ability to contact counsel in Chicago and give your opinions and your strategy?**

**MR. FEAMAN:** Same objection, the transcript speaks for itself.

**MS. CRISPIN:** I am asking him, Your Honor.

**THE COURT:** Overruled.

**THE WITNESS:** Can I see the transcript?

**BY MS. CRISPIN:**

**Q. I am asking you, do you know?**

A. Again, I do recall there was conversations about the interaction of the attorneys. And my recollection is Judge Colin said, you guys always get together and talk about things anyway, so I am not going to get in the way of that.

**Q. At that hearing you were willing that day to pay for the Illinois litigation as long as**

15:22:58-15:23:46 Page 89

**somebody would intervene on behalf of the estate; is that true?**

A. Initially, yes, initially.

**Q. And when you say initially, what does that mean?**

A. I would have to refer to a dictionary, but generally speaking initially doesn't mean permanently. It means at the beginning initially.

**Q. Why is it that there's nothing in the transcript where your counsel on your behalf put forth when it would be that you would stop paying for the litigation?**

**MR. FEAMAN:** Objection to the form, asked for a state of mind of other people why something did not happen.

**THE COURT:** Sustained.

**BY MS. CRISPIN:**

**Q. Now, you said that Mr. Stamos offered to Mr. O'Connell a contingency fee or hourly fee arrangement. And you said you thought that was a benefit that you brought to the estate; is that true?**

A. It is.

**Q. Okay. But that's because -- and that was brought to Mr. O'Connell, that was because you**

15:24:02-15:25:02 Page 90

**weren't paying; isn't that true?**
A. No, that's not true at all.
**Q. So the reason that there would be a waiver of outstanding fees so that a contingency fee arrangement could be pursued had nothing to do with the fact that you had failed to make payment to Mr. Stamos?**
A. I would have to go back and look at the record in terms of what was billed and what was paid through December'ish of 2015 when Mr. Stamos offered Mr. O'Connell, I believe that's when it was, the opportunity to go on a contingency. But my recollection is that the fees were paid currently.
The other input is that if I confer a benefit to the estate and the estate has to pay me back the money, or Mr. Stamos is willing to waive that and just roll it into the contingency fee, why would I create an extra expense for the estate when I didn't have to? So it seemed silly for me to pay something to a lawyer that I would have to get paid back from the estate when he already agreed to waive it, and it would only be a cost item if he was able to get a benefit for the estate.
**Q. But you haven't moved here today for you**

15:25:15-15:26:00 Page 91

**to change your fee arrangement that you have with the estate which currently you are paying or you are supposed to be paying, you haven't moved to convert that into a contingency; is that true?**
A. I don't know that I have the right or opportunity to do that. I think that's again the client is the estate, not Bill Stansbury. I'm just the bank.
**Q. Did you believe currently that you are obligated to pay Mr. Stamos's fees?**
**MR. FEAMAN:** Madam reporter, did you get his last statement in answer to the question, "I am just the banker"?
**THE REPORTER:** I heard "I'm just the bank."
**MR. FEAMAN:** Okay.
**THE COURT:** That's what he said.
**MR. FEAMAN:** Okay. Thank you.
**THE WITNESS:** Say it again.
**MS. CRISPIN:** Madam court reporter, please.
(The following portion of the record was read back.)
"Q. Did you believe currently that you are obligated to pay Mr. Stamos's fees?"

15:26:12-15:26:53 Page 92

**THE WITNESS:** I have an agreement with Mr. Stamos that I would initially fund the litigation. Mr. Stamos has agreed that he will take a contingency fee. Mr. Stamos's fee will be waived, all hourly fees will be waived. If the estate chooses not to take a contingency fee, they don't have to; they can do an hourly fee. So it's up to the estate to figure out whether they want to have the -- it's a win-win for them. Either they win because he is able to collect money for the estate, or he doesn't win in which case the estate doesn't spend a nickle.
**BY MS. CRISPIN:**
**Q. Okay. But right now the estate hasn't entered into a contingency fee arrangement with Mr. Stamos, correct?**
A. Yeah. That's beyond my comprehension why they haven't, but that's another delay that seems to go on forever.
**MS. CRISPIN:** Your Honor, move to strike, nonresponsive.
**THE COURT:** Sustained.
**BY MS. CRISPIN:**
**Q. The answer is, no, they haven't, right?**

15:27:03-15:27:43 Page 93

**They have not entered into -- Mr. O'Connell has not entered into a contingency fee arrangement with Mr. Stamos?**
A. Well, I am not privy to Mr. Stamos's and Mr. O'Connell's conversations. But if you say they haven't, then I have to believe that they haven't.
**Q. And you understand that there's an outstanding balance in excess of $30,000?**
A. There's a balance due, yes.
**Q. And do you owe it? Do you believe that you are required to pay it?**
**MR. FEAMAN:** Calls for a legal conclusion, objection.
**THE COURT:** Overruled.
**THE WITNESS:** I think when the estate has the opportunity to roll that fee into a contingency agreement, then for me to pay it would be irresponsible on my part.
**BY MS. CRISPIN:**
**Q. That's not what I am asking you. My question is they are currently owed over -- Mr. Stamos is currently owed over $30,000. Are you obligated to pay it?**
**MR. FEAMAN:** Objection, asked and answered.

15:27:50-15:28:47 Page 94

**MS. CRISPIN:** He has not answered it.
**THE COURT:** Overruled.
**THE WITNESS:** Do I believe I owe the money?
**BY MS. CRISPIN:**
**Q. Yes.**
A. I believe that I agreed to initially fund it. Initially was several years ago. We are long beyond initially.
**Q. Do you believe you need a court order that would permit you to stop funding it?**
**MR. FEAMAN:** Objection, legal conclusion.
**THE COURT:** Overruled. It's what he thinks.
**THE WITNESS:** If I evaporated on my way home from this court, I believe that the estate would continue to argue that they have a right to that insurance benefit. I don't believe that there is any obligation for me to continue to pay for something when the attorney has agreed to waive the fee in consideration for a contingency agreement.
**MS. CRISPIN:** Your Honor, I would ask that the witness answer the question.
**THE COURT:** He has answered. Overruled.

15:29:01-15:29:48 Page 95

He has given his answer.
**BY MS. CRISPIN:**
**Q. Do you have any intention to make the payment for the $30,000 plus that's owed to Mr. Stamos if the Court does not relieve you of your obligation to pay?**
**MR. FEAMAN:** Objection, calls for speculation, and could involve the --
**THE COURT:** Sustained.
**MS. CRISPIN:** Nothing further.
**THE COURT:** All right. We are going to stop here. I made a note. We are going to -- you can get off the stand, sir.
**THE WITNESS:** Thank you.
**THE COURT:** We are going to come back on the date we had already set, that June 28th. Everybody was free. Everybody was available. We already have. We will start with this motion first. And we will conclude that motion before we begin the next motion. All right?
**MR. ELIOT BERNSTEIN:** One thing, Your Honor, because I am confused about your order. I do have kids, and I can't tell them I am going to be in court forever. Is there a way we can say that at the point that it was

15:30:02-15:30:37 Page 96

scheduled for an hour, whatever, we get some semblance so we can notify our families, just notify? I will sleep here. I don't care if this goes on two years straight. I am ready to put him in prison. So I am just trying to figure out how I tell my family I am imprisoned in court until the judge lets me go according to this order.
**THE COURT:** All right. What I said is the Court has the discretion to extend the various hearings. And what I mean is exactly what I said. Certainly my deputies go home by -- usually I end by 5:00. I have to. If not, it's overtime. So the matters will always be concluded by 5:00.
**MR. ELIOT BERNSTEIN:** All right. That will help.
**THE COURT:** Thank you so much. All right. Court is in recess everyone. Thank you very much. Is it Friday? Yes. Have a good weekend everyone. Thank you.

(The proceeding adjourned at 3:30 p.m.)

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**C E R T I F I C A T E**
**- - -**

**The State of Florida**
**County of Palm Beach**

**I, Lisa Mudrick, RPR, FPR, certify that I was authorized to and did stenographically report the foregoing proceedings, pages 1 through 96, and that the transcript is a true record.**

**Dated June 9, 2017.**



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# THE SIMON LAW FIRM

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*ALSO ADMITTED IN CA


***VIA CERTIFED MAIL AND E-MAIL***

Mr. Eliot Bernstein
2753 NW 34TH Street
Boca Raton, FL 33434

Re: Simon Bernstein Irrevocable Trust dtd 6/21/95 v. Heritage Union Insurance

Dear Eliot,

Enclosed is an executed Settlement Agreement entered into by the remaining parties to the above-captioned litigation. Though you have opposed and harassed your siblings and their counsel at every turn, they still have consented to offer you a one-fifth (20%) share of the net Policy Proceeds that will be distributed to the 1995 Bernstein Trust.

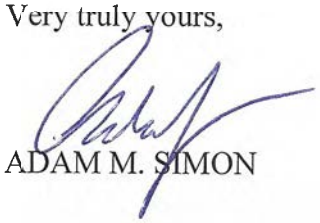
If you review the Settlement Agreement, you will see that your siblings have provided a mechanism for you to sign on and consent to the Settlement Agreement and accept your share. In the event you consent, once the funds are distributed I will distribute the funds to you, after all rights to appeal have expired. You will be required to sign a receipt or provide proof of receipt of the funds.

In the event you fail to respond with 15 days or reject the Settlement Agreement, then your siblings intend to fulfill your fathers' wishes as expressed in the drafts of the 1995 Trust and your share will be distributed to the separate trusts that have been established for each of your three children.

The Settlement Agreement provides that your share shall not be distributed unless and until all rights of appeal have expired. In the event you pursue an appeal, all costs and fees incurred by the responding parties will first be deducted from your share before distribution of the remaining proceeds, if any.

Your reply to me is required in writing by the close of business on July 27, 2017. If you choose to accept, then sign on the signature line with your name under it and return to me by the close of business on July 27, 2017. Your failure to respond by that time will be treated as a rejection of the Settlement Agreement.

Very truly yours,



ADAM M. SIMON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|---|---|---|
| SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95, by Ted S. Bernstein, its Trustee, Ted S. Bernstein, an individual, Pamela B. Simon, an individual, Jill Iantoni, an individual and Lisa S. Friedstein, an individual. | ) | |
| Plaintiff, | ) | Case No. 13 cv 3643 |
| v. | ) | Honorable John Robert Blakey |
| HERITAGE UNION LIFE INSURANCE COMPANY, | ) | |
| Defendant, | ) | |
| HERITAGE UNION LIFE INSURANCE COMPANY, | ) | |
| Counter-Plaintiff | ) | |
| v. | ) | |
| SIMON BERNSTEIN IRREVOCABLE TRUST DTD 6/21/95, | ) | |
| Counter-Defendant | ) | |
| and, | ) | |
| FIRST ARLINGTON NATIONAL BANK as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust, et al., | ) | |
| Third-Party Defendants. | ) | |

**SETTLEMENT AGREEMENT**

The remaining parties to this action, Brian O'Connell, solely in his capacity as successor Personal Representative ("PR") of the Estate of Simon L. Bernstein (the "Estate"); Ted S. Bernstein,

in his capacity as Trustee of Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 ("1995 Trust"); and the Individual Claimants, Ted S. Bernstein, an individual ("Ted"); Pamela B. Simon, an individual ("Pam"); Jill Iantoni, an individual ("Jill"); and Lisa S. Friedstein, an individual ("Lisa"), agree as follows:

1. There is presently a dispute between the Estate and the 1995 Trust with respect to the proceeds arising from a life insurance policy ("Policy") issued by Capitol Bankers Life Insurance Company, which later became Heritage Union Life Insurance Co. ("Heritage") through corporate succession. The Policy insured the life of Simon L. Bersntein.

2. Ted, Pam, Jill and Lisa are parties to this action.

3. Eliot Ivan Bernstein ("Eliot") was a party, but his claims were disposed of by summary judgment.

4. Heritage was a party, but has interpleaded the Policy Proceeds in this action, and was dismissed.

5. The 1995 Trust asserts that it is the sole beneficiary of the Policy Proceeds based upon a "Beneficiary Designation" dated August 26, 1995, in which Simon Bernstein allegedly designated as beneficiary the "Simon Bernstein Irrevocable Insurance Trust." The 1995 Trust, joined by Plaintiffs, Ted, Pam, Jill and Lisa, assert that the their father Simon Bernstein duly formed the 1995 Trust and that Ted, Pam, Jill, Lisa and Eliot are the beneficiaries of the 1995 Trust to share equally. Eliot disputed the Plaintiffs' claims prior to being dismissed from the litigation. Plaintiffs further assert that the 1995 Trust is the sole surviving beneficiary of the beneficiaries duly designated and recorded on the Insurer's records.

6. The Estate asserts that there is no validly named and existing beneficiary designated to receive the death benefits, therefore the Policy Proceeds should go to the Estate by operation of law because the Policy was owned by Simon Bernstein at the time of his death.

7. In the Lawsuit, other than the disposition of Eliot's claims, and dismissal of certain Bank parties that were former VEBA Trust Trustees, this Court has denied Plaintiffs' motion for summary judgment against the Estate, and the Estate's motion for summary judgment against Plaintiffs, and has scheduled a bench trial for August 7, 2017.

8. The Estate; the 1995 Trust; and Ted, Pam, Jill and Lisa individually, agree to settle their differences and agree to divide the Policy Proceeds held in the Registry of this District Court, in the approximate amount of $1,708,349.38, as follows:

a. The sum of $1,000,000 to the 1995 Trust, payable to the Simon Bernstein Irrevocable Insurance Trust dated 6/21/1995 and its attorney Adam M. Simon for deposit to The Simon Law Firm Client Trust Account; and

b. The remaining balance, including all accrued interest (estimated to be approximately $708,349.08, but agreed to be a minimum of $708,000) to the Estate.

9. As far as the proceeds to the Estate under ¶8b, these sums will be allocated to pay the Estate's outstanding attorneys' fees and costs to the Stamos firm (estimated to be approximately $55,000),[1] and to reimburse William Stansbury in accordance with the probate Order dated June 12, 2014 (Stansbury asserts he has paid $73,677.41 to date), with the remainder (estimated to be

[1] The Simon Bernstein Trust has agreed to pay $10,000 to the Estate to partially pay the attorneys' fees incurred by the Estate's counsel participating in mediation and as part payment of post-Stansbury attorneys' fees and costs, which payment will be made within 5 days of the disbursement from the Court Registry.)

approximately $589,000) to the PR on behalf of the Estate.[2]

10. As far as the proceeds to the putative beneficiaries of the 1995 Trust under ¶8a, these sums will be allocated to pay attorneys' fees and then equal one-fifth shares, as follows:

i. $100,000 to Adam M. Simon, for attorneys' fees and costs;

ii. $180,000 to Ted;

iii. $180,000 to Pam;

iv. $180,000 to Jill;

v. $180,000 to Lisa;

vi. $180,000 to Eliot ("Eliot's Share"), because Ted, Pam, Lisa and Jill are willing to give one-fifth to Eliot, even though his claims were dismissed, subject to the following: Eliot shall have 15 days to accept in writing the Eliot Share of the Settlement Agreement, from his receipt of a copy of this Settlement Agreement Court by email. If Eliot accepts, the Eliot Share will be paid to Eliot. If Eliot fails to accept for any reason, the Eliot Share will be paid to Eliot's children, one-third each, into their respective trusts created by the Simon L. Bernstein Amended and Trust Agreement.

11. This Settlement Agreement is contingent on approval by the Florida Probate Court with jurisdiction over the probate of the Estate and from the U.S. District Court for the Northern District of Illinois. As soon as practicable after the full execution of this Settlement Agreement, the

---

[2] Upon final approval of the settlement by the Florida Probate Court and the United States District Court in Illinois, the Estate shall repay to William Stansbury all monies he advanced out-of-pocket to pay for the legal fees and costs incurred by the Estate's Illinois counsel, and any monies he paid directly to the Curator, per the Order dated June 12, 2014. Such reimbursement will be a requirement of the motion seeking court approval in Florida. The remaining balance, after payment to the Stamos firm, will become property of the Estate, to be administered by the PR in accordance with Florida law and the terms of Simon Bernstein's will.

parties will seek approval this Court and from the Probate Court, and upon approval this Court will issue an order directing the Clerk of this Court to disburse funds from the Court Registry in accordance with ¶¶7-9 above.

12. Given the uncertainties of litigation and the anticipated expense of litigation, whether counsel is retained on an hourly or contingency basis, and given the anticipated amount of time needed for finality in the Illinois litigation after the expected trial and anticipated appeal proceedings, the PR of the Estate believes in the exercise of his business judgment that the settlement outlined above is in the best interest of the Estate as a whole, including creditors, professionals and beneficiaries, and taking into account the interest of persons with potential claims against the Estate.

13. To the extent necessary, a more formal agreement may be drafted and signed to replace this agreement. But this is intended to be a binding agreement, subject only to the entry of approval orders by the Probate Court and the Illinois federal court. ***Part of the motivation and consideration for the compromises reflected in this Settlement Agreement is the expectation of immediate payment of the Policy Proceeds upon court approval, unless the Probate Court or the Northern District Court enters a stay of the approval order. Otherwise, the parties anticipate this Court will order the Clerk of this Court to immediately disburse funds from the registry.***

14. To effectuate this Settlement Agreement and the dismissal of the Lawsuit the Parties shall file a joint motion to dismiss pursuant to the Settlement Agreement and seek entry of an Agreed Order or Agreed Orders as follows:

a. an order dismissing the Lawsuit with prejudice;

b. an order directing the Clerk to disburse the Policy Proceeds as set forth in the Settlement Agreement;

c. the parties shall execute such additional documents as might reasonably be necessary to accomplish and effectuate the terms of this Settlement Agreement, including, a declaratory order to be entered by the court, if necessary.

15. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Confirmation of execution by electronic transmission (email or facsimile) of a signature page shall be binding upon any party so confirming.

Signed and dated as of July 5, 2017.

By: Brian O'Connell, Esq. as Personal Representative of the Estate of Simon L. Bernstein

Ted S. Bernstein as Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95

Ted S. Bernstein

Pam Simon

Jill Iantoni

Lisa Friedstein

AS TO ELIOT:

ACCEPTED AND AGREED
WITHIN 15 DAYS, signed by:

Eliot Bernstein

c. the parties shall execute such additional documents as might reasonably be necessary to accomplish and effectuate the terms of this Settlement Agreement, including, a declaratory order to be entered by the court, if necessary.

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Signed and dated as of July 5, 2017.

By: Brian O'Connell, Esq. as Personal Representative of the Estate of Simon L. Bernstein

Ted S. Bernstein as Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95

Ted S. Bernstein

Pam Simon

Jill Iantoni

Lisa Friedstein

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WITHIN 15 DAYS, signed by:

Eliot Bernstein

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Signed and dated as of July 5, 2017.

| | |
|---|---|
| By: Brian O'Connell, Esq. as Personal Representative of the Estate of Simon L. Bernstein | Ted S. Bernstein as Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 |
| Ted S. Bernstein | Pam Simon |
| Jill Iantoni | Lisa Friedstein |

AS TO ELIOT:

ACCEPTED AND AGREED
WITHIN 15 DAYS, signed by:

Eliot Bernstein

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15. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Confirmation of execution by electronic transmission (email or facsimile) of a signature page shall be binding upon any party so confirming.

Signed and dated as of July 5, 2017.

By: Brian O'Connell, Esq. as Personal Representative of the Estate of Simon L. Bernstein

Ted S. Bernstein as Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95

Ted S. Bernstein

Pam Simon

Lill Iantoni

Lisa Friedstein

AS TO ELIOT:

ACCEPTED AND AGREED WITHIN 15 DAYS, signed by:

Eliot Bernstein

c. the parties shall execute such additional documents as might reasonably be necessary to accomplish and effectuate the terms of this Settlement Agreement, including, a declaratory order to be entered by the court, if necessary.

15. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Confirmation of execution by electronic transmission (email or facsimile) of a signature page shall be binding upon any party so confirming.

Signed and dated as of July 5, 2017.

By: Brian O'Connell, Esq. as Personal Representative of the Estate of Simon L. Bernstein

Ted S. Bernstein as Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95

Ted S. Bernstein

Pam Simon

Jill Iantoni

Lisa Friedstein

AS TO ELIOT:

ACCEPTED AND AGREED WITHIN 15 DAYS, signed by:

Eliot Bernstein

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY

PROBATE DIVISION

FILE NO.: 502012CP004391XXXXNB IH

IN RE: ESTATE OF

SIMON L. BERNSTEIN,

Deceased. /

**ORDER ON SUCCESSOR PERSONAL REPRESENTATIVE'S VERIFIED MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT ENTERED IN ILLINOIS FEDERAL ACTION**

THIS CAUSE having come upon Successor Personal Representative, Brian M. O'Connell's, Verified Motion for Approval of Settlement Agreement Entered in Illinois Federal Action ("Motion"), and the Court being duly advised on the premises, it is thereupon

ORDERED AND ADJUDGED as follows:

1. The Motion is GRANTED / DENIED.

After hearing testimony + witnesses, the Court finds it is appropriate to approve Settlement.

DONE AND ORDERED in Palm Beach Gardens, Palm Beach County, Florida, this 10/19/2017 day of 10/19/2017, 2017.

ROSEMARY SCHER, Circuit Judge

Rosemarie C

In Re: Estate of Simon L. Bernstein
File No: 502012CP004391XXXXNB
Order on Successor Personal Representative's Verified
Motion for Approval of Settlement Agreement
Entered in Illinois Federal Action

**Copies furnished to:**
All Counsel of Record and Parties listed on attached Service List

**SERVICE LIST**

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**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.**

APPEARING ON BEHALF OF CLAIMANT WILLIAM STANSBURY:

Peter Feaman, Esq.
PETER M. FEAMAN, P.A.
3695 Boynton Beach Boulevard, Suite 9
Boynton Beach, Florida, 33436

APPEARING ON BEHALF OF TRUSTEE TED BERNSTEIN:

Alan B. Rose, Esq.
PAGE, MRACHEK, FITZGERALD & ROSE, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401

APPEARING ON BEHALF OF PERSONAL REPRESENTATIVE OF THE ESTATE:

Brian M. O'Connell, Esq.
Ashley Crispin Ackal, Esq.
CIKLIN, LUBITZ & O'CONNELL
515 North Flagler Drive, 20th Floor
West Palm Beach, Florida 33401

ELLIOT BERNSTEIN, Pro Se

- - -

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

- - -

# I N D E X


| WITNESSES: | | |
|---|---|---|
| BRIAN O'CONNELL | DIRECT | CROSS |
| By Ms. Crispin | 9 | |
| By Mr. Feaman | | 18 |
| By Mr. Bernstein | | 24 |
| By Mr. Rose | | 35 |
| BRIAN O'CONNELL | | |
| By Mr. Bernstein | 41 | |
| JAMES STAMOS | | |
| By Ms. Crispin | 52 | |
| By Mr. Feaman | | 55 |
| By Mr. Bernstein | | 59 |
| By Mr. Rose | | 62 |

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

Appearances for the record, please.

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

THE COURT: Thank you.

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

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

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

THE COURT: Thank you very much.

Mr. Elliot?

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

THE COURT: Yes. That's fine.

MR. BERNSTEIN: It isn't fine.

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

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

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

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

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

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

O'Connell to the stand.

MR. FEAMAN: If it please the Court, I'd just like to put a statement on the record if I could before we actually begin the testimony.

THE COURT: Yes. Mr. O'Connell -- do you mind if he sits there?

MR. FEAMAN: No, not at all.

On behalf of Mr. Stansbury, Your Honor, we just -- even though you have already denied our motion, our amended motion to specially sequence this hearing behind another one, we just want to reiterate our position that this hearing should not go forward at this time until the propriety of Mr. Ted Bernstein's position as successor trustee be determined by the Court one way or the other. I'm mindful that Your Honor has already denied that request but I wanted to put it on the record so there wouldn't be any construction of waiver or anything like that.

THE COURT: Fair enough.

MR. BERNSTEIN: Your Honor, could I put something on the record? We were told that my two adult children were going to be notified of this hearing as necessary parties by Mr. Rose.

They haven't even been notified they're beneficiaries ever, but in court he said he was going to notify them and have them here and they're not here and they're necessary parties to a settlement that's happening that they don't even know about. They haven't been involved, haven't been summoned, nothing served.

THE COURT: If they're adult children, you can't represent them.

MR. BERNSTEIN: I'm not representing them.

THE COURT: No, but you are --

MR. BERNSTEIN: I'm saying they're necessary parties on the hearing.

THE COURT: Mr. Elliot, if you want to say that, that's fine, but you cannot speak on their behalf if they are an adult.

MR. BERNSTEIN: I'm not going to. I'm going to speak about them in the hearing, I think, but they're not here. And, by the way, there's one more point. There's one more point. They have counsel and they've been trying to enter this case now almost for over a year or so, but Mr. Rose is refusing their counsel to give them any of the dispositive

documents or trusts regarding that.

THE COURT: All right. That is so noted. Obviously it's a public court file. They can get the -- I don't have a notice of appearance but --

MR. BERNSTEIN: But she's asking for the full records.

THE COURT: That would be a different hearing. Okay. Are we ready to proceed?

MR. ROSE: Just for the record, I dispute what he just said. The only thing I would just say, just so you know where we stand, my client's position is he's in favor of the settlement. I think Mr. Feaman --

THE COURT: Thank you. I mean thank you for your position.

MR. ROSE: Mr. Feaman, I think his client advised us both on several occasions is taking no position with regard to settlement. The only person objecting is Elliot Bernstein.

THE COURT: Okay. Thank you.

All right. You may proceed.

THEREUPON,

BRIAN M. O'CONNELL, ESQ.,

called as a witness in his behalf, having been first

duly sworn by the Court, in answer to questions propounded, was examined and testified as follows:

MS. CRISPIN: Your Honor, we're here, just so the court reporter has it, we're here on Mr. O'Connell's verified motion for approval of settlement agreement entered in the Illinois federal action. I have another copy for Mr. Bernstein if you need it.

Do you need it?

MR. BERNSTEIN: What is it?

MS. CRISPIN: Another copy of the motion set for today.

Your Honor, I'd also like to approach the witness. I've marked it as Exhibit 1 although it's already in the court file.

THE COURT: Sure. And I have a copy. Thank you.

DIRECT EXAMINATION

BY MS. CRISPIN:

Q Mr. O'Connell, please state your name and your position in this matter.

A Brian O'Connell, and I'm the personal representative of the Estate of Simon Bernstein.

Q And for how long have you been serving?

A At this point since 2014, June of 2014, so

a little over three years, almost three and a half years.

Q And you're currently aware of a pending litigation entitled Simon Bernstein Irrevocable Insurance Trust, et al, vs. Heritage Union Life Insurance Company, correct?

A I'm familiar with that litigation, yes.

Q Okay. For how long have you been familiar with the litigation?

A Pretty much since my appointment.

Q So since June or so of 2014?

A Yes.

Q And has the estate entered an appearance in that litigation?

A It has.

Q And you have counsel in your role as personal representative?

A I do.

Q And who is that?

A James Stamos.

Q And has that always been the counsel that's represented the estate and thus you?

A To my knowledge, yes.

Q And can you just give me generally what the nature of that litigation is?

A That was a dispute over who was the beneficiary of an insurance policy, whether it would be a trust, a free-standing trust that was alleged to be the beneficiary by some of the Bernstein family members, or the default being the estate, probate estate being the beneficiary.

Q Okay. And in the litigation, if you can explain, really there was competing positions by the insurance trust and by the estate?

A Oh, absolutely.

Q And tell me what the position of the insurance trust is to the best of your knowledge as a litigant.

A Well, the trust through the trustee was claiming a hundred percent of the policy proceeds. The estate through myself was claiming we were entitled, the estate was entitled to a hundred percent of the policy proceeds.

Q And to the best of your knowledge, who is the trustee of the irrevocable insurance trust as part of that litigation?

A Ted Bernstein.

Q And other than you, has there ever been a prior fiduciary that appeared in that proceeding on behalf of the estate?

A Ben Brown who was a curator was allowed to intervene in that litigation for some period of time. I don't think it was very long.

Q Now, did there come a time when you had made the decision to explore settlement in the case?

A Correct.

Q And when was that?

A It actually started probably six, eight months ago, the beginnings of discussions, to see if some resolutions could be made. Prior to that, there might have been some isolated talk but nothing real concrete.

Q And can you take a look at what I've marked as Exhibit 1?

A Yes.

Q And is this your motion for approval of the settlement agreement?

A It is.

Q And have you signed it and read the facts that are alleged in the motion?

A I have.

Q And do you believe that they're true to the best of your knowledge?

A I do.

Q Okay. One of the attachments to the

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

works out in part an analysis about why this settlement agreement is in the best interest of the estate and its beneficiaries?

A Sure. The way the litigation is posited right now, it's an all-or-nothing situation, as in either the estate gets all of the policy proceeds, about a million, seven hundred thousand dollars, or none of the proceeds. There's no middle ground. There's no way you approach 50 percent or something of that nature.

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

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

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

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

A Roughly.

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

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

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

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

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

A Payment of some fees.

Q Savings of fees or...?

A Payment of fees being, I guess, eliminated.

Q Okay.

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

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

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

the balance going to him towards fees.

Q And that would be a best-day scenario?

A Best day.

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

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

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

A Correct.

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

THE COURT: Thank you. So admitted. You

may proceed.

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

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

THE COURT: So noted. So admitted.

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

THE COURT: Mr. Rose?

MR. ROSE: No questions.

THE COURT: Mr. Feaman?

MR. FEAMAN: Just a few, Your Honor.

MR. ROSE: Can I reserve, Your Honor?

THE COURT: You may.

CROSS EXAMINATION

BY MR. FEAMAN:

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

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

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

A Probably from when the settlement agreement was entered into.

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

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

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

A No.

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

A That's true.

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

MR. ROSE: Objection, relevance.

MS. CRISPIN: Objection, relevance.
THE COURT: Sustained.
MR. FEAMAN: The relevance is I'm laying a predicate for when we come back for fees, Your Honor.
THE COURT: It's not relevant for today though.
BY MR. FEAMAN:
Q With regard to those settlement negotiations, Mr. Stansbury in the May, June time frame, he was not involved in the negotiations, correct?
A Not to my knowledge.
Q And, in fact, to your knowledge, I was not involved, correct?
A I don't believe you were, sir.
Q And to your knowledge, nobody from my office was involved, correct?
A I don't recall anyone from your office being involved.
Q Okay. And you mentioned Ben Brown was the first one that intervened, he was allowed by the Court. Do you recall that that was actually at the behest of Mr. Stansbury's motion, is that correct?
MR. ROSE: Objection, relevance to the

issues today.

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

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

BY MR. FEAMAN:

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

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

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

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

mediator would call one side and then call the other side. It wasn't -- just to sketch it for the Court, it wasn't like an en masse mediation with everyone present at the same time. So I have to be a little cautious as to exactly who was involved in that.

Q That's fine. And who was Mr. Rose representing?

A I'm not sure.

MR. ROSE: Objection as to relevance.

THE COURT: Mr. Feaman, do you not want me to approve? Because I thought you weren't taking a position. I'm losing why we're talking about this now.

MR. FEAMAN: Well, we previously raised the issue of conflict, Your Honor.

THE COURT: Yes, and I denied the order and we're here today and you said you're not taking a position on approval of the settlement.

MR. FEAMAN: Not on the merits of the --

THE COURT: Yes, so that will discontinue the questions.

MR. FEAMAN: I don't think we're in a position to comment on the merits one way or the other not having been involved in the

litigation directly other than causing it to happen.

THE COURT: Exactly. So for purposes of today, I ask that you stay on point.

MR. FEAMAN: Okay. Thank you.

BY MR. FEAMAN:

Q Do you have an opinion as to the probability of success by the estate if the case were to go to trial?

MS. CRISPIN: To the extent it calls for attorney-client privilege or work product, I'd object and instruct you not to answer.

THE WITNESS: I would have to draw on some privileged information, Your Honor, from counsel here.

MS. CRISPIN: He asked for analysis.

THE WITNESS: I can try to answer it on my own.

MS. CRISPIN: I wouldn't have a problem with that.

THE COURT: Answer what you can without drawing on any privilege.

THE WITNESS: Sure.

A I think it was a good case as in the probabilities were more in favor of the estate, but

nothing being a hundred percent in light, again, of what I mentioned before. Of course, when we had summary judgment denied, obviously that makes it more of a horse race than it would be if summary judgment were granted, case over. But just to kind of sketch that out for you, it was certainly a meritorious case that was worth pursuing, ergo I did.

MR. FEAMAN: Thank you.

THE COURT: Mr. Elliot?

MR. BERNSTEIN: Your Honor, can I stay here? Just so I don't fall up there.

THE COURT: Absolutely.

MR. BERNSTEIN: Thank you.

CROSS EXAMINATION

BY MR. BERNSTEIN:

Q Mr. O'Connell, your pleading today states that you entered the settlement with Ted Bernstein as trustee of a 1995 trust. Are you in possession of that trust?

MR. ROSE: Objection, relevance.

THE COURT: Overruled. Go ahead.

A Not an original, to be specific.

BY MR. BERNSTEIN:

Q Excuse me?

A I don't have an original of that trust.
Q Do you have an executed copy?
A I don't.
Q So you've never seen the trust. How do you know Ted Bernstein is the trustee of that trust then?
A Because that was the claim that they were making.
Q Okay. And are you aware that Judge Blakey in the Illinois case which is hearing this matter properly in the Federal Court has determined that that trust hasn't been proven and it's one of the reasons summary judgment was denied?
A I don't have the summary judgment in front of me. When you're saying proven, I'm a little uncertain about --
MR. BERNSTEIN: I'd like to enter that summary judgment as evidence, please.
MS. CRISPIN: I haven't seen it.
MR. BERNSTEIN: Anybody else need it?
There is two of them. Can somebody give Brian the copy I gave, maybe his attorney for Brian as a witness?
THE COURT: No. His attorney right now is reviewing it. Do you have an extra copy for

Mr. O'Connell?

MR. BERNSTEIN: If I don't give one to the judge.

THE COURT: You're supposed to bring one for everybody.

MR. BERNSTEIN: I didn't know how many people were here.

THE BAILIFF: These are the extra copies.

MR. BERNSTEIN: So here's one for the judge and I need one.

THE COURT: Mr. Elliot, be mindful of your time. I'm keeping track of how long everybody has spoken. So you have about four more minutes.

MR. BERNSTEIN: What?

THE COURT: Yes, you have about four more minutes with this witness. Go ahead, ask your question.

MR. BERNSTEIN: Okay. He needs one of these too. That's the second summary judgment.

Do you need it?

THE COURT: I don't know what it is.

MR. BERNSTEIN: It's a summary judgment in the Illinois court.

THE COURT: Thank you.

BY MR. BERNSTEIN:

Q Have you seen this document?

A In the past, yes.

Q And are you aware that in the second summary judgment -- in the first summary judgment, I'm a party to the action and in the second one, I'm dismissed from the complaint based on the fact that I'm not a beneficiary with standing in my father's estate?

MR. ROSE: Objection, relevance to today.

MR. BERNSTEIN: It's all going to be relevant to today's settlement.

BY MR. BERNSTEIN:

Q Judge Blakey in this, if you go to the first order --

THE COURT: He's disputing the settlement so he gets to talk about --

BY MR. BERNSTEIN:

Q The date is on the top, 3-15-16.

A I see it, yes.

Q Do you see on Page 4, the last two paragraphs, can you read that?

A Does that start, while the above sources?

Q Right.

A While the above sources do provide some

evidence that the trust was created --

Q Which trust, the 1995 trust?

A The '95 trust.

Q Okay. Just to be clear.

A That evidence is far from dispositive of the issue. In fact, the intervenor has presented argument and evidence casting material doubt on whether, one, the trust was actually created and, two, the terms of the trust are as explained by the plaintiffs.

Want me to keep going?

Q Well, let me ask you a real quick question. Are you the intervenor?

A No.

Q You're not?

A The estate is, not me.

Q So you're representing the estate?

A Yes, me as personal representative, not me individually. That's what I thought you were asking.

Q So, in fact, the estate has made the argument that this trust does not exist?

A Correct.

Q And there are no terms that are applicable, so how can you be saying that you know

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

of the trust are just as what was explained by the plaintiffs, not the trust because you don't know the terms because we don't have a valid copy, correct?

A The position that the estate took is what's set forth in Judge Blakey's order, correct.

Q Okay. And then read Judge Blakey's next statement.

THE COURT: I'm just reminding you that you have about three more minutes.

MR. BERNSTEIN: Well, I need some more time, Your Honor. This is going to take a long time.

THE COURT: Well, it's going to take till 2:30 as this was set for an hour and giving equal time. So you can keep on moving and ask a question.

MR. BERNSTEIN: Where does it say it was set for an hour? I thought it was until five.

THE COURT: I believe I was asked by Mr. Rose on the phone the other day and I said you have an hour reserved.

MR. BERNSTEIN: You never told us that.

THE COURT: Well, I'm telling you now.

MR. BERNSTEIN: This is going to take me hours.

THE COURT: Well, sorry about that. Ask the next question.

MR. BERNSTEIN: This is a serious settlement.

THE COURT: Would you rather take the time arguing with the Court or --

MR. BERNSTEIN: Well, can we get it extended?

THE COURT: No. Ask your next question.

MR. BERNSTEIN: Okay. I'll ask my next question.

BY MR. BERNSTEIN:

Q Can you read the next sentence?

A However -- there?

Q No. The results and timing of the plaintiff's search for the trust.

A The results and timing of the plaintiff's search for the trust raises doubts about their version of events. The plaintiffs claim that David Simon found a hard copy and electronic version of the trust in his office. David Simon has offered testimony here that he aided Simon Bernstein in creating the trust and that he kept both versions of the unexecuted trust.

Keep going?

Q No, that's good. And the missing trust was one of Judge Blakey's reasons for denying summary judgment, those are still issues of fact, if there is a trust, if Ted's the trustee, correct?

A The order speaks for itself.

Q Correct. So it's not been determined Ted Bernstein is a trustee of any trust because nobody has a copy, correct?

A In connection with this proceeding, the summary judgment?

Q In connection with this proceeding. Ted Bernstein hasn't been determined to be the trustee of the '95 trust that you are entering into settlement with because nobody has the trust, correct?

A Well, Ted Bernstein claims to be the trustee of the 1995 trust --

Q Before you entered into settlement --

THE COURT: Let him finish.

A -- and this settlement resolves the litigation over -- the entire litigation, who gets the proceeds, how much of the proceeds, how they're split between the defendant and the plaintiff.

Q So you haven't verified that Ted Bernstein is the trustee that you're entering into the

settlement?

A There's no way to verify whether Ted Bernstein is the trustee of the trust. We reached a settlement because of the doubt as to whether the trust existed or not, who was the trustee, so that journey is over. That's why you settle cases.

Q I'm sorry, you entered in this pleading that you settled with Ted Bernstein who is trustee, a factual assertion, of a 1995 trust. Are you stating that again today here?

A It's not my factual assertion. I think that's the problem we're having, Mr. Elliot.

Q Well, the heading in your pleading, you start out with, This settlement was entered into between Brian O'Connell, PR of the estate, and Ted Bernstein, trustee of a 1995 trust.

A That's true, because that's the capacity that he was seeking relief from the District Court under.

Q Okay. And I've got some other questions real quick. Am I beneficiary of my father's estate with standing?

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

MR. BERNSTEIN: He's the PR of the estate.

MR. ROSE: It's already been --
THE COURT: Overruled. You can answer the question.
A Are you a beneficiary of the tangible personal property of the estate? Yes.
BY MR. BERNSTEIN:
Q Okay. So I'm a beneficiary of the estate with standing?
THE COURT: Of tangible personal property.
BY MR. BERNSTEIN:
Q Whatever property, I'm a beneficiary, correct?
A You're a beneficiary of the tangible personal property.
THE COURT: Last question.
MR. BERNSTEIN: I need to finish --
THE COURT: No. Last question, Mr. Elliot.
MR. BERNSTEIN: This is just --
THE COURT: I'm sorry. What was that?
MR. BERNSTEIN: I'm rushing through.
THE COURT: Okay. Last question.
BY MR. BERNSTEIN:
Q Mr. O'Connell, are you aware that Judge Blakey dismissed me on summary judgment claiming

that I was not a beneficiary of my father's estate with standing?

A I recall your being dismissed but I'd have to review the --

Q Go ahead. It's right there.

MR. BERNSTEIN: It's the bigger thicker judgment, Your Honor, for your edification.

MR. ROSE: I object to relevance.

THE COURT: Sustained. Okay. Redirect?

MR. BERNSTEIN: Your Honor, what just happened? I'm a little slow.

THE COURT: I sustained the objection. Okay. Mr. Rose?

CROSS EXAMINATION

BY MR. ROSE:

Q Mr. O'Connell, is it fair to say that Judge Blakey also denied the estate's motion for summary judgment?

A He did.

Q The first motion for summary judgment was filed by the Illinois plaintiff, this insurance trust, correct?

A Correct.

Q And that was denied?

A Correct.

Q And on the strength of that, the estate moved for summary judgment, correct?
A And that was denied.
Q And part of the evidence that was submitted contrary to your claim was an affidavit of Mr. Spallina?
A Correct.
Q And it's Mr. Spallina's testimony, if it was believed, that Simon Bernstein discussed the terms of the 1995 insurance trust and Simon Bernstein intended that trust to give all the money, correct?
A That was his testimony per his affidavit.
Q And if you take the litigation all the way to the end, there's a chance that you would lose and end up with nothing?
A There's always that chance; hence we settled.
Q If Mr. Spallina's affidavit is believed by the judge, that would be strong evidence against your position?
A It would be and that would be one of the key points, is that believable or not.
Q And if you hire Mr. Stamos at a 40 percent contingency, my math on a million seven says that

the fee is going to be about $680,000?
A Correct.
Q A million dollars minus 680, $700,000 fee and some costs, I assume, your best case is a million?
A Under a contingency arrangement, that's the math I did too.
Q Because someone has to pay for you, Mr. O'Connell's time to fly to Chicago, sit through a trial, however long it takes, to interact with Mr. Stamos?
A Correct.
Q And you still have to pay back Mr. Stansbury for whatever he's incurred?
A Yes.
Q And in your view, the settlement is in the best interest taking everything into account including all the questions you were asked by all the parties?
A Yes.
MR. ROSE: Nothing further.
MR. BERNSTEIN: Can I ask more after that?
THE COURT: No. It goes back to Ms. Crispin.
MR. BERNSTEIN: Do I get another shot at

that?

THE COURT: No.

MS. CRISPIN: I have nothing further for this witness.

THE COURT: Okay. You may step down. Everybody has a copy of the proposed settlement, correct, the motion?

Mr. Elliot, did you want these two orders in evidence? You didn't actually --

MR. BERNSTEIN: I do.

THE COURT: I will mark them as a composite exhibit for you.

MR. BERNSTEIN: Thank you. So that would be 1?

THE COURT: Elliot's Composite Exhibit 1.

MR. BERNSTEIN: Okay. Thank you.

THE COURT: You're welcome.

All right. Next witness?

MS. CRISPIN: Mr. Stamos, please.

THE COURT: All right. Let me call.

Mr. Stamos? Hello?

MR. SIMON: This is Adam Simon.

THE COURT: All right.

MR. ROSE: I believe he's one of the counsel in --

THE COURT: I don't know.
MS. CRISPIN: That's not Mr. Stamos.
THE COURT: I know. Is Mr. Stamos available? He's not on court call. Is anyone calling Mr. Simon?
MR. SIMON: Mr. Simon is on the phone.
THE COURT: I know. I'm not sure why.
MR. ROSE: I think he's counsel of record in the Illinois case for the trust.
MR. SIMON: I'm just listening.
MR. BERNSTEIN: And I might want to ask him questions since he's there.
MS. CRISPIN: Judge, can I use my phone to call?
THE COURT: Yes.
Go ahead. Ask some questions, Mr. Bernstein.
Do you have a notary public there? Did you arrange to have a notary public for him if you wish to call him as a witness?
MR. BERNSTEIN: I'm not his lawyer.
THE COURT: I know, but if you wish to call a witness by telephone, you need to arrange that they have a notary public so they can be sworn in.

MR. BERNSTEIN: He's the counsel.
THE COURT: I know, but he still needs a notary public because he's not in front of me to swear him in.
MR. BERNSTEIN: So, no. I didn't know that he was going to be here.
THE COURT: All right. Next witness, Ms. Crispin? Oh, you're on the phone. Sorry.
MS. CRISPIN: Your Honor, I don't have anyone after Mr. Stamos.
THE COURT: Any witnesses, Mr. Rose?
MR. ROSE: No.
THE COURT: Any witnesses, Mr. Feaman?
MR. FEAMAN: No, Your Honor.
THE COURT: Call your first witness, Mr. Elliot.
MR. BERNSTEIN: I'm waiting for Mr. Stamos.
THE COURT: No. We're waiting and for court efficiency, call your first witness.
MR. BERNSTEIN: Brian O'Connell.
THE COURT: You can call him for about eight minutes.
MR. O'CONNELL: He's calling in now, Your Honor.

THE COURT: All right. He'll call in to court call. In the meantime, go ahead and get back on the stand. I told him he has about eight minutes and we'll have Mr. Stamos -- if you're on the phone with Mr. Stamos, you can tell him to be ready by ten to three.

MS. CRISPIN: Okay.

(Mr. O'Connell resumed the stand.)

THE COURT: You're still under oath.

Go ahead. It's all you.

DIRECT EXAMINATION

BY MR. BERNSTEIN:

Q Are you aware of a 2000 insurance trust that was executed that the policy in question has been assigned to in the year 2000?

MS. CRISPIN: Asked and answered.

THE COURT: Sustained. You already asked him that.

MR. BERNSTEIN: No, a 2000 insurance policy.

THE COURT: Oh, overruled. Thank you.

BY MR. BERNSTEIN:

Q That supersedes a 1995 trust?

A You'd have to show me a document.

Q Okay. Here.

MR. STAMOS: Hello?
THE COURT: Mr. Stamos?
MR. STAMOS: Yes, ma'am.
THE COURT: Okay. This is the judge. I'm going to ask you to just hang on while we complete the testimony of another witness.
MR. STAMOS: Okay. How long will that be, how long do you think?
THE COURT: About eight minutes.
MR. STAMOS: All right. I will step away from my desk for five minutes and I'll pick up then, okay?
THE COURT: Sounds good.
MR. STAMOS: Thank you.
BY MR. BERNSTEIN:
Q Mr. O'Connell, have you seen that trust before?
A Sitting here today, I don't recall it but it's possible in the volume of documents in this case that I could have, but I couldn't tell you definitively.
Q Do you notice that it's Bates stamped by Tescher & Spallina, the former attorneys who committed forgery and fraud in this matter that you replaced and those documents were transferred to you

by Ben Brown and you actually argued -- can you answer that question?

A I see Bates stamps at the bottom.

Q So these would be part of your record, correct?

A I'm not sure. I'd have to look on my record to be sure.

Q And you're aware that the state has argued in Illinois Federal Court that this 2000 trust supercedes the '95 trust, thereby rendering it moot, the '95 trust you're entering into settlement with, is that correct?

A I'd have to see some more documents. If you're talking about -- has there been something in writing submitted taking that position?

Q Yeah. Your summary judgment arguments rely on this 2000 trust superseding -- in that 2000 trust, can you read from Page 1, the trust, the first paragraph and the Number 1?

MR. ROSE: Objection. The document is not in evidence, hearsay.

THE COURT: Sustained.

MR. BERNSTEIN: Can I submit it as evidence?

THE COURT: Objections?

MR. ROSE: Authenticity.
THE COURT: Sustained.
MR. BERNSTEIN: It's Bates stamped.
THE COURT: It doesn't matter. Sustained.
MR. BERNSTEIN: It's been submitted into the record.
THE COURT: Sustained.
MR. BERNSTEIN: We can't enter this?
THE COURT: No. I sustained the objection. It's an evidentiary objection.
MR. BERNSTEIN: Okay. Am I allowed to ask him questions about this document?
THE COURT: If you ask a question and there's an objection, I'll entertain it. I can't tell you how to proceed.
MR. BERNSTEIN: Okay.
BY MR. BERNSTEIN:
Q Can you read the first paragraph and Number 1 of that document?
MR. ROSE: Objection, hearsay. The document is not in evidence.
THE COURT: Sustained.
MR. BERNSTEIN: Okay.
BY MR. BERNSTEIN:
Q You argued in Illinois in the federal

action on behalf of the estate that this 2000 document superseded the 1995 trust?

MS. CRISPIN: Asked and answered. He said he needed further documentation to see it in writing.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q In a recent similar case to this with allegations of fraud in the Bivens case, are you aware of the Oliver Bivens case?

MR. ROSE: Objection, relevance, materiality.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q Have you been charged with breach of fiduciary duties and negligence recently and found guilty by a jury of your peers in a federal court?

MR. ROSE: Objection, relevance.

MS. CRISPIN: Argumentative.

THE COURT: I have to overrule those objections because it would go to bias.

MS. CRISPIN: Your Honor, he used the word charged. That was my problem for the argumentative.

THE COURT: Okay. With regard to the word

charged, sustained.
BY MR. BERNSTEIN:
Q Is there a verdict that claims you breached fiduciary duties and negligence in the handling of an estate?
A There was a verdict but the matter has been settled and the case has been dismissed with prejudice pursuant to a confidential settlement.
Q Who was your attorney in that settlement?
A Wicker, Smith.
Q Was it Alan Rose?
A Alan Rose came in after the verdict to represent the law firm while Ms. Crispin and I were represented by the Wicker, Smith firm as we had been from the inception of the case.
Q So the verdict stood?
A No.
MR. STAMOS: Hello ?
THE COURT: Hang out for me, Mr. Stamos.
BY MR. BERNSTEIN:
Q So there was a jury verdict that you had breached and committed negligence with Ashley Crispin, correct?
MR. ROSE: Objection, relevance and repetitive.

THE COURT: Sustained.

MR. BERNSTEIN: By the way, Your Honor, something strange here has occurred. Mr. Rose is O'Connell's counsel.

THE COURT: Excuse me. Do you have a question for this witness? You have one question left.

BY MR. BERNSTEIN:

Q If there is a 2000 trust, would it not be a necessary party to any settlement if it deals with the same insurance policy?

A I'm not aware that that trust exists, the 2000 trust exists.

Q If it exists? Since I can't enter it into evidence.

A I'd have to review the documents to make sure.

Q But after you reviewed them, if you found that it existed, would it be a necessary part to any settlement?

MR. ROSE: Objection, calls for a legal conclusion and the facts are that trust and no trustee has intervened or sought to do anything in the Illinois case so it's an irrelevant question.

MR. BERNSTEIN: Your Honor, that's really relevant because the reason this trust is suppressed is because my sister, Pam Scott -- I'd like to enter another piece of evidence where they discussed suppressing this and hiding it from the court.

THE COURT: Sustained. Last question.

BY MR. BERNSTEIN:

Q When you found out that I was a beneficiary of my father's estate and Judge Blakey removed me on summary judgment claiming that I was not a beneficiary based on res judicata from this court, when you found out again and admitted in court at the first hearing that I attended with Judge Scher here in the courtroom that I was a beneficiary, did you notify the federal court that I was a beneficiary with standing in my dad's estate?

MR. ROSE: Objection, relevance, argumentative, and I think these issues are the ones that were decided by the federal judge in Illinois.

MS. CRISPIN: Objection, compound.

THE COURT: I'll let him answer the question. He either did or he didn't.

A I guess to answer your question, I'd have

to go back and review your intervention and review the order and --

BY MR. BERNSTEIN:

Q The order is there.

A It would take some time to do it to say whether that would be --

Q Well, let me ask you a question.

THE COURT: No, that was it.

MR. BERNSTEIN: It's the same question.

THE COURT: Then it's been asked and answered.

MR. BERNSTEIN: Well, let me help him answer what he said, Your Honor. Would that be okay?

THE COURT: That would be okay.

BY MR. BERNSTEIN:

Q The question is, after a review, if you found that I was a beneficiary with standing in the estate and the Illinois court was under the impression that I was not and had dismissed me, would I need to be reinstated as a party in that action who would be a party to this settlement?

A That would be between you and the Illinois federal court using that hypothetical.

THE COURT: Okay. That about does it for

that. Follow up, Ms. Crispin?
MS. CRISPIN: None.
THE COURT: You may step down, Mr. O'Connell.
We're ready to proceed. Do you have a notary public there with you, Mr. Stamos?
MR. STAMOS: Yes. It will just take one second, Your Honor.
THE COURT: Thank you.
MR. STAMOS: She's present. Okay. Shall we begin?
THE COURT: May I speak with the notary, please?
MR. STAMOS: Yes.
MS. VASQUEZ: I'm here.
THE COURT: Hello. This is Judge Rosemarie Scher. What is your name, ma'am?
MS. VASQUEZ: My name Denise Vasquez.
THE COURT: Are you a notary public in the State of Illinois?
MS. VASQUEZ: Yes, I am.
THE COURT: When does your commission expire?
MS. VASQUEZ: October 31st, 2021.
THE COURT: In Illinois, do you have a

number? Do you have a commission number?
MS. VASQUEZ: No.
THE COURT: In Florida we do. That's the only reason I'm asking.
All right. Do you know the gentleman in front of you?
MS. VASQUEZ: Yes, I do.
THE COURT: Do you know him personally or has he produced identification?
MS. VASQUEZ: Personally.
THE COURT: All right. Who is the gentleman in front of you?
MS. VASQUEZ: James Stamos.
THE COURT: All right. Would you please ask him to raise his right hand?
MS. VASQUEZ: Raise your right hand.
THE COURT: And swear or affirm to tell the truth?
MS. VASQUEZ: Do you swear or affirm to tell the truth?
MR. STAMOS: Yes, I do.
THE COURT: Excellent. Ms. Vasquez, thank you so much for serving the Court.
Mr. Stamos, you are on. Ms. Crispin will begin her questioning.

MR. STAMOS: Thank you.

DIRECT EXAMINATION

BY MS. CRISPIN:

Q Mr. Stamos, can you hear me?

A I can.

Q This is Ashley Crispin. We've met before. I represent Brian O'Connell. We share a client.

A Yes.

Q And I'm going to be asking you some questions. Your full name, please?

A James J. Stamos. Middle name is John.

Q And you currently represent who in the pending litigation Simon Bernstein Irrevocable Insurance Trust, et al, vs. Heritage Union Life Insurance Company, et al?

A I represent the estate.

Q And currently the fiduciary position is held by Mr. O'Connell as personal representative, correct?

A That's my understanding.

Q And how long have you been representing the estate in this litigation?

A Since 2015, if I'm correct. I think it was the summer of 2015.

Q And your primary area of practice?

A I'm a litigator. I do principally professional liability defense as well as commercial litigation.

Q And you're aware of the settlement agreement that was reached between the parties in this matter, correct?

A Yes, I am.

Q And you reviewed the settlement agreement before it was executed by Mr. O'Connell, correct?

A Yes. I think I might have suggested some changes.

Q But you reviewed the final version before Mr. O'Connell executed it, correct?

A Yes, I did.

Q And it's contingent on this Court, meaning the Probate Court in Palm Beach County's approval, correct?

A That's my understanding.

Q Now, without drawing on your attorney-client communications with Mr. O'Connell, are you able to give the Court an analysis of the settlement?

A I think I can without breaching confidentiality.

Q Okay. Can you do that, please?

A Let me ask you something. Tell me exactly what you'd like me to talk about. I'm not sure whether you want me to talk about whether it's reasonable or its terms.

Q Exactly, if it's reasonable. The Court has the terms in front of it so now we're just talking about whether or not it was a reasonable settlement.

A Yes. I think it is reasonable. I base that on, and I don't think this is an attorney-client or work product assessment, I base it on a number of factors. The first being that I believe that it's a case that we would be able to win, that we should be able to win, but I thought that there were a number of issues that could make that challenging. One was that the Court had not granted summary judgment for us when I thought the Court should have which made me think that perhaps his view of the facts would be slightly different than our view of the facts.

I also thought that our winning the case was really going to come down to a credibility question and while I thought we had a much better credibility argument, nonetheless the judge was going to have to look at the witnesses and make

decisions about whether he was going to believe the witnesses for the plaintiff in terms of why they thought the trust was -- frankly why they thought the trust existed and was entitled to money. And I thought the fact that there were basically the same people on both sides, I mean I realize they're different, they're the parents and they're the kids, might make it less certain that the judge would be as precise as he might otherwise be in deciding exactly who should win.

I thought that in light of the fact that if we lost, the estate would have no money from the trust and I thought the estate probably would want to have some money, that a compromise of this nature was reasonable.

MS. CRISPIN: Nothing further.

THE COURT: Questions?

MR. ROSE: I'll reserve. For now I don't have any questions.

THE COURT: Mr. Feaman?

CROSS EXAMINATION

BY MR. FEAMAN:

Q Mr. Stamos, this is Peter Feaman. Do you recall that I represent Bill Stansbury?

A I do. I recall that well.

Q Do you recall that it was our office that first brought you into the case?
MR. ROSE: Objection, relevance.
THE COURT: Sustained.
BY MR. FEAMAN:
Q Mr. Stamos, you determined early on in your representation of the estate that the estate had a very meritorious claim, didn't you?
A Yes, I did.
Q And there was a telephonic mediation in May. Did you attend?
A I did.
Q And who attended at that mediation?
MR. ROSE: Objection for the same reasons. You limited his questioning since he has no position.
THE COURT: Sustained.
BY MR. FEAMAN:
Q And did that get the ball rolling in earnest towards settlement?
MR. ROSE: Same objection.
MS. CRISPIN: And to the extent it calls for confidential mediation.
THE COURT: Sustained.

BY MR. FEAMAN:

Q Did the most serious settlement discussions take place in June of this year?

MR. ROSE: Same objection.

THE COURT: Sustained. I don't see the relevance to this hearing.

BY MR. FEAMAN:

Q Do you recall whether I was involved at all in those settlement discussions?

MR. ROSE: Same objection.

THE COURT: What is the relevance for this hearing, Mr. Feaman?

MR. FEAMAN: For this hearing?

THE COURT: For this hearing.

MR. FEAMAN: As to whether -- while we're taking no position, I want to set the record that we were not involved.

THE COURT: Okay. You've already done that. Thank you. Any other questions?

BY MR. FEAMAN:

Q Was Ted Bernstein involved in the settlement discussions as the plaintiff in the Chicago litigation or as the trustee for the trust as the only monetary beneficiary of this estate?

MR. ROSE: Same objection. It sounds like

it's a question leading toward a position.

THE COURT: Could you ask the question again, Mr. Feaman?

BY MR. FEAMAN:

Q Was Ted Bernstein involved in settlement negotiations as a plaintiff in the Chicago litigation that you're counsel involved in or as trustee for the trust that's the only monetary beneficiary of this estate?

THE COURT: I am sustaining the objection because, again, you've taken no position in approving the settlement and I know this goes to another issue you have that's not in front of the Court today.

MR. BERNSTEIN: Can I ask that same question?

THE COURT: No, you can't. It's not in front of the Court today.

BY MR. FEAMAN:

Q My last question, Mr. Stamos, is do you have an opinion as to what the probability of success by the estate would have been if you had gone to trial?

A Well, my judgment was that we were likely to win the case. I felt that we were likely to win

the case with the caveat that I described earlier.

MR. FEAMAN: Thank you. No further questions.

THE COURT: Mr. Elliot?

CROSS EXAMINATION

BY MR. BERNSTEIN:

Q Hi, Mr. Stamos. Has Judge Blakey adjudicated this settlement yet?

A Not -- candidly, I don't recall the exact procedural posture at this moment. I know it's been brought before him, I know he's aware that this hearing has to take place. As to what he has ruled on it, I don't recall where it stands with him.

Q Okay. Was I, Elliot Bernstein, at any settlement negotiations you're aware of?

A I don't know the answer to that.

Q Okay. Is it claimed that I'm a beneficiary of the insurance policy?

A I'm sorry, state that again. I couldn't hear you.

Q Is it claimed by the plaintiffs that I'm a beneficiary of the insurance policy?

A That wasn't how I understood the claim. I understood that they were attempting to prove that a particular trust was the beneficiary of the

insurance policy.

Q Okay. Have you ever seen that particular trust, an executed copy of the 1995 trust that's at the heart of this?

A No.

Q Okay. So then would you be able to determine in this settlement that Ted Bernstein is the trustee of the '95 trust?

A I don't know the answer to that question.

Q Did you depose Ted Bernstein on these very questions in the Illinois litigation?

A Yeah. The position, as I understand it, was that the trust -- there was no evidence that the trust was ever executed and there was no clarity because there were a couple of drafts that were being presented as being exemplars of what the trust was supposed to accomplish. But my recollection is there's an inconsistency as to who the trustee would be. I never saw any document that assigned anyone as the trustee because I never saw an executed document.

Q So then it couldn't be certain that Ted Bernstein is the trustee of the trust that nobody knows exists?

MR. ROSE: Objection, relevancy, not

before the Court today.

A Our position was that there was no trust.

BY MR. BERNSTEIN:

Q Okay. And you understand that this settlement is being entered into between the estate and Ted Bernstein as trustee in fact of the 1995 trust?

A My understanding is that is a function of the fact that we are compromising and one of the compromises is to make that recognition, so it's a compromise of a factual issue.

THE COURT: All right. We need to wrap this up. One last question.

BY MR. BERNSTEIN:

Q Mr. Stamos, are you aware of the 2000 insurance trust that this policy was assigned to?

A I recall there being a trust that was entitled a 2000 trust. I have to tell you I'm a little hazy as I'm sitting here as to what exactly the function it had in the case. I know that it was never promoted by anyone as a trust that was entitled to the funds from the policy.

THE COURT: Last question. That was it.

MR. ROSE: May I have my one question?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. ROSE:

Q Mr. Stamos, are you aware that the documents that existed in the office of the insurance company that issued this policy continuously reflected the sole contingent beneficiary being this 1995 life insurance trust?

A I'm sorry, who's asking the question just so I know?

Q Alan Rose.

A Mr. Rose, if you're asking what was in the records of the issuing company, candidly I don't recall. I remember there was some changes, a beneficiary change form as to who it was ultimately. I just don't remember. I'm just blanking as to what actually was contained in the file.

MR. ROSE: Nothing further, Your Honor.

THE COURT: All right. Did you all give me the original -- I don't think so -- of the verified motion for approval of settlement? I'm just making sure I don't have an original here. It's double sided pages so I don't think so.

MS. CRISPIN: I don't believe so, Your Honor.

THE COURT: I don't believe so either. I'm just making sure. All right. Any other witnesses, Ms. Crispin?

MR. STAMOS: Am I excused, Your Honor?

THE COURT: Yes, you are excused. Thank you very much, Mr. Stamos. I'm disconnecting you.

MR. BERNSTEIN: Can I call him as a witness?

THE COURT: No. The hearing is ending.

MR. BERNSTEIN: I didn't get a chance -- it's ending now?

THE COURT: It is.

MR. BERNSTEIN: Okey dokey.

THE COURT: Do you have a proposed order?

MS. CRISPIN: Your Honor, I have a blank order here. I can fill it out here or I can hand Your Honor the blank one.

THE COURT: Okay. Thank you. I'll take the blank one. Thank you very much.

MS. CRISPIN: Your Honor, I'm just going to hand one copy because I know Your Honor will furnish it via email.

THE COURT: Absolutely. All right, everyone. I have as our next hearing

November 15th. I'm just saying just for the record.

MR. FEAMAN: My office gave me an order setting a hearing for November 9th at 1:30.

THE COURT: Which hearing is that? Isn't that the hearing I denied already?

MR. FEAMAN: No. It's on Mr. Stansbury's request for court intervention under Florida Statute 736.0706 filed back on February 15th of 2017, and in communications of my paralegal with your assistant, apparently it gave rise to her preparing an order setting that hearing for November 9th. She created it and gave it to me to confirm that there's a hearing on that date.

THE COURT: No, and you know what?

MR. FEAMAN: I didn't have any conversation with your office.

THE COURT: I understand that and actually it's not a complete shock to me. That's why I asked that. I need to look at that. My assistant is out for six weeks. So if you will hand me that, I need to look at that because in my world, I didn't think that was an issue.

MR. ROSE: Just for the record, Your Honor, this is the motion where he's asking

you --

THE COURT: I thought I denied it. I thought I entered an order denying it.

MR. ROSE: If you haven't, we ask you to.

THE COURT: Let me look at it and, Mr. Feaman, I'm sure at some point my assistant did a request for this, but like I said, she just had surgery. So let me take this, let me take the other blank order. I have a phone conference. Thank you very much.

MR. BERNSTEIN: Your Honor, I just want the record to reflect that I wasn't given a fair opportunity to be heard. I made no opening statement, was not allowed to call witnesses and there were no pretrial hearing procedures ordered by the Court or even followed by the Court.

THE COURT: So noted. Thank you so much. Feel better.

MR. ROSE: Thank you, Your Honor.

(The hearing was concluded.)

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, DEBORAH MEEK, Registered Professional Reporter, Florida Registered Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that such transcription, Pages 1 through 65, is a true and accurate record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested, directly or indirectly, in the action.

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Dated this 27th day of October, 2017.



DEBORAH MEEK, RPR, CRR, FPR

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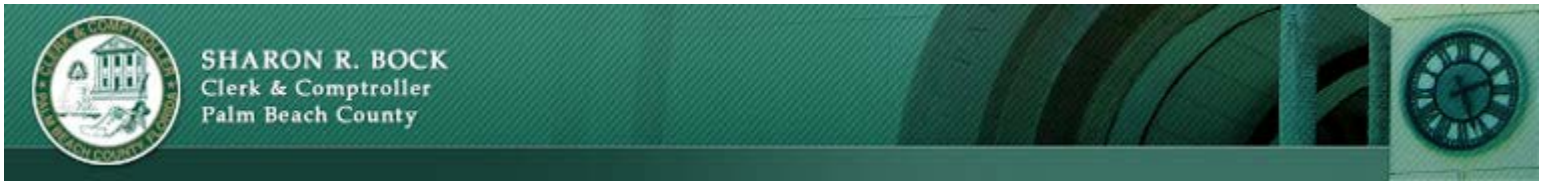
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| 84 | 05/26/2015 | ORDER DENYING |
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| 88 | 06/15/2015 | ORDER |
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| 177 | 04/05/2016 | PETITIONER EVIDENCE #16 DURABLE POWER OF ATTORNEY DTD 7/25/12 |
| 178 | 04/05/2016 | DEFENSE EVIDENCE # 6 FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08 |
| 179 | 04/05/2016 | PETITIONER EVIDENCE #4 WILL OF SIMON L BERSTEIN DTD 7/25/12 |
| 180 | 04/05/2016 | PETITIONER EVIDENCE #6 FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08 |
| 181 | 04/05/2016 | PETITIONER EVIDENCE #17 CORRESPONDENCE FROM ROBERT SPALLINA TO SIMON BERNSTEIN DTD 7/26/12 |
| 182 | 04/05/2016 | PETITIONER EVIDENCE #14 EMAIL FROM ELIOT BERNSTEIN TO ROBERT SPALLINA DTD 5/17/12 |
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| 189 | 04/05/2016 | PETITIONER EVIDENCE #3 FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08 |

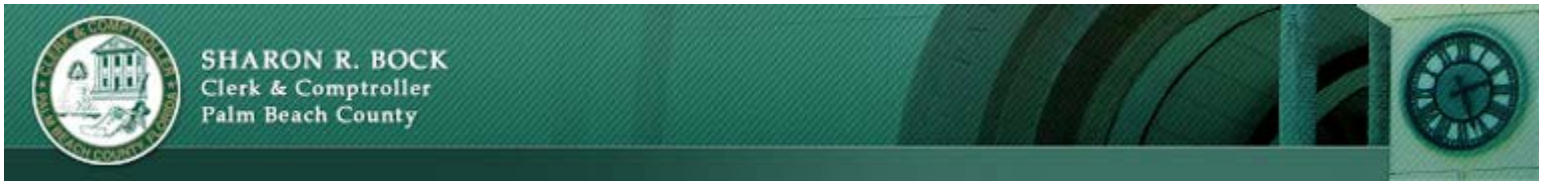
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| 190 | 04/05/2016 | PETITIONER EVIDENCE #11 CORRESPONDENCE FROM ROBERT SPALLINA TO MR & MRS SIMON BERNSTEIN DTD 4/09/08 |
| 191 | 04/05/2016 | PETITIONER EVIDENCE #9 CLIENT/CASE MAINTENANCE DTD 11/16/07 |
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| 193 | 04/05/2016 | PETITIONER EVIDENCE #13 NOTES DTD 2/01/12 |
| 194 | 04/05/2016 | PETITIONER EVIDENCE # 2 TRUST AGREEMENT DTD 05/20/08 |
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| 196 | 04/05/2016 | DEFENSE EVIDENCE #2 CORRESPONDENCE FROM DONALD TESCHER TO TED & ELIOT BERNSTEIN, LISA FRIEDSTEIN, PAMELA SIMON & JILL IANTONI DTD 1/14/14 |
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| 216 | 05/23/2016 | RESPONDENT EVIDENCE DFT ELLIOT BERNSTEIN - CORRESPONDENCE BETWEEN CANDICE SCHWAGER AND ALAN ROSE |
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| 219 | 05/23/2016 | PETITIONER EVIDENCE OPPENHEIMER - PETITION FOR ALL WRITS, WRIT OF POSSESSION, WRIT OF MANDAMUS AND PETITION TO STAY CASES AND TEMPORARILY RESTRAIN SALE, TRANSFER, DEPOSITION OF ANY ASSET AND FOR PRSERVATION OF ALL EVIDENCE |
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| 224 | 08/10/2016 | MOTION TO APPROVE AGREEMENT BETWEEN TED S. BERNSTEIN, TRUSTEE & BRIAN O'CONNELL, AS PR OF THE E/O SIMON BERNSTEIN, REGARDING THE ESTATE'S PERSONAL PROPERTY SOLD WITH TRUST'S REAL ESTATE F/B TED S. BERNSTEIN E-FILED |
| 225 | 08/23/2016 | NOTICE OF HEARING |
| 230 | 09/01/2016 | ORDER ON SUCCESSOR TRUSTEE'S MOTION TO APPROVE AGREEMENT BETWEEN TED S. BERNSTEIN, TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST, AND BRIAN O'CONNELL, AS PR OF THE ESTATE JDG J. PHILLIPS 09/01/16 |
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| 238 | 11/07/2016 | NOTICE OF HEARING |
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| 248 | 04/28/2017 | MOTION TRUSTEES MOTION FOR ENTRY OF STANDING ORDER GOVERNING HEARINGS F/B TEDD S BERNSTEIN |
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| 252 | 05/23/2017 | ORDER ORDER GOVERNING HEARINGS SIGNED BY JUDGE R SCHER ON MAY 23, 2017 |
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| 263 | 07/27/2017 | MOTION FOR LEAVE TO FILE MOTION TO HOLD ELIOT BERNSTEIN IN CONTEMPT OF COURT AND FOR SANCTIONS F/B TED S. BERNSTEIN , AS SUCCESSOR TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST |
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CASE STYLE: SIMON BERNSTEIN

Dockets & Documents

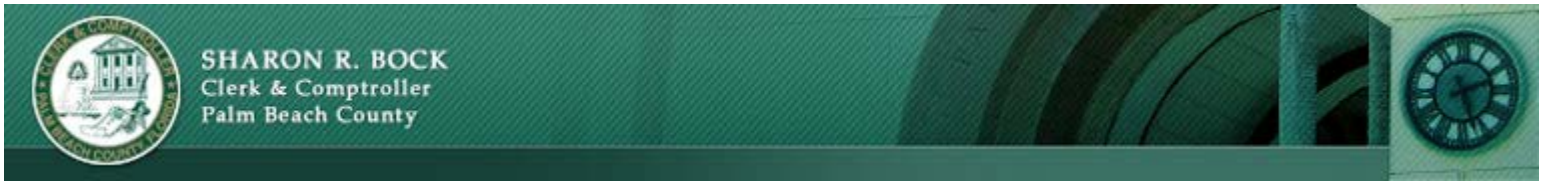
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| 40 | 04/11/2016 | CERTIFICATE OF SERVICE |
| 41 | 11/28/2016 | MOTION NOV. 29, 2016 HEARING STATUS CONFERENCE LISTING OF OPEN ISSUES AND PENDING FILINGS F/B ELIOT BERNSTEIN |
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| 71 | 02/18/2014 | ORDER |
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| 117 | 05/02/2014 | MOTION |
| 118 | 05/07/2014 | ORDER |
| 119 | 05/12/2014 | RECEIPT FOR PAYMENT |
| 120 | 05/12/2014 | REQUEST |
| 121 | 05/13/2014 | NOTICE OF HEARING |
| 122 | 05/13/2014 | MOTION |
| 123 | 05/13/2014 | MOTION |
| 124 | 05/13/2014 | NOTICE OF HEARING |
| 125 | 05/15/2014 | ORDER |
| 126 | 05/16/2014 | PETITION |
| 127 | 05/19/2014 | NOTICE OF HEARING |
| 128 | 05/20/2014 | NOTICE OF APPEARANCE |
| 129 | 05/20/2014 | NOTICE OF FILING |
| 130 | 05/21/2014 | NOTICE OF FILING |

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| 131 | 05/22/2014 | NOTICE OF FILING |
| 132 | 05/22/2014 | OBJECTION |
| 133 | 05/23/2014 | ORDER |
| 134 | 05/28/2014 | NOTICE OF HEARING |
| 135 | 05/29/2014 | RE-NOTICE OF HEARING |
| 136 | 05/29/2014 | NOTICE OF HEARING |
| 137 | 05/29/2014 | NOTICE OF HEARING |
| 138 | 05/30/2014 | OBJECTION |
| 139 | 05/30/2014 | MOTION |
| 140 | 06/01/2014 | OBJECTION |
| 141 | 06/02/2014 | OBJECTION |
| 142 | 06/02/2014 | NOTICE |
| 143 | 06/02/2014 | NOTICE OF FILING |
| 144 | 06/04/2014 | NOTICE OF HEARING |
| 145 | 06/04/2014 | MOTION TO COMPEL |
| 146 | 06/04/2014 | MOTION |
| 147 | 06/04/2014 | MOTION |
| 148 | 06/05/2014 | NOTICE OF FILING |
| 149 | 06/05/2014 | NOTICE OF UNAVAILABILITY |
| 150 | 06/05/2014 | REQUEST |

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| 151 | 06/06/2014 | NOTICE OF UNAVAILABILITY |
| 152 | 06/06/2014 | NOTICE OF UNAVAILABILITY |
| 153 | 06/06/2014 | NOTICE OF FILING |
| 154 | 06/09/2014 | NOTICE OF UNAVAILABILITY |
| 155 | 06/10/2014 | RE-NOTICE OF HEARING |
| 156 | 06/10/2014 | RE-NOTICE OF HEARING |
| 157 | 06/10/2014 | RE-NOTICE OF HEARING |
| 158 | 06/10/2014 | MOTION |
| 159 | 06/11/2014 | NOTICE OF HEARING |
| 160 | 06/11/2014 | MOTION |
| 161 | 06/11/2014 | NOTICE OF HEARING |
| 162 | 06/13/2014 | NOTICE OF HEARING |
| 163 | 06/13/2014 | NOTICE OF APPEARANCE |
| 164 | 06/13/2014 | MOTION |
| 165 | 06/13/2014 | NOTICE OF HEARING |
| 166 | 06/13/2014 | PETITION |
| 167 | 06/13/2014 | MOTION |
| 168 | 06/13/2014 | NOTICE OF HEARING |
| 169 | 06/16/2014 | RESPONSE TO: |
| 170 | 06/16/2014 | ORDER |

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| 171 | 06/16/2014 | ORDER |
| 172 | 06/16/2014 | ORDER |
| 173 | 06/16/2014 | ORDER |
| 174 | 06/16/2014 | OBJECTION |
| 175 | 06/18/2014 | NOTICE OF HEARING |
| 176 | 06/18/2014 | MOTION |
| 177 | 06/18/2014 | NOTICE OF FILING |
| 178 | 06/19/2014 | ORDER |
| 179 | 06/19/2014 | ORDER |
| 180 | 06/19/2014 | ORDER |
| 181 | 06/19/2014 | ORDER |
| 182 | 06/20/2014 | PETITION |
| 183 | 06/20/2014 | ORDER DENYING |
| 184 | 06/23/2014 | MOTION |
| 185 | 06/23/2014 | NOTICE OF FILING |
| 186 | 06/23/2014 | ORDER DENYING |
| 187 | 06/24/2014 | NOTICE OF HEARING |
| 188 | 06/24/2014 | MOTION |
| 189 | 06/25/2014 | NOTICE OF HEARING |
| 190 | 06/26/2014 | NOTICE OF UNAVAILABILITY |

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| 191 | 06/26/2014 | NOTICE OF UNAVAILABILITY |
| 192 | 06/26/2014 | NOTICE OF HEARING |
| 193 | 06/27/2014 | RESPONSE TO: |
| 194 | 06/29/2014 | NOTICE OF TAKING DEPOSITION |
| 195 | 06/30/2014 | RESPONSE TO: |
| 196 | 06/30/2014 | NOTICE OF UNAVAILABILITY |
| 197 | 06/30/2014 | MOTION |
| 198 | 07/01/2014 | ORDER |
| 199 | 07/02/2014 | RETURNED MAIL |
| 200 | 07/07/2014 | MOTION |
| 201 | 07/08/2014 | RETURNED MAIL |
| 202 | 07/08/2014 | ORDER |
| 203 | 07/10/2014 | NOTICE OF FILING |
| 204 | 07/10/2014 | NOTICE |
| 205 | 07/11/2014 | NOTICE OF FILING |
| 206 | 07/11/2014 | ORDER |
| 207 | 07/14/2014 | ORDER |
| 208 | 07/14/2014 | ORDER |
| 209 | 07/14/2014 | ORDER |
| 210 | 07/15/2014 | NOTICE OF UNAVAILABILITY |

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| 211 | 07/16/2014 | NOTICE OF UNAVAILABILITY |
| 212 | 07/16/2014 | PETITION |
| 213 | 07/16/2014 | NOTICE |
| 214 | 07/16/2014 | PETITION |
| 215 | 07/16/2014 | ACCOUNTING |
| 216 | 07/18/2014 | OATH |
| 217 | 07/18/2014 | ORDER |
| 218 | 07/25/2014 | LETTERS OF ADMINISTRATION BOOK 26942 PAGE 284 |
| 219 | 07/25/2014 | ORDER APPOINTING PERSONAL REP |
| 220 | 07/29/2014 | PETITION |
| 221 | 07/29/2014 | PETITION |
| 222 | 07/30/2014 | MOTION |
| 223 | 07/30/2014 | NOTICE OF HEARING |
| 224 | 08/04/2014 | NOTICE OF COMPLIANCE |
| 225 | 08/06/2014 | NOTICE OF HEARING |
| 226 | 08/06/2014 | MOTION |
| 227 | 08/11/2014 | MOTION TO DISMISS |
| 228 | 08/11/2014 | NOTICE OF HEARING |
| 229 | 08/11/2014 | PETITION |
| 230 | 08/13/2014 | OBJECTION |

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| 231 | 08/15/2014 | NOTICE OF HEARING |
| 232 | 08/15/2014 | MOTION |
| 233 | 08/17/2014 | MOTION |
| 234 | 08/18/2014 | NOTICE OF HEARING |
| 235 | 08/18/2014 | NOTICE OF HEARING |
| 236 | 08/20/2014 | NOTICE OF HEARING |
| 237 | 08/21/2014 | NOTICE OF HEARING |
| 238 | 08/22/2014 | STATEMENT OF CLAIM |
| 239 | 08/22/2014 | STATEMENT OF CLAIM |
| 240 | 08/22/2014 | ORDER DENYING |
| 241 | 08/23/2014 | NOTICE OF FILING |
| 242 | 08/24/2014 | EMERGENCY MOTION |
| 243 | 08/25/2014 | NOTICE |
| 244 | 08/25/2014 | ORDER |
| 245 | 08/26/2014 | NOTICE OF TAKING DEPOSITION |
| 246 | 08/26/2014 | NOTICE OF TAKING DEPOSITION |
| 247 | 08/26/2014 | ORDER DENYING |
| 248 | 08/28/2014 | MOTION |
| 249 | 08/28/2014 | MOTION |
| 250 | 08/29/2014 | MOTION TO WITHDRAW |

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| 251 | 08/29/2014 | RETURNED MAIL |
| 252 | 09/02/2014 | PETITION FOR DISCHARGE |
| 253 | 09/02/2014 | RETURNED MAIL |
| 254 | 09/06/2014 | PETITION |
| 255 | 09/08/2014 | NOTICE OF HEARING |
| 256 | 09/10/2014 | MOTION |
| 257 | 09/13/2014 | NOTICE OF HEARING |
| 258 | 09/14/2014 | NOTICE |
| 259 | 09/15/2014 | ORDER |
| 260 | 09/15/2014 | PETITION FOR ATTORNEY'S FEES |
| 261 | 09/15/2014 | NOTICE OF HEARING |
| 262 | 09/15/2014 | NOTICE |
| 263 | 09/16/2014 | RE-NOTICE OF TAKING DEPOSITION |
| 264 | 09/16/2014 | FINAL ACCOUNTING - ESTATE |
| 265 | 09/19/2014 | NOTICE OF TAKING DEPOSITION |
| 266 | 09/23/2014 | PETITION TO EXTEND TIME |
| 267 | 09/23/2014 | NOTICE OF UNAVAILABILITY |
| 268 | 09/23/2014 | NOTICE OF EMAIL DESIGNATION |
| 269 | 09/24/2014 | PETITION |
| 270 | 09/24/2014 | ORDER |

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| 271 | 09/25/2014 | ORDER |
| 272 | 09/30/2014 | NOTICE |
| 273 | 10/07/2014 | ORDER |
| 274 | 10/07/2014 | AGREED ORDER |
| 275 | 10/13/2014 | MOTION |
| 276 | 10/15/2014 | NOTICE OF HEARING |
| 277 | 10/20/2014 | NOTICE OF HEARING |
| 278 | 10/23/2014 | MOTION TO WITHDRAW |
| 279 | 10/23/2014 | NOTICE OF HEARING |
| 280 | 10/29/2014 | WAIVER AND CONSENT |
| 281 | 10/29/2014 | WAIVER AND CONSENT |
| 282 | 10/30/2014 | ORDER |
| 283 | 10/31/2014 | PETITION FOR ATTORNEY'S FEES |
| 284 | 11/10/2014 | NOTICE OF HEARING |
| 285 | 11/19/2014 | AGREED ORDER |
| 286 | 11/25/2014 | PETITION FOR ATTORNEY'S FEES |
| 287 | 12/01/2014 | INVENTORY - ESTATE |
| 288 | 12/02/2014 | NOTICE OF HEARING |
| 289 | 12/03/2014 | NOTICE OF HEARING |
| 290 | 12/09/2014 | NOTICE OF HEARING |

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| 291 | 12/18/2014 | NOTICE OF HEARING |
| 292 | 12/19/2014 | NOTICE OF HEARING |
| 293 | 12/19/2014 | NOTICE OF HEARING |
| 294 | 12/19/2014 | ORDER AWARDING ATTORNEY FEES |
| 295 | 12/24/2014 | MOTION |
| 296 | 12/30/2014 | NOTICE OF UNAVAILABILITY |
| 297 | 01/05/2015 | NOTICE OF HEARING |
| 298 | 01/07/2015 | NOTICE OF HEARING |
| 299 | 01/07/2015 | NOTICE OF UNAVAILABILITY |
| 300 | 01/07/2015 | NOTICE OF HEARING |
| 301 | 01/08/2015 | NOTICE OF HEARING |
| 302 | 01/08/2015 | ORDER |
| 303 | 01/15/2015 | NOTICE OF HEARING |
| 304 | 01/15/2015 | MOTION |
| 305 | 01/15/2015 | NOTICE OF APPEARANCE |
| 306 | 01/15/2015 | NOTICE OF HEARING |
| 307 | 01/22/2015 | MOTION |
| 308 | 01/22/2015 | NOTICE OF HEARING |
| 309 | 01/26/2015 | CORRESPONDENCE |
| 310 | 01/26/2015 | MEMORANDUM |

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| 311 | 01/27/2015 | NOTICE OF EMAIL DESIGNATION |
| 312 | 01/28/2015 | MOTION TO STRIKE |
| 313 | 01/29/2015 | ORDER |
| 314 | 02/10/2015 | PETITION FOR ORDER |
| 315 | 02/11/2015 | NOTICE OF UNAVAILABILITY |
| 316 | 02/13/2015 | NOTICE OF HEARING |
| 317 | 02/18/2015 | PETITION FOR DISCHARGE |
| 318 | 02/19/2015 | NOTICE OF HEARING |
| 319 | 02/23/2015 | NOTICE OF HEARING |
| 320 | 02/23/2015 | NOTICE OF HEARING |
| 321 | 02/23/2015 | MOTION |
| 322 | 02/25/2015 | RE-NOTICE |
| 323 | 02/27/2015 | MOTION |
| 324 | 03/03/2015 | RE-NOTICE OF HEARING |
| 325 | 03/04/2015 | RE-NOTICE OF HEARING |
| 326 | 03/04/2015 | NOTICE OF CANCELLATION |
| 327 | 03/05/2015 | RE-NOTICE OF HEARING |
| 328 | 03/18/2015 | ORDER |
| 329 | 03/18/2015 | ORDER |
| 330 | 03/18/2015 | RESPONSE TO: |

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| 331 | 03/24/2015 | NOTICE OF HEARING |
| 332 | 03/24/2015 | PETITION |
| 333 | 03/24/2015 | NOTICE OF UNAVAILABILITY |
| 334 | 03/25/2015 | NOTICE OF UNAVAILABILITY |
| 335 | 03/25/2015 | ORDER |
| 336 | 03/30/2015 | ORDER |
| 337 | 04/24/2015 | OBJECTION TO CLAIM |
| 338 | 04/24/2015 | OBJECTION TO CLAIM |
| 339 | 04/24/2015 | OBJECTION TO CLAIM |
| 340 | 04/24/2015 | OBJECTION TO CLAIM |
| 341 | 04/24/2015 | OBJECTION TO CLAIM |
| 342 | 04/28/2015 | PROOF OF SERVICE |
| 343 | 04/28/2015 | OBJECTION TO CLAIM |
| 344 | 04/28/2015 | OBJECTION TO CLAIM |
| 345 | 05/04/2015 | NOTICE OF HEARING |
| 346 | 05/04/2015 | PETITION |
| 347 | 05/04/2015 | PETITION |
| 348 | 05/05/2015 | PETITION |
| 349 | 05/05/2015 | NOTICE OF CONFIDENTIAL FILING |
| 350 | 05/06/2015 | NOTICE OF CANCELLATION |

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| 351 | 05/08/2015 | PETITION FOR ATTORNEY'S FEES |
| 352 | 05/11/2015 | NOTICE OF HEARING |
| 353 | 05/12/2015 | RE-NOTICE |
| 354 | 05/14/2015 | ORDER |
| 355 | 05/15/2015 | RE-NOTICE OF HEARING |
| 356 | 05/19/2015 | NOTICE OF REASSIGNMENT |
| 357 | 05/19/2015 | ORDER OF RECUSAL |
| 358 | 05/20/2015 | NOTICE OF HEARING |
| 359 | 05/21/2015 | DEMAND FOR: |
| 360 | 05/21/2015 | MOTION |
| 361 | 05/27/2015 | NOTICE OF HEARING |
| 362 | 06/01/2015 | NOTICE OF HEARING |
| 363 | 06/08/2015 | ORDER OF RECUSAL/REASSIGNMENT |
| 364 | 06/09/2015 | NOTICE OF CANCELLATION |
| 365 | 06/10/2015 | NOTICE OF REASSIGNMENT |
| 366 | 06/10/2015 | NOTICE OF CONFIDENTIAL FILING |
| 367 | 06/10/2015 | NOTICE OF INTENT |
| 368 | 06/11/2015 | EXHIBIT LIST |
| 369 | 06/11/2015 | NOTICE OF CONFIDENTIAL FILING |
| 370 | 06/11/2015 | NOTICE |

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| 371 | 06/12/2015 | NOTICE OF UNAVAILABILITY |
| 372 | 06/18/2015 | NOTICE OF UNAVAILABILITY |
| 373 | 06/26/2015 | NOTICE OF CANCELLATION |
| 374 | 06/26/2015 | NOTICE OF HEARING |
| 375 | 06/26/2015 | OBJECTION |
| 376 | 06/26/2015 | NOTICE OF HEARING |
| 377 | 07/07/2015 | NOTICE OF HEARING |
| 378 | 07/09/2015 | NOTICE OF UNAVAILABILITY |
| 379 | 07/14/2015 | NOTICE OF UNAVAILABILITY |
| 380 | 07/20/2015 | NOTICE OF CONFIDENTIAL FILING |
| 381 | 07/20/2015 | PETITION |
| 382 | 07/24/2015 | RE-NOTICE OF HEARING |
| 383 | 07/24/2015 | PETITION FOR ORDER |
| 384 | 07/28/2015 | PETITION FOR ATTORNEY'S FEES |
| 385 | 07/28/2015 | PETITION |
| 386 | 08/03/2015 | NOTICE OF HEARING |
| 387 | 08/14/2015 | RE-NOTICE OF HEARING |
| 388 | 08/14/2015 | NOTICE OF CANCELLATION |
| 389 | 09/01/2015 | NOTICE OF UNAVAILABILITY |
| 390 | 09/02/2015 | OBJECTION |

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| 391 | 09/02/2015 | NOTICE OF HEARING |
| 392 | 09/11/2015 | SEE DOCUMENT DESCRIPTION |
| 393 | 09/14/2015 | STATUS REPORT |
| 394 | 09/14/2015 | PETITION FOR ATTORNEY'S FEES |
| 395 | 09/28/2015 | STATEMENT OF CLAIM |
| 396 | 09/30/2015 | OBJECTION |
| 397 | 09/30/2015 | OBJECTION |
| 398 | 10/08/2015 | NOTICE OF EMAIL DESIGNATION |
| 399 | 10/16/2015 | NOTICE OF CANCELLATION |
| 400 | 10/28/2015 | MOTION TO STRIKE |
| 401 | 11/16/2015 | NOTICE OF UNAVAILABILITY |
| 402 | 11/24/2015 | NOTICE OF UNAVAILABILITY |
| 403 | 12/02/2015 | PETITION |
| 404 | 12/04/2015 | NOTICE OF HEARING |
| 405 | 12/04/2015 | PETITION |
| 406 | 12/09/2015 | NOTICE OF CANCELLATION |
| 407 | 12/23/2015 | PETITION FOR ATTORNEY'S FEES |
| 408 | 12/23/2015 | NOTICE OF UNAVAILABILITY |
| 409 | 12/28/2015 | EMERGENCY MOTION |
| 410 | 12/28/2015 | EMERGENCY MOTION |

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| 411 | 12/28/2015 | PETITION FOR ATTORNEY'S FEES |
| 412 | 01/04/2016 | ORDER DENYING |
| 413 | 01/14/2016 | MOTION |
| 419 | 01/19/2016 | NOTICE OF HEARING |
| 420 | 01/20/2016 | NOTICE OF HEARING |
| 421 | 01/20/2016 | NOTICE OF HEARING |
| 422 | 01/20/2016 | PETITION FOR ATTORNEY'S FEES |
| 423 | 01/20/2016 | NOTICE OF CANCELLATION |
| 424 | 01/29/2016 | PETITION |
| 425 | 02/03/2016 | PETITION |
| 426 | 02/03/2016 | NOTICE OF TAKING DEPOSITION |
| 427 | 02/04/2016 | RE-NOTICE OF TAKING DEPOSITION |
| 428 | 02/09/2016 | NOTICE OF HEARING |
| 429 | 02/10/2016 | PETITION |
| 430 | 02/11/2016 | NOTICE OF TAKING DEPOSITION |
| 431 | 02/12/2016 | NOTICE OF CANCELLATION |
| 432 | 02/18/2016 | NOTICE OF HEARING |
| 433 | 02/24/2016 | NOTICE OF CANCELLATION |
| 434 | 03/03/2016 | ORDER GRANTING PETITION FOR AUTHORIZATION FOR PAYMENT OF JEWELRY APPRAISALS - SIGNED 3/03/16 JUDGE PHILLIPS |

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| 435 | 03/08/2016 | ORDER ON PETITION TO HAVE THE ESTATE OF SIMON L. BERNSTEIN DECLARED THE BENEFICIARY OF THE J.P. MORGAN CHASE BANK. N.A. IRA ACCOUNT(S) - SIGNED 3/07/16 JUDGE PHILLIPS |
| 436 | 03/08/2016 | ORDER ON PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES AND EXPENSES FOR THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON L. BERNSTEIN FOR JULY 1, 2015 THROUGH AUGUST 31, 2015 - SIGNED 3/07/16 JUDGE PHILLIPS |
| 437 | 03/08/2016 | MOTION (SUCCESSOR TRUSTEES) FOR APPOINTMENT OF A GUARDIAN AD LITEM TO REPRESENT THE INTERESTS OF ELIOT BERNSTEINS CHILDREN F/B TED S BERNSTEIN |
| 438 | 03/08/2016 | ORDER ON PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES AND EXPENSES FOR THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON L. BERNSTEIN FOR NOVEMBER 1, 2015 THROUGH NOVEMBER 30. 2015 - SIGNED 3/07/16 JUDGE PHILLIPS |
| 439 | 03/08/2016 | NOTICE OF HEARING |
| 440 | 03/08/2016 | ORDER ON PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES AND EXPENSES FOR THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON L. BERNSTEIN FOR SEPTEMBER 1, 2015 THROUGH OCTOBER 31, 2015 - SIGNED 3/07/16 JUDGE PHILLIPS |
| 441 | 03/31/2016 | PETITION |
| 442 | 04/04/2016 | SATISFACTION/RELEASE OF CLAIM |
| 443 | 04/08/2016 | ORDER APPOINTING GDN AD LITEM |
| 444 | 04/11/2016 | CERTIFICATE OF SERVICE |
| 445 | 04/13/2016 | ORDER ON ORE TENUS MOTION FOR MEDIATION - SIGNED 4/13/16 JUDGE PHILLIPS |
| 446 | 04/14/2016 | NOTICE OF FILING |
| 447 | 05/03/2016 | NOTICE OF UNAVAILABILITY |
| 448 | 05/04/2016 | MOTION OF CREDITOR FOR DISCHARGE FROM FURTHER RESPONSIBILITY FOR THE FUNDING OF THE ESTATE'S PARTICIPATION IN THE CHICAGO LIFE INSURANCE LITIGATION AND FOR ASSUMPTION OF RESPONSIBILITY BY THE ESTATE AND FOR REIMBURSMENT OF ADVANCED FUNDS - F/B WILLIAM STANSBURY |

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| 449 | 05/10/2016 | NOTICE OF UNAVAILABILITY |
| 450 | 05/19/2016 | NOTICE OF HEARING |
| 451 | 05/20/2016 | NOTICE OF CANCELLATION |
| 452 | 05/25/2016 | NOTICE OF WITHDRAWAL OF PET. FOR AUTHORIZATION FOR THE PAYMENT OF 2014 DELINQUENT PROPERTY TAXES F/B ATTY .FOGLIETTA OBO BRIAN M. O'CONNELL, SUCCESSOR P.R. E-FILED |
| 453 | 05/26/2016 | NOTICE OF HEARING |
| 454 | 05/26/2016 | ORDER ON PARTIES REQUEST FOR ESTENSION TO MEDIATE SIGNED JOHN L PHILLIPS 05-26-16 |
| 455 | 06/22/2016 | NOTICE OF MEDIATION |
| 456 | 07/18/2016 | NOTICE OF UNAVAILABILITY |
| 457 | 07/22/2016 | PETITION FOR ATTORNEY'S FEES |
| 458 | 07/22/2016 | PETITION FOR ATTORNEY'S FEES |
| 459 | 07/22/2016 | PETITION |
| 460 | 07/22/2016 | PETITION FOR ATTORNEY'S FEES |
| 461 | 07/22/2016 | PETITION |
| 462 | 07/25/2016 | NOTICE OF CANCELLATION |
| 463 | 07/27/2016 | MOTION TO SCHEDULE MOTION CALENDAR HEARING F/B ATTY FEAMAN |
| 464 | 07/27/2016 | NOTICE OF HEARING |
| 465 | 07/28/2016 | NOTICE OF CANCELLATION |
| 466 | 07/28/2016 | NOTICE OF HEARING |
| 467 | 07/28/2016 | RE-NOTICE OF HEARING |

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| 468 | 08/02/2016 | PETITION FOR ATTORNEY'S FEES |
| 469 | 08/02/2016 | PETITION FOR ATTORNEY'S FEES |
| 470 | 08/03/2016 | NOTICE OF HEARING |
| 471 | 08/05/2016 | MOTION TRUSTEE'S MOTION TO APPROVE RETENTION OF COUNSEL AND TO APPOINT TED S BERNSTEIN AS ADMINISTRATOR AD LITEM TO DEFEND CLAIM AGAINST ESTATE BY WILLIAM STANSBURY F/B ATTY ROSE |
| 472 | 08/10/2016 | MOTION TO APPROVE AGREEMENT BETWEEN TED S. BERNSTEIN, TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST & BRIAN O'CONNELL, AS P.R. OF THE ESTATE, REGARDING THE ESTATE'S PERSONAL PROPERTY SOLD WITH TRUST'S REAL ESTATE F/B TED S. BERNSTEIN E-FILED |
| 473 | 08/10/2016 | MOTION TO RATIFY AND CONFIRM APPOINTMENT OF TED S. BERNSTEIN AS SUCCESSOR TRUSTEE OF TRUST WHICH IS SOLE BENFICIARY OF THE ESTATE F/B TED S. BERNSTEIN E-FILED |
| 474 | 08/16/2016 | NOTICE OF CANCELLATION |
| 475 | 08/22/2016 | OBJECTION |
| 476 | 08/23/2016 | RE-NOTICE OF HEARING |
| 477 | 08/23/2016 | NOTICE OF HEARING |
| 478 | 08/23/2016 | MOTION IN OPPOSITION TO P/R'S (1) PETITION FOR AUTHORIZATION TO SELL ESTATE JEWELRY AND (2) STATUS CONFERENCE ON PEITITON FOR AUTHORIZATION TO MOVER, STORE AND SELL TPP - F/B ELIOT BERNSTEIN |
| 479 | 08/24/2016 | ORDER ON PET FOR AUTHORIZATION AND RATIFICATION FOR THE PAYMENT OF THE MOVING & STORAGE OF, AND FOR AUTHORIZATION TO SELL, THE TANGIBLE PERSONAL PROPERTY PREVIOUSLY LOCATED AT 7020 LIONS HEAD LANE, BOCA RATON, FL JDG J. PHILLIPS 08/24/16 E-FILED |
| 480 | 09/01/2016 | ORDER ON SUCCESSOR TRUSTEE'S MOT. TO APPROVE AGREEMENT BETWEEN TED BERNSTEIN, TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST, AND BRIAN O'CONNELL, AS PR OF THE ESTATE THE SHIRLEY TRUST WILL PAY TH EP.R. OF SIMON'S ESTATE $12,457 FOR THE OLD PERSONAL PROPERTY AND THERE WILL BE NO FURTHER OR OUTSTANDING OBLIGATIONS BETWEEN THOSE PARTIES JDG J. PHILLIPS 09/01/16 E-FILED |

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| 482 | 09/02/2016 | ORDER ON PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEYS FEES AND EXPENSES FOR THE PR OF THE ESTATE OF SIMON L BERNSTEIN FOR SEPT. 1, 2014 THROUGH SEPT. 30, 2014 SIGNED BY JUDGE J L PHILLIPS ON SEPT. 2, 2016 EFILED |
| 483 | 09/02/2016 | ORDER ORDER ON PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEYS FEES AND EXPENSES FOR TH PR OF THE ESTATE OF SIMON L BERNSTEIN FOR NOV 1, 2014 THRU DEC. 31, 2014 SIGNED BY JUDGE J PHILLIPS ON SEPT. 2, 2016 EFILED |
| 484 | 09/02/2016 | ORDER ON PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEYS FEES AND EXPENSES FOR THE PR OF THE ESTATE OF SIMON L BERNSTEIN FOR JAN 1, 2015 THRU MARCH 23, 2015 SIGNED BY JUDGE J L PHILLIPS ON SEPT. 2, 2016 EFILED |
| 485 | 09/02/2016 | ORDER ORDER ON PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEYS FEES AND EXPENSES FOR THE PR OF THE ESTATE OF SIMON L BERNSTEIN FOR APRIL 25, 2015 THUR MAY 24, 2015 SIGNED BY JUDGE J PHILLIPS ON SEPT. 2, 2016 EFILED |
| 486 | 09/02/2016 | ORDER ON PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES & EXPENSES FOR THE P.R. OF THE E/O SIMON L. BERNSTEIN FOR 05/26/15 THROUGH 06/30/15 JDG J. PHILLIPS 09/02/16 E-FILED` |
| 487 | 09/02/2016 | ORDER ON PET. FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES & EXPENSES FOR THE P.R. OF THE E/O SIMON L. BERNSTEIN FOR 02/01/16 THROUGH 05/31/16 JDG J. PHILLIPS 09/02/16 E-FILED |
| 488 | 09/02/2016 | ORDER ON PET. FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES & EXPENSES FOR THE P.R. OF THE E/O SIMON L. BERNSTIN FOR 12/01/15 THROUGH 12/31/15 JDG J. PHILLIPS 09/02/16 E-FILED |
| 489 | 09/02/2016 | ORDER ON PET. FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES & EXPENSES FOR THE P.R. OF THE E/O SIMON L. BERNSTIN FOR 01/04/16 THROUGH 01/29/16 JDG J. PHILLIPS 09/02/16 E-FILED |
| 490 | 09/02/2016 | ORDER ON PET. FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES & EXPENSES FOR THE P.R. OF THE E/O SIMON L. BERNSTEIN FOR 03/24/15 THROUGH 04/24/15 JDG J. PHILLIPS 09/02/16 |
| 491 | 09/02/2016 | ORDER ON PETITION FOR ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES & EXPENSES FOR THE P.R. OF THE E/O SIMON L. BERNSTEIN FOR 06/01/16 THROUGH 06/30/16 JDG J. PHILLIPS 09/02/16 E-FILED |
| 492 | 09/12/2016 | MOTION FOR REHEARING |
| 493 | 09/14/2016 | ORDER DENYING MOTION FOR REHEARING OR RECONSIDERATION JDG J. PHILLIPS 09/14/16 |

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| 494 | 09/21/2016 | MEDIATION REPORT |
| 495 | 09/23/2016 | REPLY/RESPONSE |
| 496 | 09/29/2016 | ORDER APPROVING RETENTION OF COUNSEL AND DEFERRING RULING ON APPOINTMENT OF TED S. BERNSTEIN AS ADMINISTRATOR AD LITEM TO DEFEND CLAIM AGAINST ESTATE BY WILLIAM STANSBURY - SIGNED 9/26/16 JUDGE PHILLIPS |
| 497 | 10/07/2016 | MOTION TO VACATE IN PART THE COURT'S RULING ON 09/07/16, AND/OR SUBSEQUENT ORDER, PERMITTING THE ESTATE OF SIMON BERNSTEIN TO RETAIN ALAN ROSE AND PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. AS LEGAL COUNSEL AND MOTION FOR EVIDENTIARY HRG TO DETERMINE WHETHER ROSE AND PAGE, MRACHEK ARE DISQUALIFIED FROM REPRESENTING THE ESTATE DUE TO AN INHERENT CONFLICT OF INTEREST F/B WILLIAM STANSBURY |
| 498 | 11/09/2016 | MOTION TO APPROVE COMPROMISE AND SETTLEMENT, APPOINT A TRUSTEE FOR THE TRUSTS CREATED FOR D.B., JA.B. & JO.B AND DETERMINE COMPENSATION FOR GRD AD LITEM F/B TED S. BERNSTEIN |
| 499 | 11/09/2016 | NOTICE OF HEARING |
| 500 | 11/15/2016 | OBJECTION |
| 501 | 11/15/2016 | MOTION TO VACATE IN PART THE COURT'S RULING ON 09/07/16, AND/OR SUBSEQUENT ORDER, PERMITTING THE ESTATE OF SIMON BERNSTEIN TO RETAIN ALAN ROSE AND PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A. AS LEGAL COUNSEL AND MOTION FOR EVIDENTIARY HRG TO DETERMINE WHETHER ROSE AND PAGE, MRACHEK ARE DISQUALIFIED FROM REPRESENTING THE ESTATE DUE TO AN INHERENT CONFLICT OF INTEREST - F/B WILLIAM STANSBURY |
| 502 | 11/15/2016 | NOTICE OF HEARING |
| 503 | 11/16/2016 | NOTICE OF UNAVAILABILITY |
| 504 | 11/21/2016 | NOTICE OF TAKING DEPOSITION |
| 505 | 11/21/2016 | MOTION IN OPPOSITION TO PLAINTIFF'S MOTION TO (I) APPROVE COMPROMISE AND SETTLEMENT, (II) APPOINT A TRUSTEE FOR THE TRUSTS CREATED FOR D.B, JA.B. AND JO.B, AND (III) DETERMINE COMPENSATION FOR GUARDIAN AD LITEM (2) CASE MANAGEMENT CONFERENCE - F/B ELLIOT BERNSTEIN |

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| 506 | 11/22/2016 | NOTICE OF HEARING |
| 507 | 11/28/2016 | RESPONSE TO: OMNIBUS RESPONSE IN OPPOSITION TO STANSBURYS MOTION TO VACATE IN PART ORDER PERMITTING RETENTION OF MRACHEK AND REPLY IN SUPPORT OF MOTION TO APPOINT TED BERNSTEIN AS ADMINISTRATOR AD LITEM AND MOTION TO RATIFY AND CONFIRM APPOINTMENT OF SUCCESSOR TRUSTEE F/B TED S BERNSTEIN |
| 508 | 11/28/2016 | MOTION MOTION TO DISQUALIFY ALAN ROSE AND PAGE, MRACHEK,FITZGERALD,ROSE,KONPKA,THOMAS & WEISS, AS LEGAL COUNSEL FOR THE ESTATE OF SIMON BERNSTEIN DUE TO INHERENT CONFLICT OF INTEREST F/B WILLIAM STANSBURY |
| 509 | 11/28/2016 | MOTION NOV 29, 2016 HEARING STATUS CONFERENCE LISTINGS OF OPEN ISSUES AND PENDING FILINGS F/B ELIOT BERNSTEIN |
| 510 | 11/28/2016 | NOTICE OF FILING |
| 511 | 12/13/2016 | ORDER ON CASE MANAGEMENT CONFERENCE AND ORDER SPECIALLY SETTING HEARINGS SIGNED BY JUDGE R SCHER ON DEC. 13, 2016 |
| 512 | 12/16/2016 | ACCOUNTING |
| 513 | 12/28/2016 | NOTICE OF FILING |
| 514 | 01/12/2017 | NOTICE OF PRODUCTION NON PARTY |
| 515 | 01/17/2017 | OBJECTION |
| 516 | 01/17/2017 | NOTICE OF HEARING |
| 517 | 01/23/2017 | NOTICE OF PRODUCTION NON PARTY |
| 518 | 01/27/2017 | OBJECTION |
| 519 | 01/27/2017 | OBJECTION |
| 520 | 01/27/2017 | OBJECTION |
| 521 | 01/31/2017 | REPLY/RESPONSE |

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| 522 | 01/31/2017 | NOTICE OF HEARING |
| 523 | 01/31/2017 | MOTION TO SET HRG. ON TRUSTEE'S OBJECTIONS TO NOTICE OF PRODUCTION FROM NON-PARTY F/B WILLIAM STANSBURY |
| 524 | 01/31/2017 | MOTION AMENDED MOTION TO SET HRG. ON TRUSTEE'S OBJECTIONS TO NOTICE OF PRODUCTION FROM NONPARTY F/B WILLIAM STANSBURY |
| 525 | 02/01/2017 | NOTICE OF HEARING |
| 526 | 02/02/2017 | MOTION |
| 527 | 02/07/2017 | NOTICE OF FILING |
| 528 | 02/08/2017 | ORDER ON THE AMENDED MOTION TO SET HEARING ON TRUSTEES OBJECTIONS TO NOTICE OF PRODUCTION OF NON PARTY DEFERRED SIGNED BY JUDGE R SCHER ON FEB 7, 2017 EFILED |
| 529 | 02/09/2017 | NOTICE OF FILING |
| 530 | 02/09/2017 | NOTICE OF FILING |
| 531 | 02/09/2017 | NOTICE OF FILING |
| 532 | 02/14/2017 | REQUEST |
| 533 | 02/15/2017 | REQUEST |
| 534 | 02/15/2017 | MOTION TO APPROVE MEDIATION SETTLEMENT AGREEMENT WITH TESCHER & SPALLINA, P.A. F/B TED S. BERNSTEIN, SUCCESSOR TRUSTEE |
| 535 | 02/16/2017 | NOTICE OF FILING SEPT. 01, 2016 TRANSCRIPT OF HEARING BEFORE JUDGE J PHILLIPS IN THE SIMON BERNSTEIN ESTATE CASE, SHIRLEY BERNSTEIN ESTATE CASE,SHIRLEY BERNSTEIN TRUST CASE, SIMON BERNSTEIN TRUST CASE F/B ELIOT IVAN BERNSTEIN |
| 536 | 02/16/2017 | NOTICE OF FILING |
| 537 | 02/16/2017 | NOTICE OF FILING |

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| 538 | 02/16/2017 | NOTICE OF FILING |
| 539 | 02/16/2017 | NOTICE OF FILING |
| 540 | 02/16/2017 | NOTICE OF FILING |
| 541 | 02/16/2017 | MOTION TO HAVE VIDEOTAPED RECORDINGS OF ALL PROCEEDINGS DUE TO PROVEN AND ADMITTED FRAUD ON THE COURT BY COURT APPOINTED OFFICERS AND FIDUCIARIES AND MORE, ON THE COURT'S OWN MOTION & EXPENSE F/B ELIOT IVAN BERNSTEIN |
| 542 | 02/16/2017 | MOTION UNDER FLORIDA RULES OF CIVIL PROCEDURE 1.540(B)(3) AND 1.540(B)(4) TO VACATE-AMENDED-MODIFY IN PART THE CASE MANAGEMENT CONFERENCE ORDER OF 12/13/16 BASED UPON NEWLY DISCOVERED EVIDENCE, DISCOVERED ON 02/09/17 INVOLVING ADMISSIONS-STATEMENTS OF PR FIDUCIARY BRIAN O'CONNELL, ALSO AN OFFICER OF THE COURT, PROVING ONGOING FRAUD UPON THE COURT IN GENERAL AND UPON THIS VERY COURT OF JUDGE SCHER OF THE NORTHERN BRANCH OF PALM BEACH COUNTY BY ATTORNEY ALAN ROSE WAND WITH SUCH CASE MANAGEMENT ORDER ISSUED UPON FRAUD UPON THE COURT W/O CONSIDERATION OF THE SCHEDULE AND MOTION SUBMITTED BY ESTATE BENEFICIARY ELIOT I. BERNSTIEN B) ESTABLISH THE ORDERLY STRUCTURE FOR EVIDENTIARY HRGS INDLUCING DISCOVERY AND DEPOSITIONS, WITNESS LISTS, EXHIBITS & PROPER TIME ALLOTED FOR THE EVIDENTIARY HEARINGS; C) IN OPPOSITION TO THE MOTIONS BY TRUSTEE TED BERNSTEIN, ATTORNEY ALAN ROSE & PR O'CONNELL TO RETAIN ALAN ROSE & THE ROSE LAW FIRM TO REPRESENT THE ESTATE IN ANY CAPACITY & IN OPPOSITIONS TO APPT OF |
| 543 | 02/16/2017 | NOTICE OF FILING |
| 544 | 02/16/2017 | EVIDENCE/EXHIBIT LIST FILED |
| 559 | 02/16/2017 | NOTICE SUBMISSION OF LIST OF PLEADINGS AND MOTIONS RELEVANT TO HEARINGS SCHEDULED BY DEC 13 2016 JUDGE SCHER CASE MANAGEMENT ORDER SUBMITTED BY ELIOT BERNSTEIN AS A BENEFICIARY OF THE ESTATE OF SIMON L BERNSTEIN AND AN INTERESTED PERSON WITH STANDING |
| 546 | 02/21/2017 | MOTION TO STRIKE |
| 547 | 02/23/2017 | EXHIBIT |
| 548 | 02/23/2017 | EXHIBIT |

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| 549 | 02/23/2017 | NOTICE OF FILING |
| 550 | 02/28/2017 | MOTION URGENT MOTION TO RESCHEDULE MARCH 02, 2017 CONTINUATION HEARING AND EXTENSION OF TIME F/B ELLIOT BERNSTEIN |
| 551 | 03/01/2017 | RESPONSE TO: TRUSTEE'S RESPONSE TO ELIOT BERSTEIN'S URGENT MOTION TO RESCHEDULE MARCH 2, 2017 CONTINUATION OF HEARING F/B ATTY ROSE |
| 552 | 03/01/2017 | CONSENT |
| 553 | 03/01/2017 | ORDER DENYING ELIOT L BERNSTEIN'S URGENT MOTINO TO RESCHEDULE MARCH 2, 2017 CONTINUATION HEARING AND EXTENSION OF TIME DTD MARCH 1, 2017 JUDGE SCHER |
| 554 | 03/01/2017 | NOTICE OF HEARING |
| 555 | 03/01/2017 | NOTICE OF HEARING |
| 556 | 03/01/2017 | NOTICE OF FILING |
| 557 | 03/02/2017 | NOTICE OF FILING |
| 558 | 03/03/2017 | ORDER SETTING 03/16/17 HRG. FROM 2:00 TO 4:00 AND ESTABLISHING PROCEDURE JDG R. SCHER 03/03/17 |
| 560 | 03/07/2017 | NOTICE OF FILING |
| 561 | 03/08/2017 | EXHIBIT |
| 563 | 03/08/2017 | EXHIBIT |
| 564 | 03/08/2017 | EXHIBIT |
| 565 | 03/08/2017 | EXHIBIT |
| 567 | 03/08/2017 | EXHIBIT |
| 568 | 03/08/2017 | EXHIBIT |
| 569 | 03/08/2017 | EXHIBIT |

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| 571 | 03/08/2017 | EXHIBIT |
| 572 | 03/08/2017 | EXHIBIT |
| 573 | 03/08/2017 | EXHIBIT |
| 574 | 03/08/2017 | EXHIBIT |
| 575 | 03/08/2017 | EXHIBIT |
| 576 | 03/08/2017 | EXHIBIT |
| 577 | 03/08/2017 | EXHIBIT |
| 578 | 03/08/2017 | EXHIBIT |
| 579 | 03/08/2017 | EXHIBIT |
| 580 | 03/08/2017 | EXHIBIT |
| 581 | 03/08/2017 | EXHIBIT |
| 582 | 03/08/2017 | EXHIBIT |
| 583 | 03/08/2017 | EXHIBIT |
| 593 | 03/08/2017 | EXHIBIT |
| 594 | 03/08/2017 | EXHIBIT |
| 595 | 03/08/2017 | EXHIBIT |
| 584 | 03/09/2017 | NOTICE OF FILING |
| 585 | 03/09/2017 | NOTICE OF FILING |
| 586 | 03/09/2017 | NOTICE OF FILING |
| 587 | 03/10/2017 | NOTICE OF TAKING DEPOSITION |

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| 588 | 03/10/2017 | SUBPOENA RETURNED / SERVED |
| 589 | 03/10/2017 | NOTICE OF FILING |
| 590 | 03/10/2017 | MOTION TO ACCEPT LESS THAN ONE DAY LATE FILING AND BRIEFLY EXCEED PAGE LIMITS IN ORDER BY 4 PAGES; ELITO I BERNSTEIN AS BENEFICIARY AND INTERESTED PERSON WITH STANDING CLOSING ARGUMENTS ON INITIAL HEARINGS |
| 591 | 03/10/2017 | EXHIBIT |
| 592 | 03/10/2017 | MOTION FOR PROTECTIVE ORDER AND OBJECTION TO NOTICE OF TAKING DEPO DUCES TECUM OF BRIAN O CONNELL F/B BRIAN M OCONNELL |
| 596 | 03/13/2017 | NOTICE OF FILING |
| 597 | 03/13/2017 | SUBPOENA ISSUED |
| 598 | 03/16/2017 | NOTICE OF ADDITIONAL CASE LAW AUTHORITY F/B WILLIAM STANSBURY |
| 599 | 03/16/2017 | EXHIBIT |
| 600 | 03/16/2017 | PETITION |
| 601 | 03/16/2017 | NOTICE OF HEARING |
| 602 | 03/20/2017 | RE-NOTICE OF HEARING |
| 603 | 03/21/2017 | NOTICE OF UNAVAILABILITY |
| 604 | 04/04/2017 | ORDER DENYING MOTION TO HAVE VIDEOTAPED RECORDINGS OF ALL PROCEEDINGS DUE TO PROVEN AND ADMITTED FRAUD ON THE COURT BY COURT APPOINTED OFFICERS AND FIDUCIARIES AND MORE ON THE COURTS OWN MOTION AND EXPENSE DENIED SIGNED BY JUDGE R SCHER ON APRIL 3, 2017 EFILED |
| 605 | 04/07/2017 | ORDER SETTING HEARING |
| 606 | 04/11/2017 | AMENDED ORDER |
| 607 | 04/14/2017 | REQUEST |

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| 608 | 04/19/2017 | EXHIBIT LIST |
| 609 | 04/20/2017 | NOTICE OF HEARING |
| 610 | 04/20/2017 | NOTICE OF UNAVAILABILITY |
| 611 | 04/27/2017 | ORDER DENYING ORDER DENYTING MOTION TO VACATE AND DENYING MOTION TO DISQUALIFY AND ORDER DENYING APPOINTMENT OF TED BERNSTEIN AS ADMINISTRATOR AD LITEM (SEE ORDER FOR RULINGS) SINGED BY JUDGE R SCHER ON APRIL 27, 2017 EFILED |
| 612 | 04/28/2017 | MOTION TRUSTEES MOTION FOR ENTRY OF STANDING ORDER GOVERNING HEARINGS F/B TED S BERNSTEIN |
| 613 | 05/01/2017 | ORDER DENYING ORDER DENYING ELIOT BERNSTEIN, AS A BENEFICIARY OF THE ESTATE OF SIMON L. BERNSTEIN WITH STANDING AND AN INTERESTED PERSON UNDER LAW (D.E. #541) SIGNED JUDGE ROGER B COLTON SENIOR JUDGE 08-27-17 |
| 614 | 05/05/2017 | MOTION FOR SUMMARY JUDGMENT |
| 615 | 05/08/2017 | NOTICE OF HEARING |
| 616 | 05/09/2017 | NOTICE OF HEARING |
| 617 | 05/11/2017 | REPLY/RESPONSE |
| 618 | 05/13/2017 | MOTION FOR EXTENSION OF TIME |
| 619 | 05/15/2017 | MOTION FOR EXTENSION OF TIME: REHEARING ON 04/28/17 ORDER F/B ELIOT BERNSTEIN, APPELLANT PRO SE |
| 620 | 05/16/2017 | NOTICE OF HEARING |
| 621 | 05/18/2017 | MOTION OBJECTION -OPPOSITION TO UMC HEARING ON "1. TED BERNSTEINS MOTION TO APPROVE COPROMISE AND SETTLEMENT;APPOINT A TRUSTEE AND DETERMINE COMPENSATION FOR GUARDIAN AD LITEM F/B ELIOT I BERNSTEIN |

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| 622 | 05/18/2017 | NOTICE OF WITHDRAWAL WITHOUT PREJUDICE OF MOTION TO RATIFY AND CONFIRM APPOINTMENT OF TED S BERNSTEIN AS SUCCESSOR TRUSTEE OF TRUST WHICH IS SOLE BENEFICIARY OF THE ESTATE F/B TED S BERNSTEIN |
| 623 | 05/18/2017 | NOTICE OF CANCELLATION |
| 624 | 05/18/2017 | ORDER SETTING HEARING |
| 625 | 05/18/2017 | ORDER SETTING HEARING |
| 626 | 05/19/2017 | CORRESPONDENCE |
| 627 | 05/23/2017 | ORDER GOVERNING HEARINGS SIGNED BY JUDGE R SCHER ON MAY 23, 2017` |
| 630 | 05/26/2017 | NOTICE OF APPEAL CIVIL |
| 631 | 05/26/2017 | NOTICE OF FILING |
| 633 | 05/26/2017 | RESPONSE TO: TRUSTEES RESPONSE IN OPPOSITION TO STANSBURYS MOTION FOR DISCHARGE FROM FURTHER RESPONSIBILITY FOR THE FUNDING OF THE ESTATES PARTICIPATION IN THE CHICAGO LIFE INSURANCE LITIGATION F/B TED S BERNSTEIN (TRUSTEE) |
| 634 | 05/26/2017 | NOTICE OF FILING |
| 635 | 05/26/2017 | REQUEST FOR JUDICIAL NOTICE |
| 636 | 05/26/2017 | REQUEST FOR JUDICIAL NOTICE |
| 628 | 05/27/2017 | NOTICE OF APPEAL CIVIL BOOK 29119 PAGE 1711-1724 |
| 629 | 05/27/2017 | NOTICE OF FILING |
| 632 | 05/31/2017 | INVOICE |
| 637 | 06/01/2017 | NOTICE OF FILING |
| 638 | 06/01/2017 | AUTOMATIC RECEIPT APPELLATE FILING |

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| 639 | 06/02/2017 | ACKNOWLEDGMENT OF NEW CASE |
| 640 | 06/02/2017 | TRUE COPY |
| 692 | 06/02/2017 | ACKNOWLEDGMENT OF NEW CASE |
| 642 | 06/05/2017 | ORDER OF CONTINUANCE |
| 643 | 06/05/2017 | APPL AND AFF OF INDIGENCY |
| 644 | 06/05/2017 | RESPONDENT EVIDENCE # 1 CORRESPONDENCE TO TED BERNSTEIN FROM PETER FEAMAN - DTD 6/20/12 |
| 645 | 06/05/2017 | RESPONDENT EVIDENCE #2 - MOTION TO INTERVENE - DTD 6/05/14 |
| 646 | 06/05/2017 | RESPONDENT EVIDENCE #2 - DEPOSITION OF BRIAN O'CONNELL DTD 3/13/17 |
| 647 | 06/05/2017 | RESPONDENT EVIDENCE #1 - PLT'S FIRST AMENDED COMPLAINT - DTD 1/13/14 |
| 648 | 06/05/2017 | RESPONDENT EVIDENCE #2 - MOTION FOR CASE MANAGEMENT CONFERENCE - DTD 7/08/16 |
| 649 | 06/05/2017 | RESPONDENT EVIDENCE #8 - EMAIL FROM JAMES STAMOS TO BRIAN O'CONNELL, PETER FEAMAN & WILLIAM STANSBURY - DTD 2/14/17 |
| 650 | 06/05/2017 | RESPONDENT EVIDENCE #10 - OBJECTION TO ACCOUNTING OF SIMON BERSTEIN - DTD 9/30/15 |
| 651 | 06/05/2017 | RESPONDENT EVIDENCE #9 - TRUSTEE'S OMNIBUS STATUS REPORT - DTD 9/14/15 |
| 652 | 06/05/2017 | RESPONDENT EVIDENCE #7 - EMAIL FROM THEODORE KUYPER TO PETER FEAMAN - DTD 1/31/17 |
| 653 | 06/05/2017 | RESPONDENT EVIDENCE #4 - ORDER DTD 7/28/14 |
| 654 | 06/05/2017 | RESPONDENT EVIDENCE #5 - ANSWER TO INTERVENOR COMPLAINT - DTD 3/05/15 |
| 655 | 06/05/2017 | RESPONDENT EVIDENCE #6 - DEPOSITION OF TED BERNSTEIN - DTD 5/06/15 |
| 656 | 06/05/2017 | RESPONDENT EVIDENCE #3 - INTERVENOR COMPLAINT - DTD 6/05/14 |
| 657 | 06/05/2017 | RESPONDENT EVIDENCE #1 - P/R'S STATEMENT |

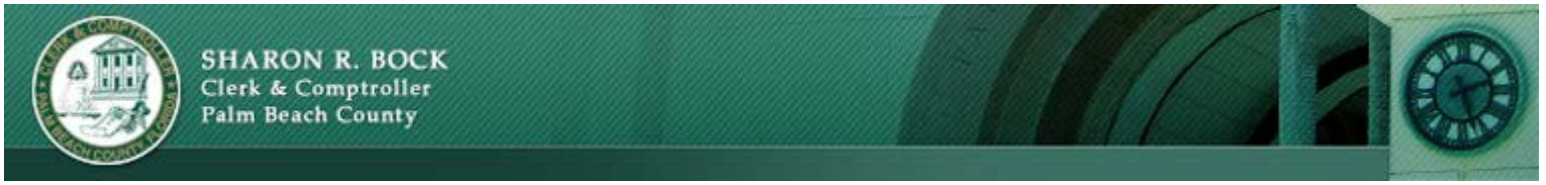
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| 658 | 06/05/2017 | NOTICE OF HEARING |
| 659 | 06/05/2017 | NOTICE OF HEARING |
| 660 | 06/06/2017 | APPL AND AFF OF INDIGENCY |
| 661 | 06/07/2017 | APPL AND AFF OF INDIGENCY |
| 662 | 06/07/2017 | NOTICE OF HEARING |
| 663 | 06/12/2017 | NOTICE OF HEARING |
| 664 | 06/15/2017 | ORDER ON STATUS CONFERENCE HELD ON JUNE 13, 2017 ON SUCCESSOR PERSONAL REPRESNTATIVE'S "TO BE FILED" PETITIONS (SEE ORDER DTD JUNE 15, 2017 JUDGE SCHER |
| 665 | 06/15/2017 | MOTION TO ACCEPT EXHIBIT BY ELIOT I BERNSTEIN AS BENEFICIARY AND INTERESTED PERSON WITH STANDING AS EXHIBIT FOR JUNE 15, 2017 STATUS CONFERENCE THAT WAS IMPROPERLY NOTICED TO PARTIES AND FUTURE UPCOMING HEARINGS EXHIBIT 7TH CIRCUIT COURT OF APPEALS MOTION F/B ELIOT BERNSTIN |
| 666 | 06/15/2017 | MOTION ESTATES SPECIAL LITIGATION COUNSELS MOTION TO ESTABLISH PROTOCOL FOR PAYMENT OF ATTYS FEES AND COSTS F/B ATTY ROSE |
| 667 | 06/15/2017 | NOTICE OF HEARING |
| 668 | 06/16/2017 | RE-NOTICE OF HEARING |
| 669 | 06/19/2017 | PETITION |
| 670 | 06/19/2017 | PETITION |
| 671 | 06/19/2017 | PETITION |
| 672 | 06/22/2017 | NOTICE OF INTENT |
| 673 | 06/22/2017 | REPLY/RESPONSE |
| 674 | 06/28/2017 | ORDER SETTING HEARING |

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| 675 | 06/28/2017 | NOTICE OF CANCELLATION |
| 676 | 06/28/2017 | MOTION CLOSING STATEMENT IN STANSBURY FEE DISCHARGE & MOT. FOR COURT TO PERFORM MANDATORY OBLIGATIONS UNDER FRAUD UPON THE COURT, STAY, INJUNCTION, DISCOVERY COMPLIANCE, CONFLICT DETERMINATION & OTHER RELIEF F/B ELIOT BERNSTEIN |
| 677 | 06/28/2017 | REPLY/RESPONSE |
| 678 | 07/11/2017 | TRUE COPY |
| 679 | 07/12/2017 | MOTION (VERIFIED) FOR APPROVAL OF SETTLEMENT AGREEMENT ENTERED IN ILLINOIS FEDERAL ACTION F/B BRIAN M O'CONNELL |
| 680 | 07/12/2017 | REPLY/RESPONSE |
| 681 | 07/13/2017 | TRUE COPY |
| 682 | 07/13/2017 | NOTICE OF FILING |
| 683 | 07/14/2017 | APPL AND AFF OF INDIGENCY |
| 685 | 07/17/2017 | EXHIBIT LIST |
| 684 | 07/18/2017 | APPL AND AFF OF INDIGENCY |
| 686 | 07/21/2017 | NOTICE OF UNAVAILABILITY |
| 687 | 07/24/2017 | ORDER SETTING HEARING |
| 688 | 07/24/2017 | ORDER STRIKING ELIOT BERNSTEINS MOTION CLOSING STATEMENT IN STANSBURY FEE DISCHARGE AND MOTION FOR COURT TO PERFORM MANDATORY OBLIGATIONS UNDER FRAUD UPON THE COURT, STAY, INJUNCTION DISCOVERY COMPLIACE, CONFLICT DETERMINATION AND OTHER RELIEF AND ELIOT BERNSTEINS ESTATE BENEFICIARY WITH STANDING AND INTERESTED PERSON ELIOT I BERNSTEINS OPPOSITION AND RESPONSE TO TRUSTEES MOTION FOR STAY OF FURTHER PROCEEDINGS UNTIL DISCOVERY COMPLIANCE, DEPOSITIONS AND CONFLICTS OF INTEREST DETERMINED (STRIKEN) SIGNED BY JUDGE R SCHER ON JULY 24, 2017 |
| 689 | 07/26/2017 | AUTOMATIC RECEIPT APPELLATE FILING |

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| 690 | 07/27/2017 | MOTION FOR LEAVE TO FILE MOTION TO HOLD ELIOT BERNSTEIN IN CONTEMPT OF COURT AND FOR SANCTIONS F/B TED S. BERNSTEIN , AS SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN TRUST |
| 691 | 07/28/2017 | TRUE COPY |
| 693 | 07/28/2017 | PETITIONER EVIDENCE #2 COPY OF AMENDED ORDER APPIONTING ADMIN AD LITEM DTD 6/12/14 JUDGE COLIN |
| 694 | 07/28/2017 | PETITIONER EVIDENCE # 5 SUCCESSOR P/R PETITION FOR AUTHORIZATION TO ENTER INTO CONTINGENCY AGREEMENT WITH ILLINOIS COUNSEL IN PENDING LIFE INSURANCE LITIGATION DTD 12/02/15 |
| 695 | 07/28/2017 | PETITIONER EVIDENCE # 3 COPY OF MOTION TO INTERVENE FROM DISTRICT COURT OF ILLINOIS - DTD 6/05/14 |
| 696 | 07/28/2017 | PETITIONER EVIDENCE #1 COPY OF ORDER SIGNED 5/23/14 JUDGE COLIN |
| 697 | 07/28/2017 | PETITIONER EVIDENCE # 4 ORDER FROM DISTRICT COURT OF ILLINOIS - DTD 7/28/14 |
| 698 | 07/28/2017 | RESPONDENT EVIDENCE # 1 CHANGE OF BENEFICARY FORM DTD 11/10/95 |
| 699 | 07/28/2017 | PETITIONER EVIDENCE # 9 SETTLEMENT AGREEMENT DTD 7/05/17 |
| 700 | 07/28/2017 | PETITIONER EVIDENCE # 7 INVENTORY BY BRIAN O'CONNELL AS SUCCESSOR P/R DTD 12/01/14 |
| 701 | 07/28/2017 | PETITIONER EVIDENCE # 6 SUCCESSOR P/R AMENDED PETITION FOR AUTHORIZATION TO ENTER INTO CONTINGENCY AGREEMENT WITH ILLINOIS COUNSEL IN PENDING LIFE INSURANCE LITIGATION DTD 12/04/15 |
| 702 | 07/28/2017 | PETITIONER EVIDENCE # 8 COMPOSITE: COPIES OF 8 CHECKS |
| 703 | 07/28/2017 | RESPONDENT EVIDENCE # 2 COMPOSITE: BINDER W/TRANSCRIPT FROM 5/23/14 & 6/02/17 |
| 704 | 08/04/2017 | MOTION TO SPECIALLY SEQUENCE HEARINGS F/B WILLIAM STANSBURY |
| 705 | 08/08/2017 | MOTION AMENDED MOTION TO SPECIALLY SEQUENCE HEARINGS F/B WILLIAM STANSBURY |
| 706 | 08/08/2017 | NOTICE OF HEARING |

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| 707 | 08/08/2017 | MOTION TO CONTINUE HEARING SCHEDULED FOR OCTOBER 27, 2017 F/B MOVANT, TED S BERNSTEIN, AS SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN TRUST |
| 708 | 08/08/2017 | NOTICE TRUSTEES RESPONSE IN OPPOSITION TO STANBURY'S AMENDED MOTION TO SPECIALLY SEQUENCE HEARINGS, INCLUDING REQUEST TO EXPEDITE APPROVAL HEARING, AND REQUEST TO STRIKE STANSBURY'S IMPROPER MOTION AND ANY HEARING ON DE 533 F/B TED S BERNSTEIN |
| 710 | 08/09/2017 | NOTICE OF FILING |
| 709 | 08/11/2017 | NOTICE OF HEARING |
| 711 | 08/15/2017 | INVOICE |
| 712 | 08/15/2017 | INDEX TO RECORD ON APPEAL |
| 713 | 08/22/2017 | ORDER ON MOTION OF CREDITOR WILLIAM E STANSBURY FOR DISCHARGE FROM FURTHER RESPONSIBILITY FOR THE FUNDING OF THE ESTATE'S PARTICIPATION IN THE CHICAGO LIFE INSURANCE LITIGATION AND FOR ASSUMPTION OF RESPONSIBILITY BY THE ESTATE AND FOR REIMBURSMENT OF ADVANCED FEES AND COSTS - SIGNED 8/22/17 JUDGE SCHER |
| 714 | 09/22/2017 | ORDER RESETTING |
| 715 | 09/22/2017 | ORDER DENYING WILLIAM E STANSBURY'S CORRECTED REQUEST FOR PRIORITY HEARING SETTING ON MOTION TO RATIFY AND CONFIRM APPT OF TED S BERNSTEIN AS SUCCESSOR TRUSTEE AND REQUEST FOR COURT INTERVENTION UNDER FL STAT 736.0706(1) (CORRECTED CASE STYLE COUNTY/JUDGE'S DIVISION) DTD 9/22/17 S/B JUDGE SCHER |
| 716 | 09/22/2017 | ORDER DENYING WILLIAM E. STANSBURY'S AMENDED MOTION TO SPECIALLY SEQUENCE HEARINGS JDG R. SCHER 09/22/17 |
| 718 | 10/11/2017 | MOTION FOR ORDER |
| 719 | 10/11/2017 | NOTICE OF HEARING |
| 720 | 10/11/2017 | NOTICE OF TAKING DEPOSITION |
| 717 | 10/12/2017 | INVOICE |

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CASE STYLE: TESCHER & SPALLINA, P.A. (& ALL PARTNERS, ASSOC. )

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IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION

SHIRLEY BERNSTEIN, File No. 502011CP000653XXXXSB

Deceased.

2011 FEB 10 AM 8:40
SHARON R. BOCK
PALM BEACH
SOUTH CTY FR

**PETITION FOR ADMINISTRATION**
(testate Florida resident)

Petitioner, SIMON L. BERNSTEIN, alleges:

1. Petitioner has an interest in the above estate as the named personal representative under the decedent's Will. The Petitioner's address is 7020 Lions Head Lane, Boca Raton, Florida 33496, and the name and office address of petitioners attorney are set forth at the end of this Petition.

2. Decedent, SHIRLEY BERNSTEIN, whose last known address was 7020 Lions Head Lane, Boca Raton, Florida 33496, whose age was 71, and whose social security number is xxx-xx-9749, died on December 8, 2010, at her home at 7020 Lions Head Lane, Boca Raton, Florida 33496, and on the date of death decedent was domiciled in Palm Beach County, Florida.

3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving spouse, if any, their addresses and relationship to decedent, and the dates of birth of any who are minors, are:

| NAME | ADDRESS | RELATIONSHIP | BIRTH DATE (if Minor) |
|---|---|---|---|
| Simon L. Bernstein | 7020 Lions Head Lane<br>Boca Raton, FL 33496 | husband | adult |
| Ted S. Bernstein | 880 Berkeley Street<br>Boca Raton, FL 33487 | son | adult |
| Pamela B. Simon | 950 North Michigan Avenue, Snite 2603<br>Chicago, IL 60606 | daughter | adult |
| Eliot Bernstein | 2753 NW 34th St.<br>Boca Raton, FL 33434 | son | adult |

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Reviewed October 1, 1998

| | | | |
|---|---|---|---|
| Jill Iantoni | 2101 Magnolia Lane<br>Highland Park, IL 60035 | daughter | adult |
| Lisa S. Friedstein | 2142 Churchill Lane<br>highland Park, IL 60035 | daughter | adult |

4. Venue of this proceeding is in this county because decedent was a resident of Palm Beach County at the time of her death.

5. Simon L. Bernstein, whose address is listed above, and who is qualified under the laws of the State of Florida to serve as personal representative of the decedent's estate is entitled to preference in appointment as personal representative because he is the person designated to serve as personal representative under the decedent's Will.

6. The nature and approximate value of the assets in this estate are: tangible and intangible assets with an approximate value of less than $ TBD .

7. This estate will not be required to file a federal estate tax return.

8. The original of the decedent's last will, dated May 20, 2008, is being filed simultaneously with this Petition with the Clerk of the Court for Palm Beach County, Florida.

9. Petitioner is unaware of any unrevoked will or codicil of decedent other than as set forth in paragraph 8.

Petitioner requests that the decedent's Will be admitted to probate and that Simon L. Bernstein be appointed as personal representative of the estate of the decedent.

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

Signed on FEB 9, 2011.

SIMON L. BERNSTEIN, Petitioner

Respectfully Submitted,
TESCHER & SPALLINA, P.A.

By:
ROBERT L. SPALLINA, ESQUIRE
Attorney for Petitioner
Florida Bar No. 0497381
4855 Technology Way, Ste. 720
Boca Raton, FL 33431
561-997-7008

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2012 OCT -2 AM 8:58
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CTY BRANCH-FILED

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION 12

SIMON L. BERNSTEIN, File No. 502012 CP00 4391 XXXX SB

Deceased.

**PETITION FOR ADMINISTRATION**
(testate Florida resident)

Petitioners, ROBERT L. SPALLINA and DONALD R. TESCHER, allege:

1. Petitioners have an interest in the above estate as the named co-personal representatives under the decedent's Will. The Petitioner's addresses are 7387 Wisteria Avenue, Parkland, FL 33076 and 2600 Whispering Oaks Lane, Delray Beach, FL 33445, respectively, and the name and office address of petitioners' attorney is set forth at the end of this Petition.

2. Decedent, SIMON L. BERNSTEIN, whose last known address was 7020 Lions Head Lane, Boca Raton, Florida 33496, whose age was 76, and whose social security number is [redacted], died on September 13, 2012, at his home at 7020 Lions Head Lane, Boca Raton, Florida 33496, and on the date of death decedent was domiciled in Palm Beach County, Florida.

3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving spouse, if any, their addresses and relationship to decedent, and the dates of birth of any who are minors, are:

| NAME | ADDRESS | RELATIONSHIP | BIRTH DATE (if Minor) |
|---|---|---|---|
| Ted S. Bernstein | 880 Berkeley Street<br>Boca Raton, FL 33487 | son | adult |
| Pamela B. Simon | 950 North Michigan Ave.<br>Suite 2603<br>Chicago, IL 60606 | daughter | adult |
| Eliot Bernstein | 2753 NW 34th St.<br>Boca Raton, FL 33434 | son | adult |
| Jill Iantoni | 2101 Magnolia Lane<br>Highland Park, IL 60035 | daughter | adult |

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| | | | |
|---|---|---|---|
| Lisa S. Friedstein | 2142 Churchill Lane<br>Highland Park, IL 60035 | daughter | adult |
| Robert L. Spallina and Donald R. Tescher, co-Trustees of the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 | 4855 Technology Way,<br>Suite 720<br>Boca Raton, FL 33431 | Trust | |

4. Venue of this proceeding is in this county because decedent was a resident of Palm Beach County at the time of his death.

5. Robert L. Spallina and Donald R. Tescher, whose addresses are listed above, and who are qualified under the laws of the State of Florida to serve as co-personal representatives of the decedent's estate are entitled to preference in appointment as co-personal representatives because they are the persons designated to serve as co-personal representatives under the decedent's Will.

6. The nature and approximate value of the assets in this estate are: tangible and intangible assets with an approximate value of less than $ Unknown .

7. This estate will not be required to file a federal estate tax return.

8. The original of the decedent's last will, dated July 25, 2012, is being filed simultaneously with this Petition with the Clerk of the Court for Palm Beach County, Florida.

9. Petitioner is unaware of any unrevoked will or codicil of decedent other than as set forth in paragraph 8.

Petitioner requests that the decedent's Will be admitted to probate and that Robert L. Spallina and Donald R. Tescher be appointed as co-personal representatives of the estate of the decedent.

Under penalties of perjury, we declare that we have read the foregoing Petition for Administration, and the facts alleged are true, to the best of our knowledge and belief.

Signed on Oct. 1, 2012.

Respectfully Submitted,
TESCHER & SPALLINA, P.A.

By: _____
ROBERT L. SPALLINA, ESQUIRE
Attorney for Petitioner
Florida Bar No. 0497381
4855 Technology Way, Ste. 720
Boca Raton, FL 33431
561-997-7008
Email: rspallina@tescherspallina.com

_____
Robert L. Spallina, Petitioner

_____
Donald R. Tescher, Petitioner

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE No. 502014CP003698XXXXNB

TED BERNSTEIN,

Plaintiff,
-vs-

DONALD R. TESCHER, ELIOT IVAN BERNSTEIN,
LISA SUE FRIEDSTEIN, JILL MARLA IANTONI, et al.,

Defendants.

---

TRIAL BEFORE THE HONORABLE
JOHN L. PHILLIPS
VOLUME 1 PAGES 1 - 114

Tuesday, December 15, 2015
North County Courthouse
Palm Beach Gardens, Florida 33410
9:43 a.m. - 4:48 p.m.

Reported By:
Shirley D. King, RPR, FPR
Notary Public, State of Florida
West Palm Beach Office Job #1358198 - VOL 1

APPEARANCES:

On behalf of the Plaintiff:

ALAN ROSE, ESQUIRE
GREGORY WEISS, ESQUIRE
MRACHEK FITZGERALD ROSE KONOPKA
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
Phone: 561.655.2250
E-mail: Arose@mrachek-law.com

On behalf of the Defendant:

ELIOT IVAN BERNSTEIN, PRO SE, ESQUIRE
2753 NW 34th Street
Boca Raton, Florida 33434
Phone: 561.245.8588
E-mail: Iviewit@iviewit.tv

On behalf of Molly Simon, Alexandra, Eric & Michael Bernstein:

JOHN P. MORRISSEY, ESQUIRE
LAW OFFICE OF JOHN P. MORRISSEY, P.A.
330 Clematis Street
Suite 213
West Palm Beach, Florida
Phone: 561.833.0866
E-mail: John@jmorrisseylaw.com

- - -

I N D E X

- - -

| WITNESS: | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| ROBERT SPALLINA | | | | |
| BY MR. ROSE: | 11 | | | |
| BY MR. MORRISSEY: | | 82 | | |
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P R O C E E D I N G S

- - -

THE COURT: We're here on the Bernstein case. Everybody ready to go?

MR. ROSE: Good morning, Your Honor. Yes. Alan Rose on behalf of the plaintiff, Ted S. Bernstein, as successor trustee.

THE COURT: Okay.

MR. ROSE: And with me is my partner, Greg Weiss. May not be for the whole trial, but he is with us for the beginning.

THE COURT: Okay. Well, great. Thanks for coming.

And who's on the other side?

MR. BERNSTEIN: Eliot Bernstein, pro se, sir.

THE COURT: Okay. You're not going to have any counsel? Who's with you at the table?

MR. BERNSTEIN: That's my lovely wife, Candice.

THE COURT: All right. And why are you at the table?

MR. BERNSTEIN: That's one of the questions I would like to address. I'm here individually.

THE COURT: Right.

MR. BERNSTEIN: And I was sued individually.

But I'm also here on behalf, supposedly, of my minor children, who aren't represented by counsel. And I'm sued as a trustee of a trust that I've never possessed.

THE COURT: Are you asking me a question?

MR. BERNSTEIN: Yes.

THE COURT: What's the question?

MR. BERNSTEIN: Well, my children are being sued.

THE COURT: What's the question?

MR. BERNSTEIN: And I was sued as their trustee, but I'm --

THE COURT: Stop, please.

MR. BERNSTEIN: Yes, sir.

THE COURT: I would love to talk with you all day --

MR. BERNSTEIN: Okay.

THE COURT: -- but we're not going to have that happen.

MR. BERNSTEIN: Okay.

THE COURT: This is not a conversation. This is a trial. So my question is, What is your question? You said you had a question.

MR. BERNSTEIN: I tried to get counsel for my children who was willing to make a pro hoc vice --

THE COURT: When will you ask me the question? Because this is all --

MR. BERNSTEIN: Well, I'd like to stay the proceeding.

THE COURT: Okay. The request for a continuance is denied. Thank you.

MR. BERNSTEIN: Have you read the filing I filed? Because my children are minor --

THE COURT: Was that your question?

MR. BERNSTEIN: Well, my children are minors --

THE COURT: Please stop.

MR. BERNSTEIN: -- and they're not represented here.

THE COURT: What is your name again, sir?

MR. BERNSTEIN: Eliot Bernstein.

THE COURT: Okay. Mr. Bernstein, I'll be courteous, unless it doesn't work; then I'll be more direct and more aggressive in enforcing the rules that I follow when I conduct trials.

I've asked you several times if you had questions. You finally asked me one, and it was, Did you read my filing? No, I did not. You asked for a continuance. I have denied that because it's untimely.

Now I'm turning back to the plaintiff, and we're going forward with this trial. That is one day set on my docket. We're going to have this trial done by the end of the day. You'll have half the time to use as you see fit; so will the other side. I'll not care if you waste it, but I'll not participate in that. Thank you.

Now, from the plaintiff's side, what is it that the Court is being asked to decide today?

MR. ROSE: Before I answer, could Mr. Morrissey make an appearance, sir?

THE COURT: All right.

MR. MORRISSEY: Yes, I'm here on behalf of four of the defendants, Judge, four adult grandchildren, Alexandra Bernstein, Eric Bernstein Michael Bernstein and Molly Simon, all of whom have joined in the plaintiff's complaint today.

THE COURT: Okay. Last time I'll ask this question of the plaintiff. What is it that I'm asked to decide today?

MR. ROSE: We are asking you to decide whether five testamentary documents are valid, authentic and enforceable. And that is set forth in count two of the amended complaint in this action. The five documents are a 2008 will of Shirley

Bernstein, a 2008 trust of Shirley Bernstein, and an amendment by Shirley Bernstein to her 2008 trust.

THE COURT: When was the amendment?

MR. ROSE: Amendment was in November of 2008.

THE COURT: All right. So there's also a 2008 amendment?

MR. ROSE: Yes, sir. In fact, I have a -- I don't know if you can read it, but I did put up here on the -- there are seven testamentary documents. We believe five of them to be valid and operative, and two of them to have been with -- revoked by later documents.

So for Shirley, there are three documents that count two seeks you to determine are valid, authentic and enforceable according to their terms.

And for Simon Bernstein, he has a 2012 will, and a 2012 amended and restated trust agreement. And we're asking that these five documents be validated today.

There also is a 2008 will and trust that you'll hear testimony were prepared, but have been revoked and superseded by later documents.

THE COURT: Does everybody agree that Simon's 2008 will and trust are invalid or is there some

claim that they're valid?

MR. ROSE: I can't answer.

THE COURT: All right. I'll ask.

Are you claiming that the Simon Bernstein 2008 will or 2008 trust are valid, or do you agree that they are invalid?

MR. BERNSTEIN: Well, I individually disagree.

THE COURT: Okay. Thank you.

MR. BERNSTEIN: And my children --

THE COURT: I just wanted to know --

MR. BERNSTEIN: -- aren't represented by counsel, so they can't have an opinion --

THE COURT: Okay.

MR. BERNSTEIN: -- even though they're parties to the case.

THE COURT: Okay. Like I say, you can waste all your time you want. I won't object to it, but I won't participate in it.

You can put on your first witness.

MR. ROSE: Thank you. Plaintiff will call Robert Spallina.

Thereupon,

(ROBERT SPALLINA)

having been first duly sworn or affirmed, was examined and testified as follows:

THE WITNESS: I do.

MR. ROSE: May I approach, Your Honor?

THE COURT: Sure. All approaches are okay.

MR. ROSE: Okay. I brought for Your Honor -- would you like a book instead of the exhibits?

THE COURT: Nothing better than a huge book.

MR. ROSE: We may not use all of them, but we'll adjust it later.

THE COURT: All right.

MR. ROSE: And then I was going to hand the witness the original for the admission into the court file as we go.

THE COURT: All right.

MR. ROSE: I have a book for Mr. Eliot Bernstein.

DIRECT EXAMINATION

BY MR. ROSE:

Q. Would you state your name for the record?

A. Robert Spallina.

Q. Did you know Simon and Shirley Bernstein, Mr. Spallina?

A. Yes, I did.

Q. And when did you first meet Simon and Shirley Bernstein?

A. In 2007.

Q. What was your occupation at the time?
A. I was working as an estate planning attorney.
Q. With a law firm?
A. Yes.
Q. And what was the name of the law firm?
A. Tescher, Gutter, Chaves, Rubin, Ruffin and Forman and Fleisher.
Q. And did Simon and Shirley Bernstein retain your law firm?
A. Yes, they did.
Q. I'm going to approach with Exhibit No. 9 -- Plaintiff's Exhibit 9. Ask if you'd identify that document?
A. This was an intake sheet to open up the file, dated November 16th of 2007.
Q. And the clients are Simon and Shirley Bernstein?
A. The clients were Simon and Shirley Bernstein, yes.
MR. ROSE: I would move Exhibit 9 into evidence, Your Honor.
THE COURT: Any objection?
[No verbal response]
THE COURT: No objection being stated, I'll receive that as Plaintiff's 19.

(Plaintiff's Exhibit No. 9 was received into evidence.)

BY MR. ROSE:

Q. Now, what was the purpose of Simon and Shirley Bernstein retaining your law firm?

A. They wanted to review and go over their existing estate planning and make changes to their documents.

Q. I'm going to hand you Exhibit No. 10, and ask you if you can identify for the record Exhibit 10.

A. These are meeting notes, my meeting notes, and -- and then partner Don Tescher's meeting notes from several different meetings that we had with Si and Shirley during the time following them retaining us as clients.

Q. And is it your standard practice to take notes when you're meeting with clients?

A. Yes.

Q. And were these notes kept in your company's files and were they produced with Bates stamp numbers?

A. Yes, they were.

MR. ROSE: I would move Exhibit 10 into evidence, Your Honor.

THE COURT: Is there any objection to the exhibit?

[No verbal response].

THE COURT: No objection being stated, they'll be received as Plaintiff's 10.

(Plaintiff's Exhibit No. 10 was received into evidence.)

BY MR. ROSE:

Q. Now, for today's purposes, are those notes in chronological or reverse chronological order?

A. This is reverse chronological order.

Q. Okay. Can you go to the bottom of the stack and start with the earliest notes. Do they reflect a date?

A. Yes. 11/14/07.

Q. And if you'd turn to the last page, is that your partner's notes that are in evidence?

A. Yes. We both would always take notes at the meetings.

Q. And so the first -- was that the first meeting with Mr. Simon or Shirley Bernstein?

A. I believe so, yes.

Q. Now, before you met with Simon and Shirley Bernstein, did you have any prior relationship with them?

A. No, we did not.

Q. Did you personally know either of them before

that date?

A. No, I did not.

Q. 11/14/2007. Okay. And if you'd just flip back to the client intake. I think that was dated November the 26th?

A. It was two days later, 11/16. The file was opened two days later.

Q. So file open.

Now, did you know in advance of the meeting what they were coming in to talk about?

A. Yeah. They were coming in to talk about their estate planning.

Q. And did they provide you in advance of the meeting with any of their prior estate planning documents?

A. I believe we had copies of documents. I don't know if they provided them at that meeting or if they provided them before for us to look at, or after, but I know that there were existing documents that were in our file.

Q. Okay. Let me approach and hand you Exhibit 40A, which is -- bears Tescher Spallina Number 1.

Does that appear to be an envelope from Stephen Greenwald --

A. Yes.
Q. -- directed to Simon Bernstein?
A. Yes, it is.
Q. And copy of this was in your files when they were produced?
A. Yes.
Q. And was Stephen Greenwald the prior lawyer that represented Simon and Shirley Bernstein, as far as you know?
A. Yes. Yes, he was.
Q. I'm going to hand you Exhibit 40B, which is a letter from Mr. Greenwald to Simon and Shirley Bernstein.
Is that also -- is that also provided in your files?
A. Yes, sir.
Q. Does it bear a Bates stamp of your law firm?
A. Yes, it does.
Q. Okay. And does Mr. Greenwald, in that letter, disclose what he is sending to Simon -- Mr. and Mrs. Simon L. Bernstein?
A. Yes, he did. Their estate planning documents, including their ancillary documents, their wills, their trusts, health care powers, durable powers and living wills.

Q. And if -- I'll show you 40C, D, E and F, and ask if you can identify these as some of the documents that were included with the letter from Mr. Greenwald?

A. We have each of the first codicils to Mr. and Mrs. Bernstein's wills, and we have each of their wills.

MR. ROSE: I would move Exhibit 40A through F into evidence, Your Honor.

THE COURT: Any objection?

[No response.]

THE COURT: No objection being stated, I'm going to receive this as Plaintiff's 40A through F.

(Plaintiff's Exhibit Nos. 40A-F were received into evidence.) A B C D E F

BY MR. ROSE:

Q. Within Exhibit 40, is there a will and a -- for Simon and a will for Shirley?

A. Yes, there is.

Q. And could you tell the Court the date of those documents?

A. August 15, 2000.

THE COURT: Are both documents the same date?

THE WITNESS: Yes, they are, Your Honor.

THE COURT: All right. Thanks. I just wanted to make sure I don't get confused.

BY MR. ROSE:

Q. Can you generally describe what the estate plan reflected in Exhibit 40 would be, who are the beneficiaries and what percentages?

A. Okay. Just give me a minute. I haven't seen these in...

The plan under the documents -- and let me just make sure it's the same under both documents. The plan under the documents was to provide all the assets to the survivor of Shirley and Si, and that at the death of the survivor of the two of them, assets would pass to -- it appears to be Ted, Pam, Eliot, Jill and Sue and Lisa -- and Lisa. So it looks to be a typical estate plan; everything would pass to the survivor at the first death, and then at the second death everything to the children.

Q. How many of the children under the 2000 documents?

A. This shows all five. The will shows all five.

Q. What page are you looking at?

A. The first page of the will. Is this -- oh, no. That's just as to tangible personal property. I'm sorry.

Q. That's okay. Are you on -- are you in Simon's or Shirley's?

A. I'm in -- on both documents, to make sure the disposition was the same.

Q. Okay. So on the page -- the first page, it talks under --

A. It speaks to tangible personal property.

Q. Split equally among the five children?

A. Among the five children.

Q. Let me just stop you one second right there. If you would, turn --

MR. ROSE: This might help, Your Honor, if you'd turn to Tab 7. It may be out of order. Might be a good time just to go over the family tree and let -- get everyone on the same page of...

We prepared a chart, and I'm going to put the -- it lists Simon and Shirley and the names of their children on the second line, and then under each child with arrows, the names of the grandchildren and which parents they belong to.

THE WITNESS: This looks accurate.

MR. ROSE: I would move Exhibit 7 into evidence, Your Honor.

THE COURT: Any objection?

[No response.]

THE COURT: No objection being stated, that's in evidence as Plaintiff's 7.

(Plaintiff's Exhibit No. 7 was received into evidence.)

BY MR. ROSE:

Q. So under the 2000 documents, for personal property, it's split among the five children.

And when you get to the residuary estate or the amount that was put into trusts, who are the beneficiaries?

A. Again, at the death of the survivor of the two of them, tangible personal property would go to the five children, and the residuary of the estate would go to four of the five children. It appears that Pam is cut out of these documents. And I recall that now, yes.

Q. Okay. So under the 2000 documents, Eliot Bernstein would get 25 percent of the residuary?

A. Correct.

Q. Now, if you look at page 5, it talks about -- page 5, near the top, it says "upon the death of my husband," then "the principal of his trust shall pass," and then the next sentence says "to the extent that said power of appointment -- oh, "and such shares equal or unequal and subject to such lawful trust terms and conditions as my husband shall by will appoint."

Do you see what I'm talking about?

A. Yes, I do.

Q. That's a power of appointment?
A. Correct.
Q. And then it says, the next sentence, To the extent the power of appointment is not effectively exercised, then it goes to the four of the five children?
A. Correct.
Q. So under the 2000 documents, the survivor would have the power to give it all to one?
A. Correct.
Q. And theoretically change it and give some to Pam?
A. That's true, by the language of this document.
Q. Okay. So I'm just going to write. We have a power of appointment, which we don't need to belabor, in favor of the survivor; and then if it's not exercised, Eliot gets 25 percent, and three other siblings get the balance?
A. 25 percent each.
Q. Okay.
A. Equal shares.
Q. Now, when Simon and Shirley came to you, did they give you an indication whether they wanted to keep in place the 2000 structure?
A. No. They wanted to change the dispositions

under their documents.

Q. Okay. So if we work through your notes now, which are in evidence as Exhibit No. 10, the first meeting was November the 14th, 2007. You had a discussion about Simon's net worth -- Simon and Shirley's net worth, how much money they had at that time?

A. Yes.

Q. Okay. I'm going to show you Exhibit No. 12 before we --

Do you recognize the handwriting on Exhibit 12?

A. No.

Q. Okay. I believe it's Simon Bernstein's statement of his net worth.

But you have seen this document before?

A. I don't recall.

Q. Okay. And you're not familiar with his handwriting to --

A. No. Other than his signature.

Q. That's fine.

But during the discussion, did you discuss Simon's net worth?

A. Yes. Both my partner and I.

Q. And if I look at Mr. Tescher's notes, which

are a little easier to read, he lists the joint brokerage account, some money for Simon, Simon, a house -- the house appears to have a million dollar mortgage -- a condo, some miscellaneous and some life insurance. And he totals -- that totals to 13 million, and then he lists 5 million for 33 shares of the company.

Do you see that?

A. Yes, I do.

Q. Okay. So if I add up what Mr. Tescher wrote in his notes, I get to about $18 million.

And this is on November the 14th of '07, around 18 million, but that includes life insurance?

A. Yes, it does.

Q. Okay. Now, did you meet with them -- how long were these meetings with Simon and Shirley Bernstein?

A. They could be an hour; sometimes more.

Q. Now, if we flip through your notes, does it reflect a second meeting?

A. Yes, it does.

Q. And what's the date of the second meeting?

A. 12/19/07.

Q. And do you have any -- I'm sorry. 12/19?

A. 12/19/07.

Q. Okay. And what's the -- let's just put all

the dates up here. That was the second meeting.

Are there notes from a third meeting?

A. The next meeting was January 31, '08.

Q. Okay. Is there a fourth meeting?

A. March 12 of '08.

Q. Now, just to put this in perspective, the document that we are going to -- well, the document that's been admitted into probate in this case is a will of Shirley Bernstein that bears a date of May 20, 2008.

Does that sound consistent with your memory?

A. Yeah, it was clearly 2008.

MRS. CANDICE BERNSTEIN: Excuse me. Can you turn that so we can see it?

THE WITNESS: Sure. Sorry.

THE COURT: Ma'am, you are not a party. You are not an attorney. And you are not really supposed to be sitting there. I'm letting you sit there as a courtesy. If you ask for and inject yourself any further in the proceeding than that, I'll have to ask you to be seated in the gallery. Do you understand?

MRS. CANDICE BERNSTEIN: Yes, sir.

THE COURT: Thank you.

BY MR. ROSE:

Q. So you have four meetings with Simon and

Shirley Bernstein.

And did it take that long to go over what they wished to do with their estate planning documents?

A. It was more of us, you know, trying to get a handle on everything that they had, the business, prior planning. From the first meeting to the March meeting, it was only a couple of months. The holidays were in there. So it wasn't uncommon for us to meet with a client more than once or twice when they had a sophisticated plan and asset schedule.

Q. At this time --

A. By the last meeting, we knew what we needed to do.

Q. And around this -- based on your notes, did Simon Bernstein believe he had a net worth all in of about 18 million when he met with you?

A. Yeah, it appears that way, 18, 19 million dollars.

Q. And did he discuss at all with you that he was involved in a business at that time, an insurance business?

A. Yes.

Q. And did he give you an indication of how well the business was doing at around the times of these meetings between November 2007 and March or May of 2008?

A. Yeah, the business was doing well at that time. He was -- he was very optimistic about the future of the business.

Q. Now, did you do any -- did you prepare any documents before the will was signed in May? Did you prepare drafts of the documents?

A. Yes, we did. We always prepare drafts of documents.

Q. And did you share the drafts with Simon and Shirley?

A. Yes, we did.

Q. Okay. I'm going to hand you Exhibit 11, and ask if you can identify that for the record?

A. This is a letter from our firm dated April 19 of 2008. It's transmitting the documents to the client, with an explanation that they could follow, better than reading their documents -- a summary of the documents.

Q. Is that a true and authentic copy of a document that you created?

A. Yes, it appears to be.

MR. ROSE: I would move Exhibit 11 into evidence, Your Honor.

THE COURT: All right. Any objection?

[No response.]

THE COURT: All right. Then that's in

evidence as Plaintiff's 11.

(Plaintiff's Exhibit No. 11 was received into evidence.)

BY MR. ROSE:

Q. And if I read Exhibit 11, the first three words say, "Enclosed are drafts of each of your wills and revocable trusts, the children's family trust, each of your durable powers of attorney, designations of health care surrogate and living wills," correct?

A. Yes.

Q. So about a month and 11 days before anything was signed, documents were sent by Federal Express to Simon and Shirley Bernstein?

A. Correct.

Q. And it appears to have gone to Simon's business?

A. Yes.

Q. Now, if you look at -- does your -- does your letter, sort of in laymen's terms, rather than reading through the legalese of a will, explain what the estate planning was under the documents that have yet to be signed but that you were preparing?

A. Yes, it does, as much as possible in laymen's terms.

Q. Can you just give us a short -- well, the will

itself for both Simon and Shirley was a relatively simple will that poured over into a revocable trust, one for each?

A. Yes, poured over wills for both.

Q. And whoever died first would inherent the personal property?

A. All tangible personal property under the will would pass to the survivor.

Q. So assuming Simon survived Shirley, he would be the sole beneficiary of her estate?

A. Correct.

Q. And then any of her residuary would go into a trust?

A. That's correct.

Q. And he, in fact, outlived Shirley?

A. He did.

Q. Okay. Now, if you go to the second page, at the top, you describe the will of Shirley Bernstein. It's essentially identical to Si -- it says "Si."

Just for the record, that's Simon shorthand?

A. Yes.

Q. Si is the personal representative of Shirley's estate, and Ted is designated as successor if Simon is unable to serve.

That was what was in the document you sent in

April?

A. Yes. I believe so, yes.

Q. And that provision remained in the final documents you signed?

A. Yes.

Q. Now, did Ted eventually become a successor personal representative upon Simon's death?

A. Yes, he did.

Q. Then you next start to talk about the Simon L. Bernstein trust agreement.

And theoretically, that was going to be the primary testamentary document?

A. Correct, it was.

Q. And that's fairly standard?

A. Yes. When a client wants to avoid probate, we use a revocable trust to title assets in prior to death. Those assets remain confidential; they're not part of the court record. And the trust is also used to avoid the need for the appointment of a guardian in the event of incapacity, because there's a successor trustee mechanism.

Q. Okay. Now, under Simon's trust agreement, moving down to the third paragraph, under that heading, it says that both trusts provide for mandatory income distributions. And then the next sentence starts, "Upon

Shirley's death, she has been given a special power to appoint the remaining assets of both the marital trust and the family trust to any of your lineal descendants and their spouses, a power to redirect and reallocate."

Do you see that?

A. Yes.

Q. Now, is that consistent with the way the documents were intended to be drafted?

A. Yes, it is.

Q. And I guess it's sort of similar to what existed in the 2000 wills?

A. Yes. Typically, you give the survivor of the spouse a power to appoint in the event that they want to change any of the estate planning of the first to die. Found in most first marriage documents with only children from that marriage.

Q. And this is a first marriage with all five children being the product of the same marriage --

A. Yes.

Q. -- as far as you know?

A. As far as I know.

Q. And as far as you know, Simon and Shirley Bernstein, they each married only once in their lifetime, to each other?

A. That's all I know.

Q. If you flip to the next page, there's a shorter paragraph for Shirley.

It basically says -- it's virtually identical, except that Simon is the initial successor, and after that, Ted would be Simon's replacement if he passed away?

A. Correct.

Q. And is that the mechanism by which Ted Bernstein became the successor trustee in this lawsuit?

A. Yes, it is.

Q. Now, if Shirley died first, then did the documents give Simon the same power of appointment over the assets in her trust that was provided for in the Simon document if he died?

A. Same power of appointment was in both documents. They were identical documents, with one exception.

Q. And what was the exception; the name of the successor trustee?

A. The name of the successor trustee.

Q. And then Simon wanted his then business partner, Bill Stansbury, to be his successor trustee in both his will and his trust, and Shirley wanted her oldest son, Ted, to be her successor in both documents?

A. Correct. The signer, non-survivor.

Q. Okay. And Shirley, I guess it says here, also made a specific gift of $200,000 to someone named Matthew Logan?

A. Correct.

Q. If you look at our family tree chart, I think Matthew Logan is under Ted.

He is the son of Ted's second wife, Deborah?

A. Correct.

Q. Okay. So there was a $200,000 special gift to Matthew that was in the documents that you sent on April 9th?

A. Correct.

Q. Then you prepared family trusts for the children.

Were those trusts created at the time?

A. Yes, they were.

Q. Now, after you sent your letter on April 9th, did you have a further discussion with Simon and Shirley before the documents were signed?

A. I can't recall, but we probably -- we probably did, to set up a meeting and talk -- you know, either, A, talk about the documents, the draft documents, any changes that they wanted to make on the draft documents. It would be typical of us to do that, although I don't have any meeting notes that showed that, so...

Q. Now, under -- we'll talk -- let's talk about the ones that matter.

Because Shirley died first, her 2008 trust became the beneficiary of her estate?

A. Correct.

Q. And then Simon had a power of appointment, correct?

A. Um-hum.

Q. And if -- you have to say yes or no.

A. Yes.

Q. And if he didn't exercise the power of appointment, was there a default set of beneficiaries that were designated in the documents you drafted in 2008?

A. Yes.

Q. And what was the default set of beneficiaries?

A. Simon had and Shirley had in their documents excluded Pam and Ted at the death of the survivor of the two of them.

Q. Okay. So if the power of appointment was not properly exercised, it would just go to three, and Eliot would end up with 33 and a third percent and two of the other sisters would get the balance?

A. That's correct.

Q. Did Simon and Shirley eventually execute

documents in 2008?

A. Yes, they did.

Q. I'm going to hand you Exhibit No. 1, which is --

A. A copy of Si's will from --

Q. Do you have Exhibit 1?

A. Excuse me. Sorry. Shirley's will.

Q. Is that a conformed copy of the document?

A. Yes, it is.

MR. ROSE: I would move Exhibit 1 into evidence.

THE COURT: Any objection?

[No response.]

THE COURT: That's in evidence as Plaintiff's 1.

(Plaintiff's Exhibit No. 1 was received into evidence.)

BY MR. ROSE:

Q. Now, that says "conformed copy." If I turn to the last page, there's no handwritten signatures.

A. Correct.

Q. Do you know where the original of that document sits today?

A. It was filed with the court.

Q. Okay. So somewhere in the courthouse, the

original goes.

And that's something that the client would keep?

A. Correct. This is what we would send to the client to include with their files.

Q. When you filed the original with the court, did anyone object while Simon was alive?

A. No.

Q. Okay. I'm going to hand you Exhibit No. 2.

Do you recognize that document?

A. Yes. This is Shirley's trust agreement that she executed in 2008.

Q. Now, does that document have copies of her signature?

A. Yes. These are actual copies of the signing parties and their signatures.

Q. And how many originals would have been created of this document?

A. We always created three originals of the trust agreements.

Q. Okay. Now, if you turn to the next -- if you turn to the last page, it says that Shirley put a dollar into her trust when it was created.

A. Yes.

Q. And that's to make it a valid trust?

A. Yeah, I mean, it's not required today, but it's pretty much just form to show a dollar. She had certainly funded it more than that.

Q. And eventually Shirley put some assets into the trust?

A. Yes.

Q. Okay. And if you go to the page before that, page 27, it appears to be a signature page, correct?

A. Yes.

Q. Now, were you one of the witnesses to the signature of Shirley Bernstein on Exhibit 2?

A. Yes, I was.

Q. And were you present with Shirley Bernstein and the other witness, Traci Kratish, at the time of the execution of the documents?

A. Yes, I was.

Q. And they're notarized by someone named Kimberly Moran.

Does she work for your office?

A. Yes, she did.

Q. And through her involvement with your firm and -- did she personally know Shirley and Traci Kratish, as well as yourself?

A. Yes, she did.

Q. Now, at the same time that Shirley signed her

documents, did Simon sign a similar set of 2008 will and trust, similar to the drafts that were sent in April?

A. Yes, he did. We were all sitting in the main conference area in their offices together.

Q. In Simon's office or your office?

A. In Simon's offices.

Q. Okay. So why would someone from your office come to Simon's office rather than rely on the notary that they have there?

A. Because we wanted to accommodate Shirley and Si in their offices and not have them travel.

Q. You personally went there. Did you personally go through to make sure that the documents were signed with all the formalities required under Florida law to make them valid and enforceable?

A. Yes, we did. That's why we were there.

Q. And if Simon did not have a 2008 will and -- sorry.

If Simon did not have a 2002 will and trust, would it be your belief that the 2008 will and trust would be valid?

A. Yes.

Q. Were they properly signed with all the same testamentary formalities required by Florida law?

A. Yes, they were.

Q. Okay. Did Shirley at some point amend her trust agreement?

A. Yes, she did.

Q. And do you recall why she amended it?

A. She amended it to remove Matt Logan from the document that she had included previously as a specific device.

Q. Do you know why Matt was removed?

A. It's attorney-client privilege.

Does it matter?

Q. I'll withdraw the question.

Was Matthew removed at the direction of Shirley?

A. Yes.

Q. I'll withdraw --

A. Yes. Yes. Yes.

Q. Did Shirley sign a document that effectively removed Matthew?

A. Yes, she did.

Q. Let me hand you Exhibit No. 3, and ask you if you recognize that document?

A. Yes, I do.

Q. Now, was this document signed with the same testamentary formalities as the 2008 trust?

A. Yes, it was.

MR. ROSE: We would move Exhibit 3 into evidence, Your Honor.

THE COURT: Any objection?

[No response.]

THE COURT: All right. That's in evidence as Plaintiff's 3.

(Plaintiff's Exhibit No. 3 was received into evidence.)

BY MR. ROSE:

Q. Now, if you look -- there's a paragraph 1 and a paragraph 3, but no paragraph 2.

Do you know why that is?

A. It's just a mistake in drafting.

Q. And did you specifically discuss with Shirley, whose privilege I technically would control -- my client would control --

Did you specifically discuss with Shirley the fact that the effect of the first amendment would be to remove the specific gift that she had made for Matthew Logan?

A. Yes. Even prior to the signing of the document.

Q. And is this the last relevant testamentary document that Shirley ever signed that you're aware of?

A. Yes, it is.

Q. Did you meet with Simon and Shirley in person to talk about this amendment?

A. Si had called me and said that Shirley had a change to her documents, and asked me to give her a call and have lunch with her. I called her. We arranged for a meeting in her house to execute the document.

Q. Now, you brought your -- you brought Kimberly with you to get -- for convenience and to make sure the documents were properly executed?

A. Correct. She had -- she had her personal assistant that was there, Rachel Walker, to serve as another witness.

Q. Just so I don't have to go back, what's the date of the amendment?

A. November 18th, 2008.

Q. So now we five documents that exist; 2008, will, trust, will, trust, and an amendment to Shirley's trust.

Did you share any of those documents with any of Simon and Shirley's children at that time?

A. No, we did not.

Q. Did any of the -- did any of the children play any role in bringing Simon or Shirley to your offices?

A. Not that I'm aware, no.

Q. Did any of the children accompany them

to -- any time they came to visit you, did any of the children come with them, drag them along?

A. No.

Q. So you prepared -- did you do some other estate planning in addition to the 2008 testamentary documents?

A. Yes, we did.

Q. Can you briefly describe some of the things you did?

A. We had set up a Florida limited partnership. We created a general partner entity for that partnership, a limited liability company.

Q. What's the name of the Florida limited partnership?

A. Bernstein Family Investments, LLLP.

Q. Was that an entity that was in existence or was it created under your direction?

THE COURT: Can I stop you a second? Is this going to help me figure out the validity of the testamentary documents?

MR. ROSE: Only in the very narrowest sense. I'm just trying to establish that they had a very lengthy and extensive relationship, and they did a lot of estate planning for Simon and Shirley. But I'll be very brief.

THE COURT: Well, if that becomes relevant later, perhaps you could come back to it. But I don't see the relevance at this point, so I'll ask you to move on.

MR. ROSE: Yes, sir.

BY MR. ROSE:

Q. Now, was Simon concerned at all about asset protection as part of some of the things you discussed?

A. Yes, he was.

Q. Now, we have -- did you have any discussion with him about who was expected to live longer or if either of them had health problems that you had any knowledge of?

A. Si was not -- he was in good health, but he had had some heart issues. And Shirley had had other issues as well. And I think it -- early on, he didn't know, but as the relationship went on, we kind of knew that Shirley was sicker than him and would probably pass first.

Q. So Shirley died -- it's in the public record -- but December --

A. 2010, yeah.

Q. -- 8th. So Simon was her -- he survived her; he becomes the sole beneficiary as far as tangible personal property under her will?

A. Yes, he does.
Q. The residuary goes into the Shirley Bernstein Trust?
A. That's correct.
Q. He's the sole successor trustee and the sole beneficiary --
A. Yes, he is.
Q. -- during the term of his life?
A. Correct.
Q. Now, was there a great deal of effort put into inventorying the assets, things like that?
A. No, there wasn't. For purposes of opening up Shirley's probate, we had asked Si to estimate the value of, you know, her tangible personal property. And that's what we included on the inventory that was filed in the probate.
Q. Now, if I'm correct, 2010 was the year there were no estate taxes at all?
A. No estate taxes.
Q. Simon's the sole beneficiary?
A. Sole beneficiary. Even if there were taxes, there wouldn't have been any tax on the first death, because everything went to Si, and there was a marital deduction.
Q. While Simon was alive, did Ted have any access

to the documents, as far as you know? Did you ever send the testamentary documents of Simon or Shirley to Ted?

A. No, we did not.

Q. Did Ted play any role in the administration of the estate while Simon was alive?

A. No, he did not.

Q. Did any of the other children play any role in the administration of the estate while Simon was alive?

A. No, they did not.

Q. Now, did you have to -- well, strike that.

Because it was only Simon, was it sort of the decision by Simon, That I don't want to spend a lot of time and money in this estate because it's just wasting my own money?

A. Yes.

Q. And that's not unusual in a situation where you have a surviving spouse that's the sole beneficiary?

A. Correct.

Q. Now, did there come a point in time when Pam, who was not a named beneficiary of the -- Shirley's documents, learned of the fact that she had been excluded?

A. Yes, there was.

Q. Okay. And did you get involved with discussions with Pam or her lawyer?

A. She had hired an attorney, who had made a request to get a copy of her mother's documents. And I called Si, spoke to Si about it, and he authorized me giving Pam those documents -- or her attorney those documents.

Q. Were they provided to any of the other children; that would be Ted or his brother, Eliot, or his two sisters, Lisa or Jill?

A. No, they were not.

Q. And did Simon Bernstein at some point decide to change his testamentary documents?

A. Yes, he did.

Q. Do you recall approximately when that happened?

A. Early 2012, he called and requested that we meet to go over his documents.

Q. I'm going to hand you an exhibit marked Exhibit 13, and ask you if you recognize those as your own notes?

A. Yes. These are my notes from that meeting in 2012.

MR. ROSE: I would move Exhibit 13 into evidence, Your Honor.

THE COURT: Any objection?

[No response.]

THE COURT: All right. That's in evidence as Plaintiff's 13 then.

(Plaintiff's Exhibit No. 13 was received into evidence.)

BY MR. ROSE:

Q. Now, during this meeting, did Simon discuss the possibility of altering his estate plan?

A. Yes, he did.

Q. Did you also go over his current finances?

A. Yes, we did.

Q. Now, we've seen from 2007 that he had disclosed about $18 million.

As part of the meeting in February of 2012, he gave you sort of a summary of where he stood at that time?

A. Yes, he did.

Q. And what was the status of the Shirley Bernstein probate administration in early 2012, about 13 months after she passed away?

A. It was still not closed.

Q. Do you know why it was not closed?

A. I think that we were still waiting -- I'm not sure that -- we were still waiting on waivers and releases from the children to close the estate, to qualify beneficiaries under the estate if Si were to

die. We had to get waivers and releases from them.

Q. Standard operating procedure?

A. Standard operating procedure.

Q. Okay. So Simon here, it says -- it says at the top "SIPC receivable."

Do you know what that is?

A. Yes, I do. That was -- Si had made an investment in a Stanford product that was purported to be a CD; it was an offshore CD. And when the Stanford debacle hit, I guess he filed a claim with SIPC to get those monies back, because it was supposedly a cash investment.

Q. And so he invested in a Ponzi scheme and lost a bunch of money?

A. Correct.

Q. Some of the 18 million he had in 2007 he lost in the next four and a half years in investing in a Ponzi scheme?

A. That's correct.

Q. And then the maximum that the SIPC -- which is like the FDIC for investments.

You're familiar with that, correct?

A. Yes.

Q. The maximum is 500,000.

You don't actually necessarily recover

500,000? You have a receivable, right?

A. Yes.

Q. Do you know how much he actually realized from the SIPC?

A. I believe he never received anything.

Q. Okay. And then it said, LIC receivable, $100,000.

Am I reading that correct?

A. Yes.

Q. And LIC was the company he was involved, with others?

A. Yes.

Q. Okay. So I put here 600 that he put, but the 600 is really probably closer to 100 if you didn't get the SIPC money?

A. Correct.

Q. So I'm going to just put a little star here and put it's really 100,000, and sort that out.

So then he says -- he has -- Si's estate, this would be his personal assets. He's got an interest in the LLLP.

That is not relevant to discuss how it was formed, but there was an LLLP that was owned, some by Si's trust, some by Shirley's trust?

A. Correct.

Q. And at the time, he thought the value was 1,150,000 for his share?
A. That's correct.
MR. BERNSTEIN: Can I object, Your Honor?
THE COURT: What's the objection?
MR. BERNSTEIN: Relevance.
THE COURT: Overruled.
MR. BERNSTEIN: Okay.
BY MR. ROSE:
Q. And then he had an IRA that says 750,000.
A. Correct.
Q. And those two things totaled 1,550,000?
A. No. They totaled one million nine. Right?
Q. Okay. You're right.
You wrote next to it "estate tax."
What does that mean, on the side next to it?
A. I think what I had done was offset the value of the assets in his estate by the loans that were outstanding at the time.
Q. And it shows a million seven in loans?
A. A million seven in loans.
Q. So we had loans back in 2008 -- I'm sorry. November of 2007 time period -- or 2008, which were only -- so we have loans now, you said, a million seven?
A. Well, he had a $1.2 million loan with

JP Morgan that was collateralized with the assets of the LLLP.

Q. And then you list -- just to speed up, then you have -- underneath that, it says Shirley's asset was empty, right? Because whatever was in had gone to Simon?

A. Yeah, her estate had nothing in it.

Q. She had a Bentley, I think, when she died.

Do you know what happened to the Bentley?

A. I wasn't aware that she had a Bentley.

Q. Did you come to learn that she had a Bentley and Simon gave it to his girlfriend, and she traded it in at the dealership and got a Range Rover?

A. Much, much, much later on --

Q. But you know --

A. -- after Si's death.

Q. But you know that to be the case?

A. I wasn't aware that it was traded for the Range Rover. I thought he bought her the Range Rover. I didn't realize he used a Bentley to do it.

Q. Okay. Somehow you know the Bentley became something for Maritza?

A. Yes.

Q. That's the name of his girlfriend?

A. Yes.

Q. Okay. Then it says, in Shirley's trust, condo, one million -- I'm sorry. I should go to the next column. It says "FMV."

That would be shorthand for Fair Market Value?

A. Yes.

Q. So condo, 2 million, which is here; house, 3 million; half of the LLLP, which is Shirley's half after -- I assume, after the deduction of the loan, was 800,000?

A. Um-hum.

Q. Then it says "LIC." That's the company Life Insurance Concepts that Mr. -- that Simon, his son Ted, and a gentleman named Bill Stansbury had formally been involved, another attorney, shares by then. Because we're in February of 2012.

But, in any event, that's Simon's company?

A. Correct.

Q. And he told you in 2007 it was worth -- Mr. Tescher's -- notes, like -- his interest was worth 5 million.

What did he tell you it was worth in 2012?

A. Zero.

Q. Then underneath that -- I put zero here, so zero today.

So his net worth -- and then there was a home

that he owned for -- that Eliot lives in, right? He didn't really own it, but he controlled it, Simon?

A. Yes.

Q. Okay. Did you set up the entity that owned the home?

A. Yes, I did.

Q. Just to save time, there's an entity called Bernstein Family Realty that owns the house.

Simon controlled that entity while he was alive?

A. Yes, he did.

Q. And his estate holds a mortgage on the house for 365,000?

A. Correct.

Q. So there's some interest there.

He didn't put it on his sheet when he talked to you, but that still would have existed in some form, right?

A. Yes.

Q. And it still exists to this day.

We don't know the value of it, but there still is a mortgage, right?

A. Yes.

Q. Okay. But either way, the point of this whole story is, his net worth went down significantly between

2007 and 2012?

A. Yes, it did.

Q. And in your world, that's not uncommon, with the stock market crash, the depression, things like that, that a lot of clients with high net worth would have suffered losses during that time?

A. Many, many of them did. And even the values that are on this sheet were not the real values.

Q. We know that the --

A. Clients have a tendency to overstate their net worth.

Q. All right. And we know the Ocean Drive house sold for about a million four?

A. Correct.

Q. And the Court -- there's an order that approved the sale, the gross sale price of a million one for St. Andrews?

A. Correct.

Q. Okay. So that's still -- that's less than half, even then, Simon thought he would get.

Now, if you look at the bottom of the Exhibit No. 13, it says a word, begins with an "I." I can't really read it.

Can you read that?

A. Insurance.

Q. Well, did you have some discussions with Simon about his insurance?

A. Yes, we did.

Q. In fact, I think -- Mr. Spallina, we talked about he had -- I'm sorry.

Mr. Tescher's notes had a $2 million life insurance?

A. Correct.

Q. Okay. Is this the same life insurance?

A. Yes, it is.

Q. And was there a discussion about -- I guess it says 1 million --

That's one million seven-fifty?

A. A million 75 -- yeah, one million seven-fifty was the value of the policy.

Q. And the death benefit was a million six?

A. Million six. There was a small loan or something against the policy.

Q. Okay. And then it says "Maritza."

What was Maritza down there for?

A. Si was considering changing -- the purpose of the meeting was to meet, discuss his assets. And he was, you know, having a lot of, I guess, internal -- he had received another letter from his daughter -- he asked me to read the letter from Pam -- that she still

was not happy about the fact that she had been disinherited under her mother's documents if the assets were to pass under the documents and he didn't exercise his power of appointment. And this meeting was to kind of figure out a way, with the assets that he had, to take care of everybody; the grandchildren, the children, and Maritza.

And so he thought maybe that he would change the beneficiary designation on his life insurance to include her. And we had talked about providing for her, depending on -- an amount -- an increasing scale, depending on the number of years that he was with her.

Q. So if you look at the bottom, it says 0 to 2 years, 250.

Is that what you're referring to?

A. Yes. Two to four years, 500,000. And then anything over plus-four years would be -- I think that's 600,000.

Q. Now, during this discussion, was Simon mentally sharp and aware of what was going on?

A. Oh, yeah. Yeah, he was -- he was the same Simon. He was just -- you know, he was struggling with his estate now. He was getting -- he felt -- I guess he was getting pulled. He had a girlfriend that wanted something. He had his daughter who, you know, felt like

she had been slighted. And he wanted to try to make good by everybody.

Q. And at that point in time, other than the house that he had bought that Eliot lived in, were you aware that he was supporting Eliot with a very significant amount of money each year?

A. I was not.

MR. BERNSTEIN: Object to the relevance.

THE COURT: Overruled.

BY MR. ROSE:

Q. Okay. So that's February.

A. Yes.

Q. What happens next in relation to Simon coming in to meet with you to talk about changing his documents?

A. He had called me on the phone and he -- we talked again about, you know, him changing his documents. He had been thinking about giving his estate and Shirley's estate to his grandchildren. And at the February meeting, I did not think it was a great idea for him to include his girlfriend, Maritza, as a beneficiary of the life insurance policy.

Q. He took your advice? He didn't change that, as far as you know?

A. He did not.

Q. Okay. I'm sorry. Continue.

A. He did not.

I had suggested that he provide for her in other ways; a joint account that would pass to her at his death, but not to mix her in with his family in their dispositive documents. And he ultimately took that advice and decided that he wanted to give his estate to his ten grandchildren, and that the policy -- which I had never seen a copy of the policy, but, you know -- he had had. And I knew that he was paying for it, because -- it almost lapsed, or did lapse at one point, and it got reinstated -- that that policy was to pass to an insurance trust that named his five children as beneficiaries.

Q. And that's something Simon specifically discussed with you when you were going over his estate planning in 2012?

A. Correct -- or something that we had known about before that meeting. But he was -- at the meeting, he was starting to talk about doing a change to the beneficiary designation to include Maritza, and I wanted to talk him out of that.

Q. And at some point, he made a decision to actually change his documents, correct?

A. He did. He did.

Q. And did he direct you to set up any kind of a communication with his children?

A. Yes. He said, I want you to get -- put together a conference call with me and you and my five children so I can talk to them about what I want to do with my estate and Shirley's estate.

THE COURT: All right. This would be a good time for us to take a pause for a morning break. We'll be in session again in 10 minutes.

As far as time use goes, so far Plaintiff's side has used 60 minutes. So you have 90 remaining in your portion of the day. And that's where we stand.

MR. ROSE: We'll be well within our time, sir.

THE COURT: Great. Okay.

We'll be in recess for ten minutes. Is ten minutes enough time for everybody? That's what it'll be then.

(A break was taken.)

THE COURT: We're ready to proceed. Please continue.

MR. ROSE: Thank you.

BY MR. ROSE:

Q. I think we were when Shirley died in December of 2010, and you meet with Si, according to

Plaintiff's 13, on February 1st of 2012.

I think by May of 2012 was when this conference call that you mentioned was?

A. Yes, it was.

Q. Okay. And did the five children attend the conference call?

A. Yes, they all did.

Q. Were you present on the call?

A. Yes, I was.

Q. Was Simon present?

A. Yes, he was.

Q. Where was Simon physically during the call?

A. His office -- I believe his office.

Q. Were you in the same room as Simon?

A. No, I was not.

Q. You were in your office?

A. I was in my office.

Q. Okay. Generally, what was discussed during this conference call?

A. Simon wanted to talk to his children about providing for his estate and his wife's estate to go to the ten grandchildren; wanted to have a discussion with his children and see what they thought about that.

Q. And was he asking them for their approval or permission or...

A. Well, I think he wanted to see what they all thought, you know, based on things that had happened in the past and documents that had been created in the past. And I don't know that it was going to sway his opinion, but when he told me, you know, to -- you know, to have the conference call, to contact his -- he said, This is what I'm going to do, so...

Q. During the call, did Simon ask his children if anybody had an objection to him leaving his and Shirley's wealth to the ten grandchildren?

A. Yes. He asked what everybody thought.

Q. Did Eliot respond?

A. Yes, he did.

Q. What did he say?

A. I'm paraphrasing, but he said something to the effect of, Dad, you know, whatever you want to do, whatever makes you happy, that's what's important.

Q. Did you also discuss during that call the need to close Shirley's estate?

A. Yes, we did. We had told Si that we needed to get back the waivers of accounting, the releases, and we asked -- he asked them to get those back to us as soon as possible.

Q. Okay. If I hand you Exhibit 14, it appears to be an email from Eliot Bernstein to you addressing the

waiver that he needed to sign?

A. Yes, it is.

MR. ROSE: I move Exhibit 14 into evidence.

THE COURT: Any objection?

[No response.]

THE COURT: All right. That's in evidence then as Plaintiff's 14.

(Plaintiff's Exhibit No. 14 was received into evidence.)

MR. ROSE: As a matter of housekeeping, Your Honor, I think I might have failed to move in Exhibit 2, which is Shirley Bernstein's 2008 trust agreement, which I would move, to the extent it's not in evidence, 1, 2 and 3, which are the operative documents Mr. Spallina's already testified about.

THE COURT: Any objection?

MR. BERNSTEIN: What was that? I'm sorry.

THE COURT: Is there any objection to Plaintiff's 1, which is the will of Shirley Bernstein, Plaintiff's 2, which is the Shirley Bernstein Trust Agreement, and Plaintiff's 3, which is the First Amendment to the Shirley Bernstein Trust Agreement?

MR. BERNSTEIN: No.

THE COURT: All right. Those are all in evidence then as Plaintiff's 1, 2 and 3.

(Plaintiff's Exhibit No. 2 was received into evidence.)

BY MR. ROSE:

Q. Okay. This email is dated May -- May 17, 2012, from Eliot, correct?

A. Yes, it is.

Q. This would have been after the conference call?

A. This, I believe, was after the conference call, yep.

Q. And he says he's attached the waiver accounting and portions of petition for discharge, waiver of service for a petition for discharge, and receipt of beneficiary and consent to discharge that he had signed.

Did you receive those from Eliot?

A. Yes, I did. We received -- that was the first waivers that we received.

Q. Then it says "as I mentioned in the phone call."

Did you have any separate phone calls with Eliot Bernstein, you and he, or is he referring to the conference call?

A. I think he's referring to the conference call.
Q. Okay. I have not yet -- "I have not seen any of the underlying estate documents or my mother's will at this point, yet I signed this document after our family call so that my father can be released of his duties as personal representative and put whatever matters that were causing him stress to rest."
Do you see that?
A. Yes, I do.
Q. Now, while Simon was alive, did you ever get authorization to share the testamentary documents with Eliot Bernstein?
A. I did not.
Q. Now, after the call and after the discussion with the siblings, did you prepare a draft of -- of new documents for Simon?
A. Yes, I did.
Q. I'm going to hand you Exhibit 15; ask if that's a letter that you sent to Simon Bernstein enclosing some new drafts?
A. Yes, it is.
Q. Now, what's the date of that?
A. May 24th, 2012.
Q. And what's -- what is the summary -- well, strike that.

You sent this letter to Simon Bernstein?

A. Yes, I did.

Q. By FedEx to his home?

A. Yes, I did.

MR. ROSE: I would move Exhibit 15 in evidence.

THE COURT: Any objection?

[No response.]

THE COURT: All right. That's in evidence as Plaintiff's 15.

(Plaintiff's Exhibit No. 15 was received into evidence.)

BY MR. ROSE:

Q. Okay. So then first page says, "Dear Si, we have prepared drafts of a new will and an amended and restated trust agreement."

Are those the 2012 documents that were his final ones?

A. Yes, they are.

Q. Okay. Then you sort of do the same thing you did in 2008; you give a little summary of what the estate plan is.

"Your amended and restated trust provides that on your death, your assets will be divided among and held in separate trusts for your then living

grandchildren," correct? I was reading paragraph -- the middle paragraph.

A. Yes, I see that. Yes.

Q. I actually skipped the part above, which is probably more important, which says -- in the middle of the first paragraph, it says, "In addition, you have exercised the special power of appointment granted to you under Shirley's trust agreement in favor of your grandchildren who survive you."

Do you see that?

A. Yes.

Q. Okay. And so that was Simon's intent as discussed on the conference call?

A. Yes, it was.

Q. Do you know if you made any changes to these draft documents from May 24th until the day they were signed?

A. I don't believe so. If I did, it was for grammar or something else. The dispositive plan that was laid out in this memo was ultimately the subject of the documents that he executed in July.

Q. I'm going to hand you Exhibit 16, which is a durable power of attorney.

If you flip to Exhibit 16, the last page, does it bear a signature of Simon Bernstein?

A. Yes, it does.
Q. And it indicates you were a witness to the signature?
A. Yes.
Q. Along with Kimberly Moran, who is someone from your office?
A. Correct.
Q. And someone named Lindsay Baxley notarized the documents?
A. Yes, she did.
Q. Do you know who Lindsay Baxley was?
A. Lindsay Baxley worked in Ted and Si's office.
Q. She was like a secretary?
A. Assistant to Ted, I believe, maybe.
Q. Okay. And if you look at --
MR. ROSE: Well, first of all, I'll move Exhibit 16 into evidence.
THE COURT: Any objection?
[No response.]
THE COURT: No objection made, then I'll receive this as Plaintiff's 16.
(Plaintiff's Exhibit No. 16 was received into evidence.)
BY MR. ROSE:
Q. If you look at the last page where the notary

block is there, it says "personally known" with an underline, or "produced identification" with an underline. And she's checked the box "personally known" -- or she's checked the line.

Do you see that?

A. Yes.

Q. So do you believe that -- did you know Lindsay Baxley by that point in time?

A. Yes, I did.

Q. And you believe -- she obviously knew Simon, she knew Kim Moran from other dealings between your offices?

A. Yes.

Q. Okay. And did you all sign this durable power of attorney with testamentary formalities?

A. Yes, we did.

Q. And what's the date of that?

A. July 25, 2012.

Q. I'm going to approach with Exhibit 4, and ask you if you recognize Exhibit 4?

A. Yes, I do.

Q. Okay. And what is Exhibit 4?

A. This is Si's new will that he executed in 2012, on July 25th, the same day as that durable power of attorney.

Q. Now, were you present when Simon executed his new will, which is Exhibit 4?

A. Yes, I was.

Q. If you turn to the last page --

Well, actually, if you turn to the first page, does it say "copy" and bear a clerk's stamp?

A. It does.

Q. Okay.

MR. ROSE: I would represent to the Court that I went to the clerk's office -- unlike with Shirley's will, I went to the clerk's office and obtained a -- like, a copy made by the clerk of the document itself, rather than have the typewritten conformed copy.

MR. BERNSTEIN: Can I object to that?

THE COURT: What's the objection?

MR. BERNSTEIN: Is he making a statement? I'm not sure --

THE COURT: You're asking me a question. I don't know.

MR. BERNSTEIN: I'm objecting. Is that a statement?

THE COURT: The objection is? What are you objecting to?

MR. BERNSTEIN: With the statement being

from --

THE COURT: Okay. That was a statement by somebody who's not a sworn witness, so I'll sustain the objection.

MR. BERNSTEIN: And the chain of custody of the document, I'm just trying to clarify that. Okay.

THE COURT: The objection was to the statement. I've sustained the objection.

Next question, please.

BY MR. ROSE:

Q. Unlike the trust, how many originals of a will do you have the client sign?

A. There's only one.

Q. And then you give the client the one with the typewritten -- you call it conformed copy?

A. We conform the copy of the will.

Q. And after Simon died, was your law firm counsel for the personal representative of the Estate of Simon Bernstein?

A. Yes, we were.

Q. Did you file the original will with the court?

A. Yes, we did.

Q. Is it your belief that the original of this document is somewhere in the Palm Beach County Court

system with the clerk's office?

A. Yes, I do.

MR. ROSE: I'd move Exhibit 4 in evidence, Your Honor.

THE COURT: All right. Any objection?

[No response.]

MR. BERNSTEIN: No objection stated, I'll receive this as Plaintiff's 4.

(Plaintiff's Exhibit No. 4 was received into evidence.)

BY MR. ROSE:

Q. Now, if you turn to the next to the last page of Exhibit --

A. Yes.

Q. -- Exhibit 4, you'll see it bears a signature of Simon Bernstein and two witnesses, yourself and Kimberly Moran, who all assert that you signed in the presence of each other?

A. Yes.

Q. And then in the next page, it has what would be a self-proving affidavit?

A. Correct.

Q. Now, if you look at the signature block where the notary signed, where it says "who is personally known to me," it doesn't seem to have a check box there.

It just says "who is personally known to me or who has produced [blank] as identification," right?

A. Correct.

Q. Is this the same person who notarized the exhibit we just put in evidence, Exhibit 15, the durable power of attorney -- 16, the durable power of attorney?

A. Yes.

Q. Okay. And again, with regard to Exhibit 4 -- strike that.

Do you recall where you signed Exhibit 4?

A. Yes.

Q. In whose office?

A. This was also done in Si's office.

Q. Okay. So you took -- you went personally again, along with Kim Moran, as your practice, to make sure that the documents were signed properly; true?

A. Correct.

Q. And that's important because, if the documents aren't properly signed, they might not be valid and enforceable?

A. That's correct.

Q. And I'm going to hand you Exhibit 5. This is the Simon L. Bernstein Amended and Restated Trust Agreement.

Was that signed the same day, at the same

time, with the same procedures?

A. Yes, it was.

Q. And would this have been signed with three originals?

A. Yes, it would be.

MR. ROSE: I would move Exhibit 5 into evidence, Your Honor.

THE COURT: Any objection?

[No response.]

THE COURT: All right. That's in evidence as Plaintiff's 5.

(Plaintiff's Exhibit No. 5 was received into evidence.)

BY MR. ROSE:

Q. Now, we looked at the history when you did the first set of documents. In the second set, you started in February through July.

Did you have a number of telephone conferences with Simon during that time?

A. Yes, we did.

Q. And at least a couple of face-to-face meetings?

A. Yes, we did.

Q. Did at any time Simon give you any indication that he was not fully mentally sharp and aware and

acting of his own volition?

A. Nope. He was Si that we had known since 2007.

Q. I'll close with Exhibit 17. This is a letter you sent to Simon Bernstein, enclosing a copy of his conformed will for him.

A. Yes, it is.

Q. And it's dated the 26th, the day after he signed the documents?

A. Correct.

Q. And did you also leave him with two of the originals of his trust?

A. Yes, we did.

MR. ROSE: I move -- did I move 17 in? Or I will move it in.

THE COURT: Number 7, is it?

MR. ROSE: Seventeen, sir.

THE COURT: Oh, I'm sorry.

Any objection?

[No response.]

THE COURT: All right. Then that's in evidence as Plaintiff's 17.

(Plaintiff's Exhibit No. 17 was received into evidence.)

BY MR. ROSE:

Q. Now, Simon passed away on September 13, 2012.

Does that sound right?

A. Yes, it does.

Q. I have Exhibit 18 as his death certificate.

MR. ROSE: I'll just move 18 into evidence.

THE COURT: Any objection?

[No response.]

THE COURT: All right. That's in evidence as Plaintiff's 18.

(Plaintiff's Exhibit No. 18 was received into evidence.)

BY MR. ROSE:

Q. So that's the death certificate for Simon Bernstein.

Did you have any further discussions or meetings with Simon after he signed the will and trust in 2012 and before he died?

A. Not that I recall, no.

Q. And you filed a notice of administration, opened an asset, published it in the Palm Beach Daily Review, did what you had to do?

A. Yes, we did.

Q. And you and Mr. Tescher were the personal representatives of the estate?

A. Yes, we were.

Q. And you and Mr. Tescher became the successor

trustees of Simon's amended trust after he passed away?

A. Yes, we did.

Q. I guess while he was still alive, he was still the sole trustee of his trust, which was revocable still?

A. Correct.

Q. And then upon his death, at some point, did Ted Bernstein become aware that he was going to become the successor trustee to the Shirley trust?

A. Yes. We had a meeting with Ted.

Q. And that was the first time he learned about the contents of her trust, as far as you know?

A. Correct.

Q. Initially, did anybody object to the documents or the fact that the beneficiaries were supposed to be the 10 grandchildren?

A. No.

Q. When was there first some kind of an objection or a complaint?

A. I can't recall exactly when it happened.

Q. Okay. Did you at some point get a letter from a lawyer at the Tripp Scott firm?

A. Yes, we did.

Q. Okay. I think she was asking you about something called the status of something called I View

It Company? Do you recall that?

A. Vaguely.

Q. Did you know what the Iviewit company was before you received a letter from the Tripp Scott lawyer?

A. I'm not sure. I'm not sure. I know today. I can't tell if I'm answering because I know about it today or if I knew about it at that time.

Q. Okay. And did -- was she asking for some documents from you?

A. Is this Ms. Yates?

Q. Yes.

A. Yes.

Q. And did you provide her with certain documents?

A. She had asked for copies of all of Shirley's and Si's estate planning documents.

Q. And did you provide her with all of the documents?

A. Yes, we did.

Q. Was one of the documents that you provided her not an accurate copy of what Shirley had executed during her lifetime?

A. That is true.

Q. Okay. And I guess I'll hand you Exhibit 6,

and this -- is Exhibit 6 a document that is not a genuine and valid testamentary document of Shirley Bernstein?

A. That's correct.

Q. Can you explain to the Court why Exhibit 6 was prepared and the circumstances?

A. It was prepared to carry out the intent of Mr. Bernstein in the meeting that he had had with his five children, and perhaps a vague -- or a layman -- a layman can make a mistake reading Shirley's documents and not understand who the intended beneficiaries were or what powers I had. So this document was created.

Q. Is it your belief that under the terms of Shirley's document from -- the ones she actually signed, that Simon had the power to appoint the funds to the ten grandchildren?

A. Yes. We -- we prepared the documents that way, and our planning transmittal letter to him reflected that.

Q. And this document is, I think you said, to explain it to a layperson in simpler fashion?

A. It was created so that the person that, you know, didn't read estate planning documents and prepare estate planning documents for a living -- you know, there was no intent to cut out Pam and Ted's children,

basically.

Q. Now, did you ever file this exhibit in the courthouse?

A. No, we did not.

Q. Did you ever use it for any purpose?

A. No, we did not.

Q. Was it at one point provided to Eliot's counsel?

A. Yes, it was.

Q. Now, the fact -- putting aside this document, were any of the other documents that we're talking about in any way altered or changed from the ones that were signed by Shirley or Simon?

A. No, they were not.

Q. Now, after these issues came to light, did Mr. Eliot Bernstein begin to attack you through the internet and through blogging and things like that?

A. He was doing that long before this document came to light.

Q. Okay. What was Eliot doing?

A. His first thing that he did was -- with respect to the courts, was to file an emergency petition to freeze assets and after his brother as successor trustee of his mother's trust had sold the condo.

MR. BERNSTEIN: Your Honor, can I object to

this line of questioning for relevance to validity?

THE COURT: What's the line of questioning you're talking about?

MR. BERNSTEIN: The slander defamation going on about me with, you know, what I do and --

THE COURT: Well, I wasn't aware there's a line of questioning going on. There is a question. You've objected to it.

MR. BERNSTEIN: Yes.

THE COURT: What's the objection to that question?

MR. BERNSTEIN: The relevancy to a validity hearing.

THE COURT: Okay. Can I have the court reporter read the question back?

(A portion of the record was read by the reporter.)

THE COURT: What is the relevance of whether this guy's posting on Facebook that's negative or not?

MR. ROSE: Well, a couple of things, but, primarily, we're just trying to determine whether these documents are valid.

THE COURT: Right.

MR. ROSE: And he is the only one who's saying

they're not valid, so I want to give some explanation as to why he's saying they're not valid, as opposed to --

THE COURT: I don't care why he's saying they're valid or invalid. I'll wait to see what the facts are. So I'll sustain the objection.

MR. ROSE: That's fine.

BY MR. ROSE:

Q. Did Simon Bernstein make any special arrangements, other than -- strike that.

Did Simon or Shirley make any special arrangements, other than the testamentary documents that are admitted into evidence, for special benefits for Eliot Bernstein and his family?

A. No, they did not.

Q. Any special education trusts, other than the -- these five documents? And I believe there was some shares of stock that were put in trust for all ten grandchildren, right?

A. There was no special arrangements made other than the estate planning documents.

Q. After Simon died, did Eliot claim to you that Simon was supposed to have made some special arrangements for him?

MR. BERNSTEIN: Object to the relevancy again.

THE COURT: Overruled.

THE WITNESS: Yes, he did.

BY MR. ROSE:

Q. Did he ever give you an indication how much money he thought he was going to inherent when his father died, or his children would inherent when his father died?

A. Through his subsequent attorney, yes, he did.

Q. And how much money did he indicate he thought there should be?

A. I heard a number from one of his attorneys of 40- to a $100 million.

Q. Are you aware of any assets that Simon Bernstein had other than what he disclosed to you at the two times that we've looked at in 2007 and again in February of 2012?

A. No, I am not.

MR. ROSE: No further questions, Your Honor.

THE COURT: All right. Thanks.

Is there any cross?

MR. BERNSTEIN: Yes.

MR. MORRISSEY: Judge, I have questions as well.

THE COURT: Okay. Well, then, let me have the direct finished. That way, all the

cross-examination can take place without interruption. So everybody make sure you're fitting within the Plaintiff's side of the room's time limitations. We'll strictly obey those.

CROSS (ROBERT SPALLINA)

BY MR. MORRISSEY:

Q. Good afternoon, Mr. Spallina. My name's John Morrissey. I represent four of the adult grandchildren of Simon Bernstein.

And since we're here today about validity, I'm just going to go over, and try to be very brief, concerning the execution of these documents and your knowledge about the execution.

Exhibit 1, which has been entered as the will of Shirley Bernstein, I'd ask you to direct your attention to that document. And I'm looking here at page 7. I ask that you turn to page 7 of Exhibit 1.

Were you a witness of this document, this will that was executed by Shirley Bernstein on May 20th of 2008?

A. Yes, I was.

Q. And was Diana Banks the other witness?

A. Yes, she was.

Q. And did you and Diana witness Mrs. Bernstein's execution of this document?

A. Yes, we did.
Q. You were present during her execution?
A. Yes, we were.
Q. And was she present during your execution of this document as a witness?
A. Yes, she was.
Q. And was she, Shirley Bernstein, present during Diana Banks' execution of this document?
A. Yes, she was.
Q. Okay. And I'm again focused on this Exhibit No. 1, this will of Shirley Bernstein dated May 20th of 2008.
Is it your opinion that at the time Shirley Bernstein executed this document she understood generally the nature and extent of her property?
A. Yes, she did.
Q. Okay. And at the time Shirley Bernstein executed Exhibit 1, did she have a general understanding of those who would be the natural objects of her bounty?
A. Yes, she did.
Q. Okay. And at the time she -- Shirley Bernstein executed Exhibit 1, did she have a general understanding of the practical effect of this will?
A. I believe she did.
Q. Okay. And in your opinion, was Shirley

Bernstein unduly influenced by any beneficiary of Exhibit 1 in connection with its execution?

A. Not to my knowledge.

Q. Okay. And do you have any knowledge of any beneficiary or anyone actively procuring Exhibit 1?

A. No, I do not.

Q. Okay. Moving on to Exhibit 2, which is Shirley Bernstein's trust executed on the same date, that is May 20th of 2008, I'll direct your attention to page 27 of Exhibit No. 2. And it appears that Shirley Bernstein executed that document on May 20th of 2008. And the witnesses were yourself and Traci -- I can't read her last name.

A. Traci Kratish.

Q. Okay. Did Shirley Bernstein execute Exhibit No. 2 in the presence of both you and Traci Kratish?

A. Yes, she did.

Q. Okay. And did you execute Exhibit No. 2 in the presence of Shirley Bernstein and Traci Kratish?

A. Yes, I did.

Q. Okay. And did Traci Kratish execute Exhibit No. 2 in your presence and Shirley Bernstein's presence?

A. Yes, she did.

Q. Okay. And at the time Shirley Bernstein executed Exhibit No. 2, which is her 2008 trust, is it your opinion that she had a general understanding of the nature and extent of her property?

A. Yes, she did.

Q. Okay. And at the time that Shirley Bernstein executed Exhibit No. 2, is it your opinion that she understood generally the relationship of those who would -- were the natural objects of her bounty?

A. Yes.

Q. Okay. And at the time Shirley Bernstein executed Exhibit No. 2, is it your opinion that she generally understood the practical effect of this document?

A. I believe she did.

Q. Okay. And did you have any belief that Shirley Bernstein was unduly influenced in connection with -- by any beneficiary in connection with her execution of Exhibit No. 2?

A. Not to my knowledge.

Q. Okay. And do you know or have any information about any beneficiary or anyone else actively procuring Exhibit No. 2?

A. I do not.

Q. Okay. And with respect -- now we'll move on

to Exhibit No. 3, which is the first amendment of Shirley Bernstein's trust, executed on November 18th of 2008. And I'll direct your attention on that Exhibit 3 to Page No. 2. And on Page No. 2 --

Well, let me ask this question. Did Shirley Bernstein execute Exhibit No. 3 in the presence of both you and Rachel Walker?

A. Yes, she did.

Q. Okay. And did you execute Exhibit No. 3 in the presence of Shirley Bernstein and Rachel Walker?

A. Yes, I did.

Q. And did Rachel Walker execute this document, Exhibit No. 3, in the presence of Shirley Bernstein and yourself?

A. Yes, she did.

Q. Okay. And at the time Exhibit No. 3 was executed, is it your opinion that Ms. Bernstein understood generally the nature and extent of her property?

A. Yes, I believe so.

Q. And is it your opinion that at the time Shirley Bernstein executed Exhibit No. 3, she generally understood the relationship of those who would be the natural objects of her bounty?

A. Yes, I believe so.

Q. Okay. And at the time Shirley Bernstein executed Exhibit No. 3, is it your opinion that she generally understood the practical effect of this trust amendment?

A. Yes, I believe so.

Q. Okay. And do you have any knowledge or information about any beneficiary or any other person unduly influencing Shirley Bernstein to execute Exhibit No. 3?

A. I do not.

Q. Okay. And do you have any knowledge or information about any person, beneficiary or otherwise, actively procuring Exhibit No. 3?

A. I do not.

Q. Okay. Moving on to Exhibit No. 4 then, which is the will of Simon Bernstein, and that is a will that Mr. Bernstein executed on July -- yes, July 25 of 2012. And let me direct your attention to page 7 of that will, Exhibit No. 4.

And did Simon Bernstein execute this document in the presence of you and Kimberly Moran on July 25, 2012?

A. Yes, he did.

Q. And did you execute this document, Exhibit No. 4, as a witness in the presence of Simon

Bernstein and Kimberly Moran on that date?

A. Yes, I did.

Q. And did Kimberly Moran execute Exhibit No. 4 as a witness in the presence of Simon Bernstein and yourself?

A. Yes, she did.

Q. Okay. And on this date -- or at the time of execution on this date of July 25, 2012, did Simon Bernstein understand in a general way the nature and extent of his property?

A. Yes, he did.

Q. Okay. At the time that Exhibit No. 4 was executed, did Simon Bernstein generally understand the relationship of those who would be the natural objects of his bounty?

A. Yes, he did.

Q. And at the time Exhibit No. 4 was executed, did -- in your opinion, did Simon Bernstein understand the practical effect of this will?

A. Yes, he did.

Q. Okay. And do you have any knowledge or information about any person, whether beneficiary or otherwise, actively procuring this Exhibit No. 4?

A. No, I do not.

Q. Do you have any information about any person,

beneficiary or otherwise, unduly influencing Simon Bernstein to execute Exhibit No. 4?

A. I do not.

Q. Okay. And moving on to the last document then, Exhibit No. 5, which is the Simon Bernstein Amended and Restated Trust Agreement, and I'll direct your attention to page 24 of that Exhibit No. 5.

On July 25, 2012, did Simon Bernstein execute this trust agreement in the presence of you and Kimberly Moran?

A. Yes, he did.

Q. And did you execute this trust, Exhibit No. 5, as a witness in front of Simon Bernstein and Kimberly Moran?

A. I did.

Q. And did Kimberly Moran execute Exhibit No. 5 as a witness in front of Simon Bernstein and yourself?

A. She did.

Q. Okay. And at the time Simon Bernstein executed Exhibit No. 5, in your opinion, did he generally understand the nature and extent of his property?

A. He did.

Q. And at the time Exhibit No. 5 was executed, did Simon Bernstein, in your opinion, generally

understand the relationship of those who would be the natural objects of his bounty?

A. He did.

Q. And did Simon Bernstein, when Exhibit No. 5 was executed, understand generally the practical effect of this trust agreement?

A. Yes, he did.

Q. And at the time Exhibit No. 5 was executed, do you have any knowledge about any person, whether beneficiary or otherwise, unduly influencing Mr. Bernstein, Simon Bernstein, to execute this Exhibit No. 5?

A. Nothing that I'm aware of.

Q. Okay. And do you have any knowledge or information about any person, whether beneficiary or otherwise, actively procuring Exhibit No. 5?

A. I do not.

MR. MORRISSEY: I have no further questions, Judge.

THE COURT: All right. Thanks.

Now, is there any cross? You're not required to ask any questions, but you just need to let me know if you're going to.

MR. BERNSTEIN: Oh, are you asking me? I had no idea.

THE COURT: I'm not asking you. I'm just telling you, if you have questions for the witness, this is your opportunity to ask them; if you don't have any questions, you don't have to ask any. But if you're going to, you have to start now.

CROSS (ROBERT SPALLINA)

BY MR. BERNSTEIN:

Q. Mr. Spallina, you were called today to provide some expert testimony, correct, on the --

A. No, I was not.

Q. Oh, okay. You're just going based on your doing the work as Simon Bernstein's attorney and Shirley Bernstein's attorney?

A. Yes.

Q. Okay. Are you still an attorney today?

A. I am not practicing.

Q. Can you give us the circumstances regarding that?

A. I withdrew from my firm.

Q. Are you under a consent order with the SEC?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Did you sign a consent order for insider trading --

A. Yes, I did.
Q. -- with the SEC?
You did. Can you give us the circumstances of your consent order?
MR. ROSE: Objection. Relevance.
THE COURT: That won't be relevant. Please move on to the next question.
MR. BERNSTEIN: Okay.
BY MR. BERNSTEIN:
Q. Were you -- did you plead to a felony crime?
MR. ROSE: Objection. Relevance.
THE COURT: Overruled.
MR. BERNSTEIN: Well, it's relevant as to --
THE COURT: I didn't ask for argument.
MR. BERNSTEIN: Well, what did you say?
THE COURT: I didn't ask for argument. I sustained the objection -- no, I sustained the last objection. This one I'm overruling.
You can answer.
MR. BERNSTEIN: I can't ask him if he's a felon?
THE COURT: You're asking the wrong guy.
MR. BERNSTEIN: Okay. Are --
THE COURT: The witness is -- you asked the question.

BY MR. BERNSTEIN:

Q. Are you a convicted felony?

THE COURT: Let's back up a second.

MR. BERNSTEIN: Yes, sir.

THE COURT: When you're asking for a ruling, and I make one, then we're going to have the witness answer.

MR. BERNSTEIN: Okay.

THE COURT: I made my ruling. I'm letting the witness answer your earlier question, unless you're withdrawing it. Are you withdrawing your earlier question?

MR. BERNSTEIN: No.

THE COURT: You can answer the question, which is, did you plead to a felony?

MR. BERNSTEIN: Sorry, sir.

THE WITNESS: I have not.

THE COURT: Okay. Next question.

BY MR. BERNSTEIN:

Q. Have you pled guilty to a misdemeanor?

A. I have not.

Q. Were you involved in a insider trading case?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained. Next question.

MR. BERNSTEIN: Does that mean he doesn't have

to answer that?

THE COURT: How many times have you been in court?

MR. BERNSTEIN: Just a few where I've had to do this.

THE COURT: You know how this works.

MR. BERNSTEIN: I really don't.

THE COURT: All right. If I sustain an objection, that's means he does not answer the question.

MR. BERNSTEIN: Okay. And overruled?

THE COURT: If I overrule an objection, that means the witness does answer the question.

MR. BERNSTEIN: Okay.

THE COURT: And I've asked you to ask your next question.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Is that your picture on the Florida Law Review, SEC case settled against Florida attorneys?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

Do you have any questions on the issues that I have to decide in this case?

MR. BERNSTEIN: Well, his testimony is based

on his truthfulness.

THE COURT: My question is, do you have any questions you want to ask about the issues relevant to this case?

MR. BERNSTEIN: Yes. This is relevant to this case.

THE COURT: I disagree.

MR. BERNSTEIN: Oh, okay.

THE COURT: I thought I made that very clear in my ruling. You probably want to move on to a relevant issue.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Mr. Spallina, have you been in discussion with the Palm Beach County Sheriff's Office regarding the Bernstein matters?

MR. ROSE: Objection. Relevance.

THE COURT: Overruled.

You can answer that.

THE WITNESS: Yes, I have.

BY MR. BERNSTEIN:

Q. And did you state to them that you fraudulently altered a Shirley trust document and then sent it through the mail to Christine Yates?

A. Yes, I did.

Q. Have you been charged with that by the Palm Beach County Sheriff yet?

A. No, I have not.

Q. Okay. How many times were you interviewed by the Palm Beach County Sheriff?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Did you mail a fraudulently signed document to Christine Yates, the attorney for Eliot Bernstein's minor children?

MR. ROSE: Objection. Relevance.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. BERNSTEIN:

Q. And when did you acknowledge that to the courts or anybody else? When's the first time you came about and acknowledged that you had committed a fraud?

A. I don't know that I did do that.

Q. Well, you just said you went to the Palm Beach County Sheriff and admitted altering a document and put it in the mail.

THE COURT: Let me stop you there. If you want to ask the witness questions, you're permitted to do that. If you would like to argue with the

witness, that's not -- do you have any questions you want to ask?

MR. BERNSTEIN: Yes.

BY MR. BERNSTEIN:

Q. So you sent a fraudulent document to Eli Bernstein's minor children's counsel.

Can you tell us what that document did to affect the dispositive Shirley trust document?

A. It has no effect.

Q. What was its intended effect of altering the document?

A. To carry out your father's wishes in the agreement that he had made with the five of you for a layperson that would be reading the documents.

Q. You were carrying out his wishes by fraudulently altering a document?

MR. ROSE: Objection.

THE COURT: Sustained.

That's argumentative. I don't want you to argue with the witness. That's an argument.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Did the fraudulently altered document change the beneficiaries that were listed in Shirley's trust?

A. They did not.

Q. Who are the beneficiaries of Shirley's trust?
A. It depends on -- under the trust instrument, in the absence of Si exercising his power of appointment, it would be yourself and your two sisters, Lisa and Jill.
Q. Oh. So the only beneficiaries in Shirley's trust are me, Lisa and Jill.
Is that directly or through a family trust?
A. Your father had established -- your parents had established family trusts for the three of you to receive assets from the trust.
Q. Okay. So in that document that you sent to Christine Yates, did you include Ted and Pam's lineal descendants under the amendment that you fraudulently drafted and sent to her?
MR. ROSE: Objection. Argumentative.
THE COURT: Sustained.
BY MR. BERNSTEIN:
Q. Did in any way the document that you fraudulently altered and sent to Yates change the beneficiaries from Eliot, Lisa and Jill and their lineal descendants to anybody else?
THE COURT: May I ask a question?
MR. BERNSTEIN: Yes, sir.
THE COURT: This document that you're

referring to, is anybody asking me to probate that document?

MR. BERNSTEIN: Well, it's part of the estate plan. It's part --

THE COURT: Is anybody seeking relief, either you or the other side, under that document?

MR. BERNSTEIN: Yeah. They're seeking to change the beneficiaries of my mom's trust through that document and others.

THE COURT: You're misperceiving my question.

MR. BERNSTEIN: Oh, okay. Sorry.

THE COURT: That document, which is -- nobody's put it in evidence; I don't know what it is, but it's -- that thing that you're asking the witness about, is somebody seeking relief based upon that document?

MR. ROSE: Absolutely not. The opposite.

THE COURT: All right. Are you seeking relief based upon that document?

MR. BERNSTEIN: Yeah. Oh, absolutely.

THE COURT: All right. Are you claiming that that document is subject to probate?

MR. BERNSTEIN: Yeah.

THE COURT: Is the lady who's giving you advice your attorney?

MR. BERNSTEIN: No.

THE COURT: Ma'am, are you admitted to the bar in Florida? Remember what I told you earlier. I've let you sit there as a courtesy. Generally, I don't let wives or friends or anybody else sit at the table where the parties are because it confuses me. But you're giving that guy advice and you're also not listening to me, which I find odd, because I'm going to have you move you back to the gallery now. Please have a seat in the gallery. Please have a seat in the gallery. Please have a seat in the gallery. Soon. When courtesy is not returned, courtesy is withdrawn. Please have a seat in the gallery. Thank you.

Do you have any other questions of the witness?

MR. BERNSTEIN: Can I submit this as evidence to the Court?

THE COURT: Is that the document you've been asking the witness about?

MR. BERNSTEIN: Yeah.

THE COURT: All right. Any objection to it being received as an exhibit?

MR. ROSE: I don't have any objection to it being received as an exhibit. But as Your Honor

noted, we aren't seeking to probate it, and we're not suggesting it's valid in the first place.

THE COURT: All right. Well, let me see what that document is, so then I'll see if I can make some sense out of it.

You can't -- Gary's always afraid that if somebody's not a member of the bar, they might do something bad to me. Officers of the court aren't allowed to do things bad to the judge. Other folks don't know that. And so Gary watches out carefully for my well-being.

MR. BERNSTEIN: Gotcha.

THE COURT: Okay. So this is a document that's titled "First Amendment to Shirley Bernstein Trust Agreement."

MR. BERNSTEIN: Correct.

THE COURT: And it's in the book that I've been given earlier by the plaintiff as Tab 6. You're seeking to put it into evidence as Defendant's 1?

MR. BERNSTEIN: Okay.

THE COURT: Right?

MR. BERNSTEIN: Sure. Yes, sir.

THE COURT: You're offering it as an exhibit?

MR. BERNSTEIN: No, Evidence 1.

THE COURT: The objection to it is that it's not relevant?

MR. ROSE: Not relevant. Right, relevance. And it's also not something we're seeking to be probated or treated as authentic and genuine.

THE COURT: Well, the other side is seeking to use the terms of this document instead of the terms of the amendment that's in evidence, right?

MR. ROSE: I don't believe that's what he's doing.

THE COURT: I'm not sure what he's doing, but in an abundance of caution, I'm going to receive it for what relevance it might have. I don't perceive any yet, but we'll see what happens.

So this is Defendant 1.

(Defendant's Exhibit No. 1 was received into evidence.)

THE COURT: Any other questions of the witness?

MR. BERNSTEIN: Sure.

BY MR. BERNSTEIN:

Q. You've testified here about Kimberly Moran.

Can you describe your relationship with her?

A. She's been our long-time assistant in the office.

Q. Was she convicted of felony fraudulent notarization in the Estate of Shirley Bernstein?

MR. ROSE: Objection. Relevance.

THE COURT: Overruled.

You're asking if she was convicted of a felony with respect to the Estate of Shirley Bernstein?

You can answer the question.

MR. BERNSTEIN: Correct.

THE WITNESS: I believe she was.

BY MR. BERNSTEIN:

Q. And what was she convicted for?

A. She had notarized the waiver releases of accounting that you and your siblings had previously provided, and we filed those with the court.

Q. We filed those with the court.

Your law firm submitted fraudulent documents to the court?

A. No. We filed -- we filed your original documents with the court that were not notarized, and the court had sent them back.

Q. And then what happened?

A. And then Kimberly forged the signatures and notarized those signatures and sent them back.

Judge Colon has a rule in his court to have those documents notarized, even though that's not the

requirement under the Florida Probate Code.

Q. So when you didn't follow the rule, you frauded [sic] and forged the document?

MR. ROSE: Objection. Argumentative.

THE COURT: Sustained.

THE WITNESS: I had nothing to do with that.

THE COURT: You've got to stop a second.

MR. BERNSTEIN: Yes, sir.

THE COURT: If you continue to argue with the witness, then I'll assume you don't have any more questions. I sustained that last objection to argumentative.

MR. BERNSTEIN: I'm a little confused --

THE COURT: I'm sorry about your confusion, but there are ways you could have dealt with that before this trial. If you are confused during the trial, you better get unconfused as quickly as you can because bad things will happen. And I don't want bad things to happen. I want to get the facts so that I can accurately decide the case on its merits.

Stop arguing, ask questions, let the witness answer, and listen to any rulings that I make on the objections. That's the last time I'll repeat that advice to you. Thank you.

BY MR. BERNSTEIN:

Q. What law firm submitted those documents to the court?

A. Tescher & Spallina, P.A.

Q. Are you a partner in that firm?

A. I was.

Q. So your firm that you were a partner with sent in documents that were fraudulent to the court?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Did Tescher & Spallina law firm submit Kimberly Moran's forged and fraudulent document waivers to the court?

MR. ROSE: Objection. Cumulative.

THE COURT: He already said he did.

MR. BERNSTEIN: What is that?

THE COURT: Cumulative means you've already had that answer given.

MR. BERNSTEIN: No, I didn't have that.

THE COURT: He's already said that he did.

MR. BERNSTEIN: I'm asking if they deposited them with the court.

THE COURT: And he said they didn't.

MR. BERNSTEIN: Well, I asked him, and he

said --

THE COURT: I won't argue with you. Do you want to go on to the next item or not?

MR. BERNSTEIN: Oh, okay, I do.

THE COURT: Okay. Next question, please.

BY MR. BERNSTEIN:

Q. Did your office -- did you submit documents to close the estate of Shirley with Simon as the personal representative at a time Simon was dead?

A. We did.

Q. You did? Excuse me? I didn't hear an answer.

A. I said yes.

Q. So Shirley's estate was closed by a dead personal representative.

Can you give me the time that the estate was closed by Simon while he was dead?

MR. ROSE: Objection. Argumentative.

THE COURT: Overruled.

You can answer.

THE WITNESS: I believe it was October, November 2012.

BY MR. BERNSTEIN:

Q. Do you want to check your records on that?

A. I believe it was after his death. I know he died September 13, 2012. And we had received late from

one of your sisters the signed waiver. So it was probably in November, somewhere around there.

Q. You stated that Simon -- that Kimberly did five waivers for the siblings that she sent back in fraudulently to the court through your law firm.

Did she also do a fraudulent forged signature of a waiver for Simon?

A. I'm not sure. I guess if you're saying she did --

Q. Well, the court has on file a waiver of Simon's that she's admitted to.

A. We filed all of the waivers originally with the court all signed by the appropriate parties, and the court kicked those back. And she forged and notarized new documents and sent them to the court. She felt she had made a mistake.

Q. Okay. Are you aware of an April 9th full waiver that was allegedly signed by Simon and you?

A. Yeah. That was the waiver that he had signed. And then in the May meeting, we discussed the five of you, all the children, getting back the waivers of the accountings.

Q. Okay. And in that April 9th full waiver you used to close my mother's estate, does Simon state that he has all the waivers from all of the parties?

A. He does. We sent out -- he signed that, and we sent out the waivers to all of you.

Q. Okay. So on April 9th of 2012, Simon signed, with your presence, because your signature's on the document, a document stating he had all the waivers in his possession from all of his children.

Had you sent the waivers out yet as of April 9th?

THE COURT: What is it that you want the witness to answer? There was several questions.

MR. BERNSTEIN: Oh, compounded a little bit?

THE COURT: Yes.

MR. BERNSTEIN: Sorry.

THE COURT: So you even --

MR. BERNSTEIN: I'll kick that back.

THE COURT: So you even know the lingo of the objections.

MR. BERNSTEIN: I'll kick that back to one at a time, because it's an important point.

BY MR. BERNSTEIN:

Q. April 9th, 2012, you have a signed full waiver of Simon's that says that he is in possession of all of the signed waivers of all of the parties?

A. Standard operating procedure, to have him sign, and then to send out the documents to the kids.

Q. Was Simon in possession -- because it's a sworn statement of Simon saying, I have possession of these waivers of my children on today, April 9th, correct, the day you two signed that?

Okay. So if you hadn't sent out the waivers yet to the --

A. I'm not certain when the waivers were sent out.

Q. Were they sent out after the --

A. I did not send them out.

Q. Okay. More importantly, when did you receive those? Was it before April 9th or on April 9th?

A. We didn't receive the first one until May. And it was your waiver that we received.

Q. So how did you allow Simon, as his attorney, to sign a sworn statement saying he had possession of all of the waivers in April if you didn't get mine 'til May?

MR. ROSE: Objection. I think it's relevance and cumulative. He's already answered.

THE COURT: What's the relevance?

MR. BERNSTEIN: Oh, this is very relevant.

THE COURT: What is the relevance on the issue that I have to rule on today?

MR. BERNSTEIN: On the validity? Well, it's

relevant. If any of these documents are relevant, this is important if it's a fraud.

THE COURT: I'll sustain the objection.

MR. BERNSTEIN: Okay. Can I -- okay.

BY MR. BERNSTEIN:

Q. When did you get -- did you get back prior to Simon's death all the waivers from all the children?

A. No, we did not.

Q. So in Simon's April 9th document where he says, he, Simon, on April 9th has all the waivers from his children while he's alive, and you didn't even get one 'til after he passed from one of his children, how could that be a true statement?

MR. ROSE: Objection. Relevance. Cumulative.

THE COURT: Sustained.

Here's what I'm going to decide at the end of the day; I'm going to decide whether Shirley's 2008 will and trust and 2008 amendment are valid and enforceable. I'm going to decide whether Simon's 2012 will and 2012 trust documents are valid and enforceable. You have a lot more on your mind than I have on mine. You do. Right? But those are the things that I'm working on. So I'm focused like a laser and you're focused more like a shotgun. I'm telling you this so that you can focus more tightly

on the questions you're asking and the facts you're developing so they'll help me make an accurate decision on those things that I'm going to decide today. You can keep asking questions that don't go anywhere, but I would hope that you'll adjust your approach so that you'll help me make an accurate decision.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. And on validity, let's just get right to that real quick. You've testified to a lot of documents here today, correct, of the estate documents you drafted, correct?

A. Yes, I did.

Q. Did you gain any pecuniary interest, did you gain any titles in those documents?

A. Pecuniary interest? No. I was named by your father as personal representative and trustee of his trust.

Q. And so you executed -- you drafted the documents, you signed them as a witness, and you gained interest in the documents, correct?

A. No, I did not.

Q. You didn't gain interest as a trustee --

MR. ROSE: Objection.

BY MR. BERNSTEIN:

Q. -- or a personal representative of those documents?

MR. ROSE: Objection. Cumulative. Asked and answered.

THE COURT: Overruled.

THE WITNESS: I was named as his personal representative and trustee, along with my partner.

BY MR. BERNSTEIN:

Q. Did you witness the document?

A. I did.

Q. Did you draft the document?

A. I did.

Q. Okay. You mentioned there was Kimberly Moran there at the signing of these documents, correct?

A. She was.

Q. Okay. Can you point her out, because I'm going to need her to testify as to the validity?

A. I do not see her in the courtroom.

Q. Okay. You mentioned a Traci Kratish. Can you point her out in the courtroom today to validate the documents?

A. I don't see Traci in the room either.

Q. So she was another witness that is not here present to validate the documents today? Well, it's

awful -- okay.

Is Kimberly Moran here who notarized the documents.

MR. ROSE: Objection. Cumulative. Asked that a minute ago.

MR. BERNSTEIN: I didn't -- did I? Was it Moran --

THE COURT: No, I thought it was some other name.

MR. BERNSTEIN: So did I.

THE COURT: Is Kimberly here?

THE WITNESS: She's not.

THE COURT: Okay. Next question.

BY MR. BERNSTEIN:

Q. Okay. Being a former estate planning attorney. To validate a document, wouldn't you have the parties who witnessed and notarized and signed present?

MR. ROSE: Objection. Relevance. Misstates --

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Is it necessary to validate documents with the necessary notaries and witnesses present?

MR. ROSE: Objection. Calls for a legal conclusion.

THE COURT: Well, I'm the one that's going make that decision. I don't care what the witness says about the law.

MR. BERNSTEIN: I gotcha. Okay.

THE COURT: So this would be a good time for us to take a pause. We're not making headway.

You ever here of cavitation when it comes to boat propellers?

MR. BERNSTEIN: No.

THE COURT: Okay. I don't know a lot about the physics of it, but a boat goes forward based on a propeller spinning in the water. And it happens sometimes in racing boats, maybe other boats too, that you get the propeller going so fast or you do something so much with the propeller that it cavitates, which means that it's not actually pushing in the water. It's making a lot of noise. It's spinning like crazy. It's furiously working, but it's not propelling the boat forward. I want to suggest to you that you've hit a point of cavitation. So this would be a good time for us to take our lunch break so that when we get back we'll go forward with this ship that is our trial.

MR. BERNSTEIN: How long?

THE COURT: It'll be until 1:30.

MR. BERNSTEIN: Okay.

THE COURT: That'll give everybody a time to revive, if necessary, and we'll reconstitute ourselves at 1:30. Thanks.

(A break was taken.)

(Proceedings continued in Volume 2.)

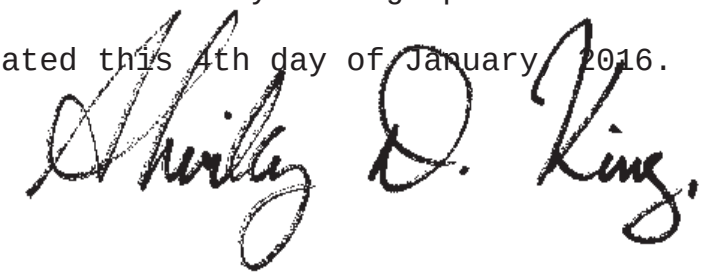
C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Shirley D. King, Registered Professional Reporter, State of Florida at large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 4th day of January, 2016.



Shirley D. King, RPR, FPR

Job #1358198-VOL 1

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE No. 502014CP003698XXXXNB

TED BERNSTEIN,

Plaintiff,

-vs-

DONALD R. TESCHER, ELIOT IVAN BERNSTEIN, LISA SUE FRIEDSTEIN, JILL MARLA IANTONI, et al.,

Defendants.

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TRIAL BEFORE THE HONORABLE
JOHN L. PHILLIPS
VOLUME 2 PAGES 117 - 260

Tuesday, December 15, 2015
North County Courthouse
Palm Beach Gardens, Florida 33410
9:43 a.m. - 4:48 p.m.

Reported By:
Shirley D. King, RPR, FPR
Notary Public, State of Florida
West Palm Beach Office Job #1358198- VOL 2

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P R O C E E D I N G S

- - -

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THE COURT: We're ready to resume. Our witness is still under oath.

Is there any further cross-examination?

MR. BERNSTEIN: Yes.

THE COURT: Okay.

CROSS (ROBERT SPALLINA) (Cont'd)

BY MR. BERNSTEIN:

Q. Mr. Spallina, just to clarify --

MR. ROSE: Your Honor, can he just stand at the podium?

THE COURT: Okay. Well, use the podium. Your microphone will help explain your questions. But you can walk up there. If you need to show the witness a document or something, that's fine.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Did you -- are you a member of the Florida Bar?

A. Yes, I am.

Q. Currently?

A. Yes, I am.

Q. Okay. You said before you surrendered your

license.

A. I said I withdrew from my firm. It wasn't that I was not practicing.

Q. Okay. In the chain of custody of these documents, you stated that there were three copies made?

A. Yes.

Q. Do you have those three original trust copies here?

A. I do not.

MR. BERNSTEIN: Does anybody?

THE COURT: Do you have any other questions of the witness?

MR. BERNSTEIN: Yeah. I wanted to ask him some questions on the original documents.

THE COURT: Okay. Keep going.

BY MR. BERNSTEIN:

Q. Okay. So the original documents aren't in the court?

A. I don't have them.

Q. Your firm is not in possession of any of the original documents?

A. I'm not sure. I'm not at the firm anymore.

Q. When you left the firm, were there documents still at the firm?

A. Yes, there were.

Q. Were you ordered by the court to turn those documents over to the curator, Benjamin Brown?

A. I don't recall.

MR. ROSE: Objection. Can he clarify the question, which documents? Because I believe the curator was for the estate, and the original will was already in file, and the curator would have no interest in the trust --

THE COURT: Which documents? When you say "those documents," which ones are you referring to?

MR. BERNSTEIN: Any of the trusts and estate documents.

THE COURT: Okay. That's been clarified.

You can answer, if you can.

THE WITNESS: I believe that he was given -- I believe all the documents were copied by Mr. Pollock's office, and that he was given some type of zip drive with everything. I'm not sure, though. I couldn't --

BY MR. BERNSTEIN:

Q. Did the zip drive contain the original documents?

A. Did not. I believe the original documents came back to our office. Having said that, we would only have -- when we made and had the client execute

three documents, two originals of those documents would remain with the client, and then we would keep one original in our file, except -- including, most of the time, the original will, which we put in our safe deposit box. So we would have one original of every document that they had executed, including the original will, and they would keep two originals of everything, except for the will, which we would give them conformed copies of, because there was only one original will.

Q. Okay. I asked a specific question. Did your firm, after the court order of Martin Colin, retain documents, original documents?

MR. ROSE: Objection. Sorry. I should have let him finish.

MR. BERNSTEIN: -- original documents?

THE WITNESS: I believe --

MR. ROSE: Relevance and misstates the -- there's no such order.

THE COURT: Well, the question is, Did your firm retain the original documents?

Is that the question?

MR. BERNSTEIN: Yes, sir.

THE COURT: Overruled.

Answer, please.

THE WITNESS: I believe we had original

documents.

BY MR. BERNSTEIN:

Q. After the date you were court ordered to produce them to the curator?

MR. ROSE: Object -- that's the part I object to.

THE COURT: Sustained.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. To your knowledge -- so, to your knowledge, the documents can't all be here since they may be at your firm today?

A. I don't practice at the firm anymore, so I'm not sure where the documents are.

Q. Okay. And you said you made copies of all the documents that you turned over to the curator? Did you turn over any original documents as ordered by the court?

MR. ROSE: Objection. Same objection. There's no court order requiring an original document be turned over.

THE COURT: What order are you referring to?

MR. BERNSTEIN: Judge Colin ordered when they resigned due to the fraudulent alteration of the documents that they turn over --

THE COURT: I just said, what order are you referring to?

MR. BERNSTEIN: It's an order Judge Colin ordered.

THE COURT: All right. Well, produce that order so I can see it, because Judge Colton's [sic] been retired for six or seven years.

MR. BERNSTEIN: Okay. I don't have it with me, but...

THE COURT: Well, Judge Colton's a retired judge. He may have served in some other capacity, but he doesn't enter orders, unless he's sitting as a replacement judge. And that's why I'll need to see the order you're talking about, so I'll know if he's doing that. Okay. Thanks. Next question.

BY MR. BERNSTEIN:

Q. Okay. Has anyone, to the best of your knowledge, seen the originals while you were in custody of them?

A. Yes.

Q. Okay. Who?

A. I believe Ken Pollock's firm was -- Ken Pollock's firm was the firm that took the documents for purposes of copying them.

Q. Did anybody ask you, refer copies to inspect

the documents?

A. Other than Ken Pollock's office, I don't recall.

Q. Did I ask you?

A. Perhaps you did.

MR. BERNSTEIN: Okay. I'd like to go through some of the documents with him real quick. But I don't have my wife to hand me the documents, so it's going to take me incredibly long. These are just copies I have. Can I approach him?

THE COURT: All approaches are okay.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Are these the documents that you drafted, Shirley's will and Shirley's trust agreement?

MR. ROSE: Your Honor, could I see what he's handing the witness before he hands it to them?

THE COURT: Say again.

MR. ROSE: I don't know what he's handing the witness.

THE COURT: All right. You'll need to show the other side the documents that you're handing to the witness so that they're looking at the same thing you're talking about.

MR. ROSE: These are not accurate. These are

multiple things stapled together. I'd object to the exhibit -- or the use of it.

THE COURT: Ma'am, if you come back up past that bar one more time, you'll be in contempt of court. I don't want you to be in contempt of court. Do you understand my instruction?

MRS. BERNSTEIN: Yes.

THE COURT: Thank you.

MR. ROSE: I don't know if that's filed with the court and I don't know that these are genuine. And the second document has attached to it --

THE COURT: Well, you don't need to tell me what the papers are. The thing that the person who's asking the questions has to do is show you the documents that he's going to show the witness.

MR. ROSE: Okay.

THE COURT: Then I intend to move forward. I expect he'll show the witness the documents and then he'll probably ask a question.

Am I right?

MR. BERNSTEIN: Do you want to see those?

THE COURT: Nope.

So then if there's an objection to the documents coming in, if at some time they're proffered as an exhibit, then I'll take the

objection.

Have you seen the documents that are in his hand that are going to be shown to the witness?

MR. ROSE: Oh, yes, sir. I'm sorry.

THE COURT: Okay. That's fine.

Proceed.

BY MR. BERNSTEIN:

Q. Okay. Can you look at the initials on the pages of that document and describe them -- describe what they look like?

A. The initials?

Q. Yes.

A. On each page, there's an SB --

Q. Okay.

A. -- for your mother's initials.

Q. And it's clearly SB?

A. Is it clearly SB?

Q. Yeah. Looks like SB?

A. Yes, it's clearly SB.

Q. Okay. And on this will signed on the same date by my mother in your presence, is that my mom's initials? And does it look like an SB? Do they even look similar?

A. Well, your mother was asked to sign these documents.

Q. Okay.

A. When we execute a will, unlike the bottom of the trust agreement where we initial the trust pages, on the bottom of the will, she's supposed to sign her signature. And which she has done at the bottom of each page, is sign her signature consistent with the signature page that she signed.

Q. So what you're saying is, she signed this document, that she initialed this document?

A. Right. We only ask that for purposes of the trust that they initial each page. For purposes of the will, that they sign each page.

So this is the signature that she has -- this is her signature on the bottom of this document.

Q. Well, there's no line saying that's her signature, correct? There would be --

A. But that was our practice.

Q. Okay.

A. That was our practice, to have --

Q. Okay. You testified to my dad's state of mind that he was fine.

Si was usual when you saw him from May through his death; is that correct?

A. Are you speaking about 2012?

Q. Yes.

A. Correct.

Q. Are you aware of any medical problems my father was having at that time?

A. No, I'm not.

Q. Are you aware of any stress he was under?

A. No, I was not.

Q. Mr. Rose had you read into or -- read into the record a letter that I wrote with my waiver, saying, anything -- I haven't seen the dispositive documents, but I'll do anything, 'cause my dad is under stress, to relieve him of his stress.

Do you know what stress I was referring to?

A. I don't.

Q. Were you in the May meeting with my father, May 10, 2012?

A. I was -- are you talking about on the telephone call?

Q. Correct.

A. I wasn't together with him.

Q. Okay. Were you together with anybody on that call?

A. No. I was on -- in my -- my office phone.

Q. Okay. And at that meeting, did Si state that he was having this meeting to end disputes among certain parties and himself?

A. I don't recall.
Q. Were there any disputes you were aware of?
A. The only thing that he ever brought to my attention was the letter that Pam had sent him.
Q. And what did Pam's letter state, basically?
A. I can't remember it. I mean, it was the letter that he showed me in February of 2012. But the general gist of that letter was that she was unhappy about not being part of their estates.
Q. Just her or her and her children?
A. She may have spoke to her children.
Q. Was there anybody else who was left out of the wills and trusts?
A. That was causing him stress?
Q. No. Just anybody at this point that was left out, other than Pam.
A. Yes. Ted.
Q. And are you aware of anything Ted and Pam were doing to force upon Si changes?
A. Not to my knowledge, other than the letter that Pam had sent to him just expressing her dissatisfaction.
Q. You said you talked to her attorney?
A. I talked to her attorney.
Q. And you told her attorney, while Si was

living, that she had been cut out of the estates and trusts with her brother Ted?

A. I don't recall the conversation with the attorney, but, ultimately, Si gave me authorization to send documents to the attorney. So we may have had a conversation about it.

Q. So you're stating that Si told you to -- he authorized you to tell his daughter that she had been cut out of the estates and trusts?

A. He authorized me to send documents to the attorney.

Q. Did you send those documents to the attorney?

A. I believe we did, yes.

Q. Okay. Was Ted and his lineal descendants disinherited?

A. They were, under the original documents.

Q. Well, under Shirley's document that's currently theirs, Ted considered predeceased for all purposes of disposition according to the language in the document you drafted?

A. To the extent that assets passed to him under the trust.

Q. Well, the document says, for all purposes of disposition, Ted Bernstein is considered predeceased, correct?

A. You'll have to state the question again.

Q. Does the document you drafted say that Ted Bernstein is both considered predeceased under the beneficiary definition with his lineal descendants and considered predeceased for all purposes of dispositions of the trust?

MR. ROSE: Objection. Best evidence. The document's in evidence.

THE COURT: Sustained.

MR. BERNSTEIN: I'll have him read it.

THE COURT: Well, I mean, I can read it. It's in evidence. So when it comes time, just point me to the part that you want me to read, and I'll read it. But I don't need to have the witness read it to me. That's of no benefit.

MR. ROSE: Your Honor, and for the record, those issues are part of the other counts and aren't being tried today.

MR. BERNSTEIN: Page 7, Your Honor, of the Shirley trust.

THE COURT: What exhibit number is that?

MR. BERNSTEIN: You want me to enter it as my exhibit?

THE WITNESS: Plaintiff's Exhibit 2, Your Honor.

THE COURT: All right. Let me go to page 7 of Plaintiff's 2.

MR. BERNSTEIN: Can I enter this one into the record?

THE COURT: Is it the same as the one I already have?

MR. BERNSTEIN: According to Alan, it's not.

THE COURT: According to who?

MR. BERNSTEIN: Mr. Rose.

THE COURT: All right. Well, if it comes time for you to put any exhibits in on your case, if that's not a duplicate of an exhibit that's already in, you're welcome to put it into evidence. But this is not the time when you put evidence in. This is the time when you're cross-examining the plaintiff's witness.

MR. BERNSTEIN: Okay.

THE COURT: So on Page 7 of Plaintiff's 2, you can go on with your questioning.

BY MR. BERNSTEIN:

Q. Are you there and are we on the same page? Yes?

A. Yes, I am.

Q. Okay. In the definition of -- under E1, do you see where it starts "notwithstanding the foregoing"?

A. Yes.
Q. Okay. Can you read that?
A. "Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this trust to my children, Ted S. Bernstein and Pamela B. Simon and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children Eliot Bernstein, Jill Iantoni and" --
Q. Okay, that's -- you can stop there.
Would you consider making distributions a disposition under the trust?
A. It would it depend on other factors.
Q. What factors?
MR. ROSE: Objection. Relevancy.
THE COURT: Sustained.
BY MR. BERNSTEIN:
Q. Is a validity hearing a disposition of the trust?
MR. ROSE: Objection. Calls for a legal conclusion.
THE COURT: Sustained.
MR. BERNSTEIN: Well, he drafted the document, so I'm trying to get what his meaning was when he

put it in. And it's relevant to the hearing today.

THE COURT: I ruled it's not relevant.

MR. BERNSTEIN: Oh, you did rule that?

THE COURT: Do you have another question of the witness? Or we're moving on.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. So for purposes of disposition, Ted, Pam and her lineal descendants are considered predeceased, correct?

MR. ROSE: Objection. Relevancy, cumulative and best evidence.

THE COURT: Sustained.

The document says what it says.

MR. BERNSTEIN: Okay.

THE COURT: When you ask a witness if it says what it says, I don't pay any attention to his answer, because I'm reading what it says.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Did you produce a fraudulent copy of the Shirley trust agreement?

A. No, I did not.

Q. So when you sent to Christine Yates this trust agreement with the attached amendment that you've

already admitted you fraudulently altered, was that producing a not valid copy of the trust that was distributed to a party?

A. We've already talked about the amendment was not a valid amendment.

Q. No, I'm asking, did you create a not valid trust of my mother's and distribute it to Christine Yates, my children's attorney?

MR. ROSE: Objection. Cumulative. He's covered this.

MR. BERNSTEIN: Well, it has to go to the validity, Your Honor, because --

THE COURT: The question I'm figuring out is, have we already covered this?

MR. BERNSTEIN: We touched on a piece of it. The more important part --

THE COURT: Okay. Then I'll let you reask your question to cover something that we've not already covered.

MR. BERNSTEIN: Okay. And we covered that the --

THE COURT: You don't have to remind me.

MR. BERNSTEIN: Oh, okay.

THE COURT: Listen, see, this -- look at this. I take notes. I write stuff down. Now, a lot of

times, if you see me not writing and I'm doodling, that means you're not scoring any points.

MR. BERNSTEIN: You've got to show me --

THE COURT: The point is, I should be writing notes. So that means you're not doing any good.

MR. BERNSTEIN: Gotcha.

THE COURT: So, please, the reason I write it is so we don't have to repeat things.

BY MR. BERNSTEIN:

Q. Okay. You've already stated that you created a fraudulent amendment.

Did you attach it to a Shirley trust document?

A. No. We included the amendment with the documents that we transmitted to her.

Q. So it was included as part of the Shirley trust document as an amendment, correct?

A. It was included as an amendment.

Q. To the Shirley trust document.

Thereby, you created a fraudulent copy, a not valid copy of the Shirley trust, correct?

MR. ROSE: Objection. Argumentative. Cumulative.

THE COURT: Overruled.

You can answer. Did that create a fraudulent version of the trust?

THE WITNESS: It could have, yes, Your Honor.
BY MR. BERNSTEIN:
Q. Can you explain why it couldn't have?
A. Because Si ultimately exercised his power of appointment, which was broader than the definitional provision in the document.
Q. That's not my question. I'll just say it was asked and not answered.
Okay. So there are not validly -- not valid Shirley trust agreements in circulation, correct?
A. That's not true.
Q. Well, the Shirley trust agreement you said sent to Christine Yates you've just stated was invalidly produced.
A. To Christine Yates.
Q. Yeah, okay. So I said "in circulation."
Is Christine Yates out of circulation?
A. I don't know what Christine Yates did with the documents.
Q. Well, I got a copy, so they're even more in circulation.
So my point being, you sent from your law firm fraudulent -- a non-valid copy of the document --
A. Which document?
Q. -- the Shirley trust and her amendment to

Christine Yates, right?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

MR. BERNSTEIN: Okay. We'll move on from that.

BY MR. BERNSTEIN:

Q. Would you know about when you did that fraudulent alteration of the document?

A. January 2013.

Q. And you were a fiduciary -- or you were counsel to the alleged fiduciary, Ted Bernstein, of the Shirley Bernstein trust, correct?

A. Yes, we were.

Q. And you were counsel to Ted Bernstein as the alleged personal representative of Shirley's estate?

A. Yes, we were.

Q. And as Ted's counsel in the Shirley trust, can you describe what the not valid trust agreement that was sent to Ms. Yates did to alter the beneficiaries of the document?

MR. ROSE: Objection. Cumulative.

THE COURT: Overruled.

What alterations did that make to the beneficiaries?

THE WITNESS: It didn't make any alterations

to the beneficiaries. The document's not a valid document and so it couldn't have made any changes to the estate planning.

BY MR. BERNSTEIN:

Q. Okay. But what did it intend to do?

MR. BERNSTEIN: Sorry. Excuse me, Your Honor. What did you say?

THE COURT: Next question.

BY MR. BERNSTEIN:

Q. Okay. What did it intend to do?

A. I answered that question earlier.

THE COURT: I can't let the witness object to questions. That won't work.

THE WITNESS: I'm sorry, Your Honor. Earlier you asked me the question, and I responded to you that it was to carry out your father's intent and the agreement that you all had made prior to his death, on that telephone call, and to have a document that would provide, perhaps, clarity to a vague misinterpretation of your mother's document.

BY MR. BERNSTEIN:

Q. So instead of going to the court, you just frauded a document to an attorney, who's representing minor children in this case -- produce a fraudulent copy of the trust document, making us have total trouble

understanding what's real and not, especially with your firm's history of fraudulent and forged documents submitted to the court in this case.

THE COURT: Okay. Thanks. You're just ranting. Ranting is not allowed.

MR. BERNSTEIN: Sorry.

THE COURT: If you'd like to ask a question, I'll let you do that. If I have to call you on this too many more times, I'm going to assume that you're done questioning the witness.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. When did you first meet my parents?

A. 2007.

Q. And how did you meet them?

A. I met them through someone that made a referral to them to our office.

Q. You didn't know Ted Bernstein prior to meeting Si?

A. I don't recall who we met first. I'm not sure.

Q. What firm were you with at the time?

A. Tescher, Gutter, Chaves, Josepher, Rubin and Ruffin and Forman.

Q. And how long were you with them?

A. Five-plus years.
Q. And where were you before that?
A. I was in school.
Q. Okay. Did you work at Sony Digital ever?
A. I did.
Q. You did. And when was that, before school or after?
A. That was from 1994 to '96.
Q. So after school?
A. After college.
Q. Okay. So that was -- you just forgot about that one in your history.
Is there any other parts of your biography I'm missing?
MR. ROSE: Objection. Argumentative.
THE COURT: Sustained.
BY MR. BERNSTEIN:
Q. Can you repeat, since I'm -- there was a little clarification error there. Your history, you started --
THE COURT: That's not necessary to repeat the history. Do you have a new question?
MR. BERNSTEIN: Well, I'm trying to get the history.
THE COURT: I don't want him to repeat what

he's already said. That moves the case backwards.
I want to go forward. You're cavitating.
MR. BERNSTEIN: Okay.
BY MR. BERNSTEIN:
Q. Did the altered trust document sent to Christine Yates attempt to convince Yates and others she sent that document to that Ted and Pam's lineal descendants were actually inside the document?
A. Say the question again.
Q. Well, we read the section where they're considered predeceased, Ted and Pam and their lineal descendants.
When you altered that amendment that you said you were just doing Si's wishes postmortem by altering a document, my question is, did you put language in there that would have made Ted and Pam's lineal descendants now beneficiaries of Shirley's trust?
MR. ROSE: Objection. I think it's cumulative. We've covered this.
THE COURT: Sustained.
MR. BERNSTEIN: Okay.
BY MR. BERNSTEIN:
Q. Can the beneficiary of Shirley's trust be Ted, Pam or their lineal descendants?
A. If the assets of her trust were to pass under

the trust, no --

Q. Okay.

A. -- under the trust.

Q. So in the trust language of the Shirley trust document, Ted's lineal descendants and Pam's lineal descendants can get no dispositions, distributions, whatever you want to call it?

A. You have to ask the question in a different way, because I answered the question. I said, if it passes under the trust, that they would not inherent. If.

Q. Okay. When Shirley died, was her trust irrevocable at that point?

A. It was.

Q. Who were the beneficiaries?

A. Simon Bernstein.

Q. And who were the beneficiaries -- well, Simon Bernstein wasn't a beneficiary. He was a trustee.

A. No, he became the beneficiary of her trust when she died. He was the sole beneficiary of her trust when she died.

Q. Okay. And then who would it go to when he died?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Okay. When Simon died, who would the benefits of Shirley's trust go to?

MR. ROSE: Objection. Cumulative.

THE COURT: Are you asking him to tell you what would happen if the mother died first, then the father died second, and we have the trust documents and the wills that are in place so far that have been testified to at the trial?

MR. BERNSTEIN: Correct.

THE COURT: I already know all that stuff.

MR. BERNSTEIN: Well --

THE COURT: So what is the new question you want to ask that's not cumulative?

MR. BERNSTEIN: Okay. Well, I'm trying to get to a very significant point there.

THE COURT: Get there. Just go there and see what happens.

MR. BERNSTEIN: I just have to learn to ask these questions a little more like a lawyer.

THE COURT: Yes.

MR. BERNSTEIN: So I have to rethink how to ask that.

BY MR. BERNSTEIN:

Q. Do you recall talking to Detective Ryan

Miller?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Can you tell me all the roles you had in these estates and trusts, and your partner, Don Tescher?

A. We were the attorneys to your parents. Upon your dad's death, we became counsel to his estate and served as co-PRs and co-trustees under his documents.

Q. Any other roles?

A. Served as counsel for -- we served as counsel for Ted as fiduciary under your mother's documents.

Q. And who served as your counsel as trustee PR -- co-trustee, co-PR?

A. Mark Manceri.

Q. Mark Manceri submitted that he was your attorney?

A. I believe so, yes.

Q. Did you take a retainer out with him?

MR. ROSE: Objection. Relevance.

THE WITNESS: I'm sorry.

THE COURT: What's the relevance of the retainer question?

THE WITNESS: I'm sorry. I take that back. Mark Manceri was not counsel to us with respect to

the estate, except on a very specific matter.

THE COURT: The question that was objected to was, did you take out a retainer? What's the relevance of that?

MR. BERNSTEIN: Well, I'm trying to figure out if he was properly representing before the court these documents, and to his credibility, meaning his --

THE COURT: I'll sustain the objection.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. And a question about the court. How long before you notified the court as a personal representative fiduciary that you had produced a fraudulent trust of Shirley's?

A. To whom? I don't know that we ever represented the document to the court, and I don't know that anyone ever came to the court and said that we did.

Q. Well, I did in a petition I filed and served on you --

MR. ROSE: Objection.

BY MR. BERNSTEIN:

Q. -- of January -- excuse me -- petition that I served on you exposing a fraud of what happened with Christine Yates after you admitted that to the police.

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Okay. How many times have you spoken with Alan Rose in the last three months?

A. Twice.

Q. Did you prepare for this hearing in any way with Alan Rose?

A. I did.

Q. Okay. Was that the two times you spoke to him?

A. Yes.

Q. Do you see any other of the parties that would be necessary to validate these trust documents in the court today?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. And you gave testimony to the total net worth of Simon today, when you were asked by Mr. Rose; is that correct?

A. Yes.

Q. How long did you serve as the co-trustee and co-personal representative?

A. Of your father's estate? Since the date of

his death.

Q. And his trust?

A. Same.

Q. Okay. Did you produce an accounting to support those claims you made today?

MR. ROSE: Objection. Relevancy.

THE COURT: Sustained.

MR. BERNSTEIN: Well, can I argue that or --

THE COURT: No.

MR. BERNSTEIN: Not even close. Does that mean I have to ask it a different way?

THE COURT: Well, I can't answer questions. I'm not allowed to give anybody legal advice.

MR. BERNSTEIN: Okay. That was procedural, I thought. But okay.

THE COURT: Well, that's legal advice. Procedure is a legal issue.

BY MR. BERNSTEIN:

Q. As a fiduciary of the estate of Simon and the trust of Simon, did your law firm produce a accounting?

MR. ROSE: Objection. Relevance.

MR. BERNSTEIN: Well, it's relevant to, if he's a fiduciary, his conduct. I mean, there's --

THE COURT: Here's the way I handle objections --

MR. BERNSTEIN: Okay.

THE COURT: -- somebody asks a question, and somebody in the courtroom says objection, and then I have them state the legal objection and stop. The other side doesn't say anything, unless I say, Is there any argument one side or the other? Because usually I can figure this stuff out without having to waste time with arguments.

I didn't ask for any argument, right? Okay. Sustained. Next question.

BY MR. BERNSTEIN:

Q. Mr. Rose asked you about Shirley's Bentley.

Are you aware -- you became aware of Shirley's Bentley, correct?

A. Yes.

Q. When you became aware of Shirley's Bentley, did you put in an amended inventory to account for it?

THE COURT: What's this going to help me decide on the validity of the wills or trusts?

MR. BERNSTEIN: I'm just responding to the statements that were brought up.

THE COURT: I wish you would have objected to the relevancy then, but you didn't.

MR. BERNSTEIN: I did.

THE COURT: I don't think so.

MR. BERNSTEIN: No?

THE COURT: I'm a car guy, so I pay attention if somebody's asking questions about Bentleys just because it's interesting.

MR. BERNSTEIN: Well, it's so important, Your Honor, because --

THE COURT: No, it's not. Right now what is tied is, are the wills and trusts bound?

MR. BERNSTEIN: We have to question his competency.

THE COURT: And so what's in the estate or what's in the trust is not of any interest to me right now. So if that Bentley should have been in the estate or should not have been in the estate, it should have been accounted for, not accounted for, I'm not going to figure out today. But I want to get all the evidence I possibly can to see whether these wills and trusts that are in front of me are valid or not valid. And I'm hoping that you'll ask some questions that'll help me figure that out.

MR. BERNSTEIN: Are those originals that you have?

THE COURT: See, I'm not the witness. I'm the judge. So I'm not sworn in and I have no knowledge

of the facts of this case, other than what the witnesses tell me.

MR. BERNSTEIN: I'm winding down. I'll check my list.

THE COURT: All right.

BY MR. BERNSTEIN:

Q. Are you familiar with a document the Bernstein Family Realty LLC agreement?

A. Yes, I am.

Q. Did you draft that document?

A. Yes, I did.

Q. Was it part of Simon's estate planning?

A. It was part of his estate planning -- well, yes --

Q. And what was --

A. -- in a roundabout way.

Q. What was it designed to do?

A. It was designed to hold title to the home that you and your family live in.

Q. Oh, okay. And so it was -- who's the owners of that?

A. The three kids -- your three kids, Josh, Daniel -- your three kids' trusts that your father created -- and Jake -- that he created in -- I believe he created those trusts in 2006.

Q. And the prior testimony was, there were no special documents under Simon's estate plan for my family; is that correct?

A. Right. None that we prepared. Those were not documents that we prepared.

Q. Okay. I think he asked you if you knew of any.

So you knew of these, correct?

A. You're making me recall them. Yes.

Q. Oh, okay. Because you answered pretty affirmatively no before, that you weren't aware of any special --

THE COURT: Do you have any questions for the witness?

MR. BERNSTEIN: Okay. I get it.

BY MR. BERNSTEIN:

Q. You referenced an insurance policy.

MR. BERNSTEIN: Can I -- well, I can't ask him anything.

BY MR. BERNSTEIN:

Q. You referenced an insurance policy earlier, life insurance policy, that you said you never saw; is that correct?

A. Yes.

Q. And was that part of the estate plans?

A. We never did any planning with that. That was an insurance policy that your father had taken out 30 years before. He had created a trust in 1995 for that. That was not a part of any of the planning that we did for him.

Q. Did you file a death benefit claim on behalf of that policy?

MR. ROSE: Objection. Relevancy.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Is Christine Yates, who you sent the fraudulently altered Shirley trust document that's not valid, a layman?

MR. ROSE: Objection. Argumentative.

MR. BERNSTEIN: Excuse me.

BY MR. BERNSTEIN:

Q. Is she an attorney at law?

THE COURT: Now you're asking a different question.

MR. BERNSTEIN: Okay.

THE COURT: Thanks.

BY MR. BERNSTEIN:

Q. Is she a layman, as you described prior?

A. She's an attorney.

Q. Okay. So you were sending that document that

you said you altered to make a layman understand the language in the trust better?

MR. ROSE: Objection. Cumulative.

THE COURT: Let me have you finish your questioning.

BY MR. BERNSTEIN:

Q. But you sent it to Christine Yates, an attorney, who's not a layman?

A. We did.

Q. Okay. So it could be that you sent that document to an attorney to commit a fraud upon her clients, my children, minor children, correct?

A. The intent was not to commit a fraud.

Q. Okay.

A. Again, the intent was to carry out your dad's wishes.

Q. By fraudulently altering documents?

MR. ROSE: Objection. Argumentative.

THE COURT: Sustained.

If you ask one more argumentative question, I will stop you from asking the other things, because I'll figure that you're done. Is that clear?

MR. BERNSTEIN: Yes.

THE COURT: I'm done warning you. I think that's just too much to have to keep saying over

and over again.
BY MR. BERNSTEIN:
Q. When Shirley died, were her wishes upheld?
A. Your dad was the sole survivor of her estate -- he was the sole beneficiary of her estate and her trust.
Q. So her wishes of her trusts when Simon died were to make who the beneficiaries?
MR. ROSE: Objection. Cumulative.
THE COURT: Sustained.
BY MR. BERNSTEIN:
Q. Who did Shirley make -- are you familiar with the Eliot Bernstein Family Trust?
A. I am.
Q. And is that trust under the Shirley trust?
A. No, it's not.
Q. It's a separate trust?
A. It is.
Q. Is it mentioned in the Shirley trust?
A. It may be.
Q. As what?
A. As a receptacle for Shirley's estate.
Q. Her trust?
A. A potential receptacle for Shirley's trust.
Q. So there were three, the Eliot Bernstein

Family Trust, Lisa Friedstein and Jill Iantoni Family Trust, that are mentioned as receptacles. I would assume that's the word, beneficiary --

MR. ROSE: Objection.

BY MR. BERNSTEIN:

Q. -- of the Shirley trust, correct?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Okay. On Simon's medical state eight weeks before he died, when these documents of the Simon trust are alleged by you to have been signed, are you aware of any conditions of Simon's at that time medically?

A. I was not.

Q. Were you aware of any medicines he was on?

A. I was not.

Q. Were you aware he was seeing a psychiatrist?

A. I was not.

Q. Were you aware that he was going for a brain scan?

A. I was not.

Q. Were you aware that he was brought in to multiple doctors during that time for brain problems; that they ended up doing a brain biopsy at Delray Medical right around that time that he's said to sign

these documents?

A. He did not make us aware of any medical issues that he had.

Q. Okay. Did you ask him at the time you were signing those amended documents if he was under any medical stress?

A. No, I did not.

Q. Okay.

A. He --

MR. BERNSTEIN: Can I ask him to read that?

BY MR. BERNSTEIN:

Q. Can you look at that document and --

MR. BERNSTEIN: Judge, would you like a look at this?

THE COURT: I don't look at anything that's not an exhibit.

MR. BERNSTEIN: I'm exhibiting it to him.

THE COURT: Okay. Well, that's fine, but I want you to go ahead and ask your question. I don't look at things that aren't exhibits in evidence --

MR. BERNSTEIN: Okay.

THE COURT: -- unless I have to mark them. But no, I don't have a curiosity to look at pieces of paper.

MR. BERNSTEIN: Should I exhibit it as evidence -- can I exhibit it as --

THE COURT: If it comes into evidence, I'll look at it.

MR. BERNSTEIN: Okay. Can I submit it as evidence?

THE COURT: Well, have you asked any questions to establish what it is?

BY MR. BERNSTEIN:

Q. Is this a letter from your law firm -- prior law firm?

A. I did not prepare this letter --

Q. Okay.

A. -- but it appears to be, yes.

Q. Prepared by?

A. Donald Tescher.

MR. BERNSTEIN: Okay. Now can I submit it?

THE COURT: So you're offering it as an exhibit --

MR. BERNSTEIN: Please.

THE COURT: -- as Defendant's 2.

Is there any objection?

MR. ROSE: No objection.

THE COURT: All right. I'll take a look at it. And that'll be in evidence as Defendant's 2.

Thank you.

(Defendant's Exhibit No. 2 was received into evidence.)

BY MR. BERNSTEIN:

Q. Can you just read into the record paragraph 2 --

THE COURT: Well, I'm reading it. The document is in the record.

MR. BERNSTEIN: Oh, okay.

THE COURT: I'm reading paragraph 2 even as we speak, so I don't need the witness to read it for me. But if you want to ask him a question, you can go ahead with that.

BY MR. BERNSTEIN:

Q. Okay. That letter states that Si's power of appointment for Simon could not be used in favor of Pam, Ted and their respective children; is that correct?

A. Yes. Don appears to have written that.

Q. Did you get a copy of this letter?

A. I don't recall getting a copy of it, but doesn't mean that I didn't.

Q. But you are partners in that firm?

A. Yes, we were partners in that firm.

Q. Now, that -- this document --

MR. ROSE: Your Honor, can I just -- I don't

want to go out of order, but this is only relevant if the documents are valid. And if he's -- the whole point is the documents are valid. And he wants to argue the second part, of what they mean, then we should not have wasted a whole day arguing over the validity of these five documents.

THE COURT: Well, waste of time is what I do for a living sometimes. Saying we shouldn't be here doesn't help me decide anything.

I thought I was supposed to decide the validity of the five documents that have been pointed out; some of them might be valid and some of them might be invalid. And I'm struggling to decide what's relevant or not relevant based upon the possibility that one of them might be invalid or one of them might not. And so I'm letting in a little bit more stuff than I normally think I would.

MR. ROSE: I'm concerned we're arguing the second -- the second part of this trial is going to be to determine what the documents mean and what Simon's power of attorney could or couldn't do. And this document goes to trial two and not trial one, although I didn't object to its admissibility.

THE COURT: Well, since it's in evidence,

we'll leave it there and see what happens next.

Do you have any other questions of the witness?

MR. BERNSTEIN: Yeah.

BY MR. BERNSTEIN:

Q. It says that the document that you fraudulently altered creating the invalid copy of the Shirley trust had some kind of paragraph 2 that was missing from the original document --

MR. ROSE: Objection. Argumentative.

BY MR. BERNSTEIN:

Q. -- from my understanding.

THE COURT: You may finish your question. And make sure it's a question and not an argument. Because you know what happens if this is an argument.

MR. BERNSTEIN: I'm not arguing. I'm just asking --

THE COURT: I want you to ask your question.

BY MR. BERNSTEIN:

Q. It says here that there was a blank spot that you -- a Paragraph No. 2 which modified the definitional language by deleting words.

According to this document, the power of appointment by Simon could not alter the Shirley trust

agreement, correct?

A. Don seems to be suggesting that in the second paragraph. I don't necessarily believe that that's the case.

Q. Did you review this document with Don?

MR. ROSE: Objection. Cumulative.

THE COURT: The question is, Did you go over this document with Don?

MR. BERNSTEIN: Correct.

THE COURT: Overruled.

You can answer.

THE WITNESS: No.

BY MR. BERNSTEIN:

Q. So he's -- Don, in this letter, is describing your actions, correct?

A. Yes.

Q. Okay. Did you write a letter to anybody describing your actions?

A. I did not.

Q. You did not.

And what have you done to correct the damages caused by that to my family?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. And are you aware of an autopsy that was done on my father the day -- or ordered the day he died?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Are you aware -- well, are you aware of a heavy metal poison test that was done by the Palm Beach County coroner?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

MR. BERNSTEIN: Well, it's --

THE COURT: Next question.

MR. BERNSTEIN: I'm trying to figure that out.

Your Honor, is -- I can't ask you that question.

BY MR. BERNSTEIN:

Q. Competency. Based on everything you know about Simon, when he signed those documents, he was competent?

A. To my knowledge, he was of sound mind and body.

Q. Now, are you a medical expert?

A. I'm not.

Q. Are you aware of any other fraudulent activity that took place in anything in the estate and trusts of

Simon Bernstein by yourself or your employees?

A. Are you referring back to the closing of your mother's estate?

Q. I'm referring to any other --

A. -- we've talked about.

Q. So can you list those and then just say that's all that you're aware of?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Other than the fraud that you've admitted to in the documents of Shirley, the Moran forged and fraudulent waivers, the April 9th waiver that you and Si signed stating he had all the waivers when he couldn't have, are there any other frauds that you're aware of that took place with these estate and trust documents?

A. Not to my knowledge.

Q. When you were first interviewed by the Palm Beach County Sheriff with Kimberly Moran, did you notify them at that first interview that you had fraudulently altered a document?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. When did you notify the sheriff that you

fraudulently altered a document?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. You have these exhibits. This will says "conformed copy" on Exhibit 1 of their exhibits; is that correct?

A. Yes, it does.

Q. Does a conformed copy have to have the clerk of the court's signature on it?

A. Conformed copy would not be sent to the clerk of the courts.

Q. Conformed copy -- okay.

Is that your signature on the document? This is Exhibit 2, Shirley trust agreement, of the plaintiff's exhibit book, 2, page 27.

A. Yes, it appears to be.

Q. It appears to be?

A. Yes.

Q. All right. And is that Traci Kratish's signature?

A. She was there. I can't speak to her signature.

Q. Did you witness her sign it?

A. I did.

Q. Okay. Is that my mom's signature on page 28?
A. Yes, it is.
Q. On this first amendment to Shirley's trust --
MR. BERNSTEIN: Exhibit 3, Your Honor, page 1 of 3, I guess. It's the first page in that exhibit.
BY MR. BERNSTEIN:
Q. Is that document -- do you recall that document?
A. Yes.
Q. Okay. And you recall the day it's signed and notarized, allegedly?
A. November 18th, 2008.
Q. On the front page of that document, what day is the document dated?
A. It's not dated.
Q. Is that typical and customary in your office?
A. Sometimes clients forget to put the date at the top.
Q. You forget?
A. I said, sometimes clients forget to put the date at the top.
Q. Well, did you check the document before making it a part of a will and trust?
A. It was notarized as a self-proving document.

Q. Are you aware that Kimberly Moran's notarization of the Simon trust has been found by the Governor Rick Scott's notary public division to be deficient?

MR. ROSE: Objection. Hearsay.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Are you aware of Kimberly Moran of your office being contacted by the governor's office in relation to these wills and trusts?

MR. ROSE: Objection. Hearsay.

THE COURT: Sustained.

What do I care if he's aware of that or not? How does that help me decide the validity of these documents?

MR. BERNSTEIN: Well, the governor's already made a claim that --

THE COURT: But you're asking the witness if he's aware of. Are you aware the sky is blue right now? It doesn't matter to me if he's aware of it or not. Are you aware Rick Scott has started an investigation of a moon landing? It doesn't matter to me if he knows that or not. You asked him are you aware of somebody from Rick Scott's office doing something. It doesn't matter to me if he's

aware of that or not. I've got to figure out the validity of these documents, so I need to know facts about that, please. Any other questions of the witness on that?

MR. BERNSTEIN: Yes.

BY MR. BERNSTEIN:

Q. Is that my father's signature?

A. I'm not an expert on your father's signature. But if it's on his will, at the bottom of his will, that must have been a copy that was obtained from the clerk of the courts, because that will was filed, and we would have conformed copies in our file, which would not have his signature at the bottom. Apparently, it is.

Q. But it does say on the document that the original will's in your safe, correct?

A. For your mother's document, it showed that.

Q. Oh, for my father's -- where are the originals of my father's?

A. Your father's original will was deposited in the court. As was your mother's.

Q. How many copies of it were there that were original?

A. Only one original. I think Mr. Rose had stated on the record that he requested a copy from the clerk of the court of your father's original will, to

make a copy of it.

Q. Certified?

A. I'm not sure if he said it was certified or not.

Q. Is that your signature on my father's will?

MR. BERNSTEIN: This is Exhibit 4, Your Honor, Page 7.

THE WITNESS: Yes, it is.

BY MR. BERNSTEIN:

Q. Okay. Is that my father's signature?

A. Appears to be.

Q. Whose signature is that?

A. That's my signature.

Q. Oh, okay. So the only two witnesses you see on this document are you and Kimberly Moran; is that correct?

A. On that page.

Q. And both you and Kimberly Moran have had misconduct in these cases?

MR. ROSE: Objection. Relevance.

THE COURT: Overruled. But it's cumulative.

MR. ROSE: It's cumulative.

THE COURT: How many times do I need to know this?

MR. BERNSTEIN: What does that mean exactly,

cumulative? I don't get that. I'm sorry.

THE COURT: Let's say you hit me over the head with a two-by-four. That's one time. If you do it twice, that's cumulative. Cumulative's not allowed.

MR. BERNSTEIN: That's an objection, is that I've asked it --

THE COURT: Yes.

MR. BERNSTEIN: -- and it was answered? Is that what it's kind of saying?

THE COURT: Yes, asked and answered. That's another way of saying it.

MR. BERNSTEIN: Now I got it.

THE COURT: Asked and answered is a similar way to say it.

MR. BERNSTEIN: Okay. Sorry.

BY MR. BERNSTEIN:

Q. Is that my father's signature, to the best of your knowledge?

A. Appears to be, yes.

Q. And is that your signature?

A. Yes, it is.

Q. And here, did Kimberly Moran properly notarize this document?

A. Kimberly did not notarize the document.

Q. Or Lindsay Baxley, did she check one -- either the person was personally known or produced identification?

A. No. This is what Mr. Rose had gone over earlier.

Q. No, those, I believe, are in other documents we'll get to.

So this notarization, as far as you can tell, is incomplete?

MR. ROSE: Objection. Are we on Exhibit 2?

MR. BERNSTEIN: No.

THE COURT: We're on Exhibit 4, as far as I recall.

MR. BERNSTEIN: He does not miss a thing. Your Honor, page 8.

THE WITNESS: This is Si's documents.

MR. ROSE: Got it.

BY MR. BERNSTEIN:

Q. Okay. So on Simon's trust, weeks before he dies, the notarization's improper?

A. This was the same document we spoke about before. Yes, she did not circle "known to me," although...

Q. So she didn't know you or Simon?

A. No, she knew all of us. She just neglected to

circle "known to me."

Q. And that's one of the three functions of a notary, to the best of your knowledge, to determine the person is in the presence that day by some form of I either know you or you gave me a license; is that correct?

A. Yes.

Q. So your firm -- have you done anything since knowing this document's improperly notarized to correct it with the courts?

MR. ROSE: Objection. It misstates facts. He didn't say it was improperly notarized.

THE COURT: Just state the objection, please.

MR. ROSE: Well, calls for a legal conclusion.

THE COURT: Sustained.

MR. MORRISSEY: Another objection. It misstates the law.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Is that Lindsay -- oh, you can't answer that.

So, to the best of your ability, regarding your signature, Kimberly or Lindsay Baxley has failed to state that you either were known to her or produced identification?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

MR. BERNSTEIN: Okay. We'll go on to document 5.

BY MR. BERNSTEIN:

Q. Is that my father's initials, to the best of your knowledge?

A. Appears to be, yes.

Q. Do these initials look similar to you, this one on page 2, next to this one on page 3, next to that thing on page 4?

A. Initials typically don't look perfect page to page, and they don't necessarily look similar page to page. I have seen clients execute a lot of documents, and by the time they get to, you know, the second and third document, their signatures and their initials do not necessarily look --

Q. Look at page 13, for example. I mean, this is almost -- if we go through page by page, tell me if you see any that are even similar. On page -- let's start back at the beginning, if that'll help you.

That? Do those look similar to you as you're flipping through those?

A. Yeah, they have a lot of the same -- similar ending marks. Your father's ending mark was that line. I mean, it's on every single solitary page.

Q. Okay. So your testimony today is those are my father's initials?

A. That they were.

Q. Okay.

A. I was there when he was...

Q. And you've looked at all of these, page 19, page 20? Those look similar to what you're saying -- or why don't you just look at them. If you go through them all, they all look different. But okay.

A. They all look different, and they all look consistent at the same time.

Q. Okay. Is that -- on page 24, is that my father's signature?

A. Appears to be.

Q. Is that your signature?

A. Yes, it is.

Q. Okay. Now, this is another trust document that Lindsay Baxley did that's supposed to be notarized, a will and trust, I believe, and the amended and restated.

Can you tell that Simon Bernstein was present or produced -- or present that day by the notarization?

A. She again failed to mark that he was personally known, but she worked for him.

Q. So these dispositive documents are improperly

notarized?

MR. ROSE: Objection. Cumulative. Legal conclusion.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Okay. And then let's go to the first amendment to Shirley Bernstein's trust. Is this a document prepared --

MR. BERNSTEIN: Your Honor, that would be 6.

THE COURT: All right.

BY MR. BERNSTEIN:

Q. Is that a document prepared by your law firm?

A. Yes, it is.

Q. And do you see where it's, "Now therefore by executing this instrument I hereby amend the trust agreement as following"? And what is it -- what are the numbering sequences there?

A. It says, I hereby delete a paragraph of article --

Q. What number is that?

A. Paragraph B -- it's number 1.

Q. Okay. And what's Number 2?

MR. ROSE: Objection. Best evidence. It's in evidence. And it's cumulative.

THE COURT: Two is in evidence, as is

paragraph one and paragraph three. And I've read --

MR. BERNSTEIN: Oh, no. But Number 1, Your Honor, take a look real quick. Number 1; there's no Number 2.

THE COURT: The objection came on your next question, and that was dealing with paragraph 2, which says it's already in evidence. And it is.

MR. BERNSTEIN: No, no, not paragraph 2. Look at down below. Under the "now therefore," there's a Number 1, and I was asking him what Number 2 reads.

THE COURT: I know you were.

MR. BERNSTEIN: And there is no Number 2.

THE COURT: You've asked me to look at Exhibit No. 6, right? Plaintiff's Exhibit 6 has, under the therefore clause, a one, a two and a three. Are you asking me to look at a different document?

MR. BERNSTEIN: Can I approach?

THE COURT: Sure. All right. So that's a different Number 6 than I have. So let's see your Number 6.

MR. BERNSTEIN: What do I do on that?

THE COURT: That's not my decision.

MR. BERNSTEIN: That's his book, not my book, just so you know.

THE COURT: Well, that Tab 6 is different than my Tab 6. So there you go.

MR. BERNSTEIN: Okay. Well, which -- what do I go off there?

THE COURT: I have no --

MR. BERNSTEIN: Can I submit that into evidence?

THE COURT: I have no preference.

MR. BERNSTEIN: Okay. I'd like to submit this, because I'm not sure if the other one is in evidence wrong.

THE COURT: All right. Any objection?

MR. ROSE: Could I just see the book? Would you mind?

THE COURT: Here, I'll show you my book. You can look at that book and see what's going on.

And this will be a good time for us to take a short break, and let you all straighten it out. So we'll be back in session in 15 minutes. And then we'll go to the bitter end. Each of you has about 60 minutes remaining.

MR. BERNSTEIN: Your Honor, when you say "60 minutes remaining," we haven't got through all

the witnesses yet.

THE COURT: Well, we will have by the end of 60 minutes on each side.

This trial is over at five o'clock. I told you when we started each of you has half of the time; please use it wisely; use it as you wish. I've tried to encourage both sides to be efficient. When your time is gone, that's the end of the trial for you.

MR. BERNSTEIN: Well, the case manager --

THE COURT: When their trial is gone --

MR. BERNSTEIN: At the case management, they said it would take a day. I argued and said to you it would take days. I mean, they've got 10 witnesses. I need to have all the people who witnessed these documents here.

THE COURT: Remember when I said a moment ago we're in recess? I was serious. Thanks. We'll go back in session 15 minutes from now.

(A break was taken.)

THE COURT: We're ready to resume. Are there any further questions for the witness on cross?

MR. BERNSTEIN: Okay. We were just working out that 1, 2, 3, Exhibit No. 6, so that we get the record straight.

THE COURT: Okay.

MR. BERNSTEIN: Shall I get a copy of yours, you get a copy of mine? Or how do you want to do that?

MR. ROSE: Your Honor, I tried to work it out.

THE COURT: Listen, I don't have any preference as to how we do anything. You all tell me how you've worked it out, and if I agree with it, I'll accept it.

MR. ROSE: The copy that's been marked for the witness, the copy in my book and the copy in your book are all identical. I don't know what's in his book, and he wouldn't show me his book on the break.

THE COURT: Okay.

MR. ROSE: But I'm fine. It's a three-page document. And if he wants to put it in evidence, even though it's not operative, I have no objection.

THE COURT: Okay. So are you putting something into evidence?

MR. BERNSTEIN: Yeah. The one that I --

THE COURT: Have you showed it to the other side yet? You can't put secret documents into evidence, only after they've been seen by everyone.

Let's at least show it to the other side so they know the document that's being proffered as an exhibit. If they still have no objection, I'll receive it as Defendant's 3.

MR. ROSE: This is in evidence already as Exhibit No. -- as Plaintiff's No. 3.

MR. BERNSTEIN: So what's 6? So now I don't even have the right 6 document.

MR. ROSE: The 6 that the witness has is three pages. It's the same 6 that's in your book and it's in my book. It's three consecutive pages of the production from Tescher & Spallina law firm. It has the inoperative first amendment as page 1, then it has the operative first amendment as page 2, and the signature page as page 3. It's the same document in everybody's book. That's all I can tell you.

THE COURT: Okay.

MR. BERNSTEIN: Your Honor, in my book, 3 and 6 are the identical documents --

THE COURT: Okay.

MR. BERNSTEIN: -- so I would need --

THE COURT: Are there any other questions of the witness?

MR. BERNSTEIN: Well, I was going to ask him

questions on this document.

THE COURT: All right. Well, then, let's go.

MR. BERNSTEIN: Okay. I need a -- I don't have the 6 that everybody else is referring to. My sinks is the same as --

THE COURT: There you go. Take whatever you need.

MR. BERNSTEIN: Okay. Thank you. I think we missed 6. It's just short on 6.

THE COURT: All right. Then here's my Tab 6.

MR. BERNSTEIN: Thank you, sir.

THE COURT: The idea is to keep moving.

MR. BERNSTEIN: Okay. I'll move on. I'm almost done here.

BY MR. BERNSTEIN:

Q. Okay. So on Exhibit 3, can you list the numbers there?

MR. ROSE: Objection. Best evidence. Cumulative.

THE COURT: Sustained.

You need to refer to which page. That's a multi-page document, and both pages have numbered paragraphs on them.

MR. BERNSTEIN: Page 1 of 2.

BY MR. BERNSTEIN:

Q. The Roman Numeral -- or the numerals, can you give the sequence of those numbers?

A. One and three. It's skipping two.

Q. And this is a document you allege to be part of the Shirley trust that you're claiming is valid?

A. That's the amendment that Shirley executed in November of 2008.

Q. And would there be a reason why your law firm numbers one, three?

MR. ROSE: Objection. Cumulative.

THE COURT: Overruled.

You can answer.

THE WITNESS: Human error.

BY MR. BERNSTEIN:

Q. Okay. But it is an error in the document that you're claiming is valid Shirley trust?

A. It's a numbering error.

Q. In the document, you're claiming this is a valid amendment, correct?

A. Correct.

Q. Okay. And then in number 6 from the judge, what's the numbering sequence?

A. One, two, three.

Q. Okay. So you added in a number two?

A. Yes.
Q. Okay. How did you go about doing that?
A. There was a paragraph two inserted between one and three.
Q. Well, the paragraph that's inserted between one and three wouldn't fit there.
So what did you do?
A. The document was opened up and a paragraph was inserted.
Q. Okay. So you increased the spacing on the document, correct, by adding a number three, correct?
A. Adding number two, yes.
Q. By adding number two, correct.
Okay. So you actually had to alter the chronology as it was placed on the document? You didn't just put a number two there in between one and three? You actually went and expanded the document with words that were inserted by you fraudulently, right?
MR. ROSE: Objection. Argumentative. Cumulative.
THE COURT: Sustained.
MR. BERNSTEIN: Okay.
MR. ROSE: Your Honor, the witness does have the exhibits in front of him. If Mr. Bernstein could be at the podium.

MR. BERNSTEIN: I don't know if he has all the exhibits.

THE COURT: Well, do you have the exhibit that I gave you from the Court's?

MR. BERNSTEIN: Oh, jeez.

THE COURT: Because I'd like to have it back so that that doesn't get lost.

MR. BERNSTEIN: Okay. You gave me the one with one, two, three.

Can I get a copy of this from the clerk?

THE BAILIFF: There is no clerk.

THE COURT: Can I have the document back, please? He's not a clerk.

MR. BERNSTEIN: Marshall, sheriff, officer, sir. Sorry about that.

THE COURT: He does not make copies.

MR. BERNSTEIN: Okay.

THE COURT: Thanks. Any other questions of the witness? Your time is rapidly disappearing.

MR. BERNSTEIN: Just going through that.

THE COURT: And I think you said earlier you have no objection to Plaintiff's 6 being received as an exhibit?

MR. ROSE: Correct.

THE COURT: Okay.

MR. ROSE: Thank you.

THE COURT: Then it's in evidence as Plaintiff's 6. I'm making it Plaintiff's 6, rather than Defendant's 3, because it's already marked and it's been referred to by that number.

(Plaintiff's Exhibit No. 6 was received into evidence.)

BY MR. BERNSTEIN:

Q. Are these your notes?

A. No, they're not. Those are Don's.

Q. Do you know the date on that note?

A. 3/12/08.

Q. Did you take any notes in the meeting?

A. Those are my notes there.

Q. These are? Oh, so this is a compilation of Don's and your notes?

A. Those are my notes, yes.

Q. And those were taken on that day?

A. Correct.

Q. Whose notes are those?

A. I just saw those for the first time today. I believe they're your father's notes.

Q. How would you know those are my father's notes?

A. Mr. Rose introduced that document earlier.

Q. Document 12, did it come from your offices?
A. I don't know where it came from.
Q. Did you Bates stamp this document as part of your documents?
A. I don't recall ever seeing that document.
Q. And it doesn't have your Bates stamp from your production, right?
A. Correct.
Q. You were supposed to turn over all your records, correct?
MR. ROSE: Objection. He's testified it wasn't in his --
THE COURT: What's the objection to the question?
MR. ROSE: Cumulative.
THE COURT: Sustained.
MR. BERNSTEIN: All right. Your Honor, I'm done.
THE COURT: All right. Thank you.
Is there any redirect?
MR. ROSE: Brief, Your Honor.

REDIRECT (ROBERT SPALLINA)

BY MR. ROSE:
Q. Assuming the documents are valid, they'll have to be a later trial to determine the effect of Simon's

exercise of his power of appointment?

A. Yes.

Q. It doesn't have any direct bearing on whether these five documents are valid?

A. No.

Q. And I take it you don't necessarily agree with Mr. Tescher's view as expressed in his letter of January 14th, 2014?

A. Again, I'm seeing that here. Surprised to see that.

Q. The original documents, the wills, you retained at all times of Shirley and Simon in your firm?

A. Prior to their death, yes.

Q. And that's consistent practice for a trust and estate lawyer, to keep it in your will vault or in your safe deposit box?

A. Yes. I would say most attorneys do that just because there's only one original of the will, and very often documents can get lost if clients take documents home. So, typically, they're kept in a safe deposit box or a safe or something like that, and left with the attorney.

Q. I want to make sure I understand and the Court understands what happened with the waiver forms.

While Simon was alive, he signed a petition

for discharge; is that correct?

A. Correct. April of '08.

Q. And --

MR. BERNSTEIN: What exhibit? Excuse me. What number are we looking at?

MR. ROSE: None -- well, actually, it's in my book. If you want to follow along, it's Tab 28. But it's not in evidence.

BY MR. ROSE:

Q. And Simon also then filed a waiver of accounting himself?

A. Correct.

Q. And is it necessary for Simon, even though he's the personal representative, to sign a waiver of accounting because he's a beneficiary?

A. I mean, we do it as a matter of course.

Q. And the signature of Simon Bernstein on April 9th, that's genuinely his signature?

A. Can I see?

Q. Exhibit 28 is a petition that was filed with the court. I'm going to just show you the exhibits. Exhibit A says "Petition for discharge full waiver."

Is this a document you would have prepared for Simon Bernstein to sign?

A. Yeah, our firm would prepare that.

Q. Okay. And it's a three-page document.
Is that Simon Bernstein's signature --
A. Yes, it is.
Q. -- April 9th, 2012?
A. Yes, he signed the document.
Q. And he was alive when he signed the document?
A. Yes, he was.
Q. Okay. Then he had to sign a waiver of accounting, which he signed on the same day?
A. Correct.
Q. And you have a document waiver of accounting on the next page signed by Eliot Bernstein on May 15th?
A. Correct.
Q. And there's no doubt that's Eliot's signature because he's the one who emailed you the document, correct?
A. And sent us the original by mail.
Q. Right. And we already have an exhibit which is his email that sent you his waiver form?
A. Correct.
Q. And the waiver forms of Ted, Pam, Lisa and Jill are all valid, signed by them on the date that they indicated they signed it?
A. To the best of my knowledge, yes.
Q. So then these got submitted to the court.

Is there anything wrong with submitting waiver forms to the court signed by Simon while he's alive after he had passed away?

A. Maybe we should have made a motion to, you know, have a successor PR appointed and file the documents through the successor PR.

Q. Were you trying to just save expenses because there was nothing in the estate?

A. Correct.

Q. And if Judge Colin had not rejected -- or his assistant had not rejected the documents, and the estate was closed, it would have been closed based on legitimate, properly signed documents of Simon and his five children?

A. Correct.

Q. So then they get kicked back to your law firm, and you could file a motion and undertake some expense, instead --

MR. BERNSTEIN: Object. This has been asked and answered.

THE COURT: Sustained.

BY MR. ROSE:

Q. Now, does the fact that -- well, strike that.

At the time that Simon signed his 2012 will and 2012 trust, had there been ever anyone question a

signature or a notarization of any document that had been prepared by your law firm?

A. No, there was not.

Q. You didn't see anything or observe anything or any behavior of Simon Bernstein during the course of any meeting you had with him that would call into question his competence or his ability to properly execute a testamentary document?

A. We did not.

MR. ROSE: Nothing further, Your Honor.

THE COURT: All right. Thanks.

Thank you, sir. You can step down.

MR. ROSE: At this time, we would rest our case.

THE COURT: Okay. Thank you.

Any evidence from the defendant's side?

MR. BERNSTEIN: Well, I'd like -- can I call back Spallina?

THE COURT: If you want to call him as a witness on your behalf, sure.

MR. BERNSTEIN: Yeah, sure.

THE COURT: All right. Mr. Spallina, you're still under oath, and you're being called as a defense witness now.

DIRECT EXAMINATION

BY MR. BERNSTEIN:

Q. Mr. Spallina, when Simon died on September 12th -- or September 13th -- sorry -- 2012, and you were responsible as his attorney to appoint Ted as the successor, correct, you were in charge of his wills and trusts?

THE COURT: You just asked three questions in a row.

MR. BERNSTEIN: Oh, sorry.

THE COURT: Which question would you like the witness to answer?

BY MR. BERNSTEIN:

Q. Okay. When Simon died, was Shirley's estate closed?

A. No, it was not.

Q. Okay. Did you appoint a successor to Simon who was the personal representative of Shirley on the day he died?

A. I don't understand the question.

Q. Well, on the day Simon died, there was a successor to him in the will, correct?

A. That's correct. Ted.

Q. Okay. Did you appoint Ted?

A. I did not appoint Ted. Si did.

Q. Si appointed Ted?

A. Si appointed Ted as a successor trustee under the document -- I mean, Shirley appointed Ted as the successor trustee to Si under the document.

Q. So Simon didn't appoint Ted?

A. Simon did not appoint Ted.

Q. Okay.

A. He was the named successor under your mother's document.

Q. Okay. So when Simon died -- just so I get all this clear, when Simon died, your law firm knew Ted was the successor, correct?

A. That's correct.

Q. According to your story. Okay.

A. Under Shirley's documents, you're talking about.

Q. Under the alleged Shirley document.

Okay. But yet did Simon then -- after he died, did he not close the estate of Shirley while he was dead?

MR. ROSE: Objection. Argumentative. It's cumulative.

THE COURT: Sustained.

MR. ROSE: And I believe this whole line of questioning's been covered ad nauseam in the first cross-examination.

THE COURT: Well, it's important not to ask the same thing over and over again. You have finite time to work with.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. The estate of Shirley was closed in January, correct, of 2013?

A. I don't recall, but it sounds -- it has to be sometime after November.

Q. Okay. So it was closed by Simon, who was dead at that time, correct?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Did Ted Bernstein close the Estate of Shirley Bernstein as the successor personal representative?

A. No.

Q. Who closed the Estate of Shirley Bernstein?

A. The documents were filed with the court based on the original petition that your father signed.

Q. Did you close the estate?

MR. ROSE: Objection. Relevance.

THE COURT: What's the relevance?

MR. BERNSTEIN: Well, I'm trying to figure out who closed my mom's estate.

THE COURT: What's the relevance I've got to figure out?

MR. BERNSTEIN: Okay. The documents, they were bringing up these waivers. There's relevance to this.

THE COURT: Well, I'll sustain the objection.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. On this petition for discharge that Mr. Rose brought up on his cross -- and I can't remember where I just pulled that -- I'm going to take a look. That would be 28.

MR. BERNSTEIN: Can I admit this into evidence, Your Honor, since I believe Mr. Rose stated it wasn't?

THE COURT: You're just picking up a piece of paper and walking up to me and saying, can I admit this into evidence?

MR. BERNSTEIN: Well, they didn't admit it.

THE COURT: Is there a foundation laid for its admissibility?

MR. BERNSTEIN: Yes.

THE COURT: Do I know what it is so that I can make a ruling?

MR. BERNSTEIN: Oh. It's a petition for

discharge.

THE COURT: Did anybody testify to that, or are you just --

MR. BERNSTEIN: Yeah, he just did.

THE COURT: If you have a piece of paper you want to have me consider as an exhibit, the other side has to have seen it and the witness has to have seen it so I'll know what it is.

MR. BERNSTEIN: Okay. They were just talking about it.

MR. ROSE: Your Honor, just to speed things along, we have no objection to this document coming into evidence. It is part of our Exhibit 28. The whole 28 could come in evidence. That's fine with me. Then it would all be in evidence. Or however you wish to do it.

THE COURT: I'm letting this party take charge of his own case.

Are you asking that to be received as an exhibit? There's no objection. So that'll be Defendant's 3. Hand that up, and I'll mark it.

MR. BERNSTEIN: Thank you.

(Defendant's Exhibit No. 3 was received into evidence.)

THE COURT: So are you done with it?

MR. BERNSTEIN: No. Can I use it still?

THE COURT: Anything that's supposed to be an exhibit in evidence has to come back to me.

MR. BERNSTEIN: Gotcha.

BY MR. BERNSTEIN:

Q. Okay. On this document, it's a petition for a discharge, a "full waiver," it says.

Was this document sent back to your firm as not notarized by Judge Colin's office?

A. I'm not sure. I didn't get the documents back.

Q. Is it notarized?

A. No, it's not.

Q. Did you sign as the notary?

MR. ROSE: Objection. Cumulative.

THE COURT: Overruled.

The question was, is it notarized? The answer was no. Then you asked if -- somebody else, if they'd sign, and then the witness if he signed as a notary.

THE WITNESS: I signed it as the attorney for the estate.

BY MR. BERNSTEIN:

Q. Okay. On April 9th with Simon Bernstein?

A. Yeah, it appears that way.
Q. Could it be another way?
A. It didn't -- this document did not require that I witness Si's signature. So I believe that that document was sent to Si, and he signed it, sent it back, we signed it and filed it.
Q. So you sent it to Si, he signed it, then sent it back, and you signed it all on April 9th?
A. It doesn't -- it's what day he signed it that's relevant. He signed it on April 9th.
Q. And what day did you sign it?
A. I could have signed it April 11th.
Q. Well, where does it say April 11th?
A. My signature doesn't require a date. His does.
Q. Why?
A. Just doesn't.
Q. Well, the date that the document says this document's being signed on April 9th.
A. I did not sign that exhibit.
Q. Next question. On September 13, 2013, the year after my father died, in Judge Martin Colin's court, when he discovered this document, did he threaten to read you your Miranda Rights, stating he had enough evidence to read you Mirandas?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Did you deposit this document, this April 9th full discharge, with the court?

A. Did I personally do it?

Q. Did your law firm?

A. No, the law firm did, yes.

Q. Okay. And on whose behalf?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

MR. ROSE: And relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Simon was dead when this document was deposited with the court, correct?

MR. ROSE: Objection. Cumulative. Relevance.

THE COURT: I've got that he is dead written down here several times. It's clear in my mind. You're not moving in a positive direction.

MR. BERNSTEIN: I understand that part.

THE COURT: All right. New question, please.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Is this document sworn to and attested by my

father? Is it a sworn statement? Does it say "under penalties of perjury"?

A. It does.

Q. Okay. So under penalties of perjury, on April 9th, my father and you signed a document, it appears, that states that Simon has fully administered the estate.

Was that done?

A. Yes, it was.

Q. He had settled the estate, made dispositions of all claims of Shirley's estate?

A. He was the only beneficiary of the estate. The creditor period had passed.

Q. He was the only beneficiary of the will?

A. He was the only beneficiary of the will if he -- that's if he survived your mother.

Q. Did you say earlier that the five children were tangible personal property devisees or beneficiaries under the will?

A. I did not. I said your father was the sole beneficiary of your mother's estate by virtue of surviving her.

Q. I thought you mentioned -- can I take a look at the will?

Okay. On Simon's will, which is Exhibit 4

here --

A. This is your mother's will we're talking about.

Q. Well, hold on. Well, you did state there were mirror documents, correct, at one point? That's okay. I'll proceed. That part seems to be in error.

Does the document say, "I, Shirley Bernstein, of Palm Beach County, Florida hereby revoke all of my prior wills and codicils and make this will my spouse's assignment. My children are Ted, Pam -- Pamela Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein"?

MR. ROSE: Objection. Best evidence and cumulative.

THE COURT: Sustained.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Was there a separate written memorandum prepared for this will?

A. No, there was not.

Q. And if Simon didn't survive, the property would be going to the children, correct?

MR. ROSE: Objection.

THE WITNESS: Correct.

MR. ROSE: Best evidence and cumulative.

THE COURT: Sustained.

MR. BERNSTEIN: What was -- I missed that. Can I not ask him that question I just asked?

THE COURT: I sustained the objection. You can ask a new question of him.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Is there any chance that the children could be beneficiaries of anything under this will?

A. Not at the time of your mother's death. Your father survived.

Q. So at the time of her death, you're saying that -- if they both died together, would the children --

MR. ROSE: Objection. Relevancy.

BY MR. BERNSTEIN:

Q. -- be beneficiaries?

THE COURT: Sustained.

MR. BERNSTEIN: Okay. I'm done with him.

MR. ROSE: No questions.

THE COURT: Okay. Thank you. You can step down now.

Next witness, please.

MR. BERNSTEIN: My next witness, are you saying?

THE COURT: If you have another witness, now's

the time to call him or her.

MR. BERNSTEIN: Okay. Ted Bernstein -- well, one second.

Is Kimberly Moran, your witness, here? Is Kimberly Moran, an exhibited witness, here, Mr. Rose?

THE COURT: Listen, it's your case. I've asked if you have any other witnesses. Do you have any other witnesses?

MR. BERNSTEIN: No, I don't. I was going to call some of their witnesses, but they're not here.

THE COURT: Okay. So you aren't going to call anybody?

MR. BERNSTEIN: Yes, I'm going to call Ted Bernstein.

THE COURT: Well, that's a witness, right?

MR. BERNSTEIN: Yeah, yeah. I just was looking for the other ones on the witness list. I didn't know if they were sitting outside.

Thereupon,

(TED BERNSTEIN)

having been first duly sworn or affirmed, was examined and testified as follows:

THE WITNESS: I do.

DIRECT EXAMINATION

BY MR. BERNSTEIN:

Q. Ted --

THE COURT: You've got to ask the witness his name. The record needs to reflect who's testifying.

MR. ROSE: And could I just ask that he stay at the podium?

THE COURT: Okay. You need to stay near the microphone so that I can hear and the court reporter can accurately hear you. And then if you need to go up to the witness stand for some reason, you're allowed to do that.

BY MR. BERNSTEIN:

Q. State your name for the record.

A. Ted Bernstein.

Q. Is that your full formal name?

A. That is.

Q. Do you go by Theodore Stuart Bernstein ever?

A. I do not.

Q. Okay. Is that your name on your birth certificate?

A. Which one?

Q. Theodore Stuart Bernstein?

A. It is not.

Q. Okay. Ted, you were made aware of Robert

Spallina's fraudulent alteration of a trust document of your mother's when?

A. I believe that was in the early 2013 or '14.

Q. Okay. And when you found out, you were the fiduciary of Shirley's trust, allegedly?

A. I'm not sure I understand the question.

Q. When you found out that there was a fraudulent altercation [sic] of a trust document, were you the fiduciary in charge of Shirley's trust?

A. I was trustee, yes. I am trustee, yes.

Q. And your attorneys, Tescher and Spallina, and their law firm are the one who committed that fraud, correct, who altered that document?

A. That's what's been admitted to by them, correct.

Q. Okay. So you became aware that your counsel that you retained as trustee had committed a fraud, correct?

A. Correct.

Q. What did you do immediately after that?

A. The same day that I found out, I contacted counsel. I met with counsel on that very day. I met with counsel the next day. I met with counsel the day after that.

Q. Which counsel?

A. Alan Rose.

Q. Oh. Okay. So he was -- so Tescher and Spallina were your counsel as trustee, but Alan Rose became that day?

A. I'm not sure when, but I consulted him immediately. You asked me when.

MR. ROSE: Can I caution the witness that it's fine to say who he consulted with. I think the advice was the attorney-client privilege I would instruct him on.

THE COURT: All right. The attorney-client privilege is available, and your client is on the stand. Counsel's reminding him that it exists.

Are there any other questions? What is the time period that you're asking about here?

MR. BERNSTEIN: Right after he discovered that there had been a fraudulent, invalid will created.

THE COURT: Right. And you're asking him what he did afterwards?

MR. BERNSTEIN: Right afterwards.

THE COURT: Okay. Have your mother and father both passed away at the time you're asking him that?

MR. BERNSTEIN: Correct.

THE COURT: So the validity of the documents

that I've got to figure out won't have anything to do with the questions you're asking him now about his actions at trustee, will they?

MR. BERNSTEIN: Yes.

THE COURT: Tell me how.

MR. BERNSTEIN: Okay. Because, Your Honor, when he found out that there was fraud by his attorneys that he retained, the question is, what did they do with those documents? Did he come to the court to correct --

THE COURT: The question you're asking him is what did he do.

MR. BERNSTEIN: Yeah.

THE COURT: Well, that doesn't tell me anything about what the attorneys did. So I'll sustain my own objection. I want to keep you on track here. You're running out of time, and I want you to stay focused on what I've got to figure out. You've got a lot more on your mind than I do. I explained that to you earlier. Do you have any other questions on the issues that I've got to resolve at this point?

MR. BERNSTEIN: Yeah.

BY MR. BERNSTEIN:

Q. Have you seen the original will and trust of

your mother's?

A. Can you define original for me?

Q. The original.

A. The one that's filed in the court?

Q. Original will or the trust.

A. I've seen copies of the trusts.

Q. Have you done anything to have any of the documents authenticated since learning that your attorneys had committed fraud in altering dispositive documents that you were in custody of?

MR. ROSE: Objection. Relevance.

THE COURT: Overruled.

THE WITNESS: I have not.

BY MR. BERNSTEIN:

Q. So you as the trustee have taken no steps to validate these documents; is that correct?

A. Correct.

Q. Why is that?

A. I'm not an expert on the validity of documents.

Q. Did you contract a forensic analyst?

A. I'm retained by counsel, and I've got counsel retained for all of this. So I'm not an expert on the validity of the documents.

Q. You're the fiduciary. You're the trustee.

You're the guy in charge. You're the guy who hires your counsel. You tell them what to do.

So you found out that your former attorneys committed fraud. And my question is simple. Did you do anything, Ted Bernstein, to validate these documents, the originals?

THE COURT: That's already been answered in the negative. I wrote it down. Let's keep going.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. As you sit here today, if the documents in your mother's -- in the estates aren't validated and certain documents are thrown out if the judge rules them not valid, will you or your family gain or lose any benefit in any scenario?

A. Can you repeat that for me, please? I'm not sure I'm understanding.

Q. If the judge invalidates some of the documents here today, will you personally lose money, interest in the estates and trusts as the trustee, your family, you?

A. I will not.

Q. Your family?

A. My -- my children will.

Q. So that's your family?

A. Yes.

Q. Okay. So do you find that as a fiduciary to be a conflict?

MR. ROSE: Objection.

THE WITNESS: No.

MR. ROSE: I think it calls for a legal conclusion.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Well, would it matter to you one way or the other how these documents are validated?

A. What would matter to me would be to follow the documents that are deemed to be valid and follow the court orders that suggest and deem that they are valid. That would be what I would be charged to do.

Q. So you can sit here today and tell me that the validity of these documents, even though your family will lose 40 percent, has no effect on you?

A. It has no effect on me.

Q. Okay. And you don't find that to be adverse to certain beneficiaries as the trustee?

MR. ROSE: Objection. Calls for a legal conclusion.

THE COURT: Well, what difference does it make to me? I mean, what he thinks about his role is just not relevant to me.

MR. BERNSTEIN: Well, Your Honor --

THE COURT: So the next question, please. That's not relevant.

BY MR. BERNSTEIN:

Q. So in no way have you tried to authenticate these documents as the trustee?

THE COURT: He has already said that. That's the third time you've asked it, at least. And I've written it down. It's on my papers.

MR. BERNSTEIN: Okay. I'll let it go. I'll let him go today.

THE COURT: Okay. You have no further questions of the witness.

Is there any cross?

MR. ROSE: Briefly.

CROSS (TED BERNSTEIN)

BY MR. ROSE:

Q. You did a few things to authenticate the documents, didn't you? You filed a lawsuit?

A. Yes.

Q. In fact, we're here today because you filed a lawsuit to ask this judge to determine if these five documents are valid, correct?

A. That's correct.

Q. And you fired Mr. Tescher and Spallina on the

spot?
A. Correct.
Q. Called the bar association?
A. The next business day.
Q. You consulted with counsel, and we retained additional probate counsel over the weekend?
A. We did.
Q. So as far as authenticating the documents, you personally believe these are genuine and valid documents, right?
A. I do.
Q. And you, in fact, were in your office the day your father signed them?
A. That's correct.
Q. And witnessed Mr. Spallina and the notary coming to the office to sign the documents?
A. Yes, that's right.
Q. And you had been on a conference call with your father, your brother and your three sisters where your father told you exactly what he was going to do?
A. That is also correct.
Q. And the documents that we're looking at today do exactly what your father told everybody, including your brother, Eliot, he was going to do on the conference call in May of 2012?

A. Yes, that is correct also.
Q. Now, I think you were asked a good question.
Do you care one way or the other how these documents are decided by the Court?
A. Absolutely not.
Q. Did you care when your father or mother made a document that did not specifically leave any money to you?
A. I did not.
Q. Now, did you care for anybody other than yourself?
A. I cared for the -- for the sake of my children.
Q. And why did you care for the sake of your children?
A. My parents had a very good relationship with my children, and I did not want my children to misinterpret what the intentions of their grandparents were and would have been. And for that reason, I felt that it would have been difficult for my children.
Q. Did you ever have access to the original will of your father or mother that were in the Tescher & Spallina vaults?
A. I have no access, no.
Q. Did you ever have access to the original

copies of the trusts that Mr. Spallina testified were sitting in their firm's file cabinets or vaults?

A. I did not.

Q. Now, did you find in your father's possessions the duplicate originals of the trusts of him and your mother that we've talked about?

A. I did.

Q. And do you have any reason to believe that they aren't valid, genuine and signed by your father on the day that he -- your father and your mother on the days that it says they signed them?

A. None whatsoever.

Q. You need to get a ruling on whether these five documents are valid in order for you to do your job as the trustee, correct?

A. Yes, that is correct.

Q. Whichever way the Court rules, will you follow the final judgment of the Court and exactly consistent with what the documents say, and follow the advice of your counsel in living up to the documents as the Court construes them?

A. Always. A hundred percent.

MR. ROSE: Nothing further, sir.

THE COURT: All right. Thank you.

Is there any redirect?

REDIRECT (TED BERNSTEIN)

BY MR. BERNSTEIN:

Q. You just stated that you came to the court and validated the documents in this hearing today; is that correct?

MR. ROSE: Objection. It mis --

BY MR. BERNSTEIN:

Q. You filed a motion to validate the documents today?

THE COURT: Wait. You've got to let me rule on the objection.

MR. BERNSTEIN: Oh, sorry. I don't hear any objection.

THE COURT: I'll sustain the objection.

BY MR. BERNSTEIN:

Q. Okay. Since -- did you file a motion that we're here for today for validity?

A. Explain motion.

Q. A motion with the court for a validity hearing that we're here at right now.

A. Do you mean the lawsuit?

Q. Well, yeah.

A. Yes, we did file a lawsuit, yes.

Q. Okay. Do you know when you filed that?

A. No. I don't know, Eliot. I don't know when I

filed it. I don't have it committed to memory.

Q. Do you have an idea?

MR. ROSE: Objection. I think the court file will reflect when the case was filed.

THE COURT: Overruled.

The question was answered, I don't know. Next question.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Prior to filing this lawsuit, Mr. Rose said you couldn't do anything because you didn't know if the documents were valid.

My question is, did you do anything from the time you found out the documents might not be valid and needed a validity hearing to today at this validity hearing?

MR. ROSE: Objection. Relevance.

THE COURT: What's the relevance?

MR. BERNSTEIN: Well, he knew about these documents being fraudulent for X months.

THE COURT: What will that help me decide on the validity of the five documents?

MR. BERNSTEIN: Why, Your Honor, they didn't come to the court knowing that they needed a validity hearing, and instead disposed and

disbursed of assets while they've known all this time --

THE COURT: I'll sustain the objection.

I'm not called to rule upon that stuff. I'm called to rule upon the validity of these five paper documents. That's what I'm going to figure out at the end of the day.

BY MR. BERNSTEIN:

Q. Mr. Rose asked you if you found documents and they all looked valid to you, and you responded yes.

Are you an expert?

A. I am not.

Q. Can you describe what you did to make that analysis?

A. They looked like they were their signatures on the documents. I had no reason whatsoever to think those weren't the documents that were their planning documents. I had no reason at all to think that.

Q. Even after your hired attorneys that were representing you admitted fraud, you didn't think there was any reason to validate the documents?

MR. ROSE: Objection. Argumentative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Did you find any reason to validate these

documents forensically?

A. I think I answered that by saying that we filed a lawsuit.

Q. No, I'm asking you to have a forensic -- you're the trustee. And as a beneficiary -- to protect the beneficiaries, do you think you should validate these documents with a handwriting expert due to the fact that we have multiple instances of fraud by your counsel who were acting on your behalf?

MR. ROSE: Objection. Cumulative and argument.

THE COURT: The question is, does he think something. I've already told you when you ask a question do you think, I stop listening. It's not relevant what the witness thinks.

So I'll sustain the objection.

BY MR. BERNSTEIN:

Q. As a trustee, would you find it to be your fiduciary duty upon learning of document forgeries and frauds by your counsel to have the dispositive documents you're operating under validated by a professional handwriting expert, forensic expert, et cetera?

MR. ROSE: Objection. Cumulative.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Do you think these documents should be validated -- you're the trustee.

Do you think these documents should be validated by a professional firm forensically?

MR. ROSE: Objection. Cumulative.

THE COURT: It's not relevant. You just asked him if he thinks he should have had them validated. I don't care what he thinks. In making my decisions today, what he thinks he should have done or not done isn't relevant. I'm looking for facts. So I really wish you would address your questions to facts.

BY MR. BERNSTEIN:

Q. So, to the best of your knowledge, have these documents been forensically analyzed by any expert?

MR. ROSE: Objection. Cumulative.

THE COURT: No, they are not. I already know that. I wrote it down. He's already said they've not been.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Ted, when your father signed, allegedly, his 2012 documents in July, were you aware of any medical problems with your father?

A. I don't think so.
Q. Were you aware that I took him for a biopsy of his brain?
A. I'm not aware of that, no.
Q. Were you aware of the headaches he was suffering that caused him to go for a biopsy of his brain?
A. I don't believe he had a biopsy of his brain. But if he did, then I'm not aware of it.
Q. Oh, okay. Were you aware of headaches your father was suffering?
A. I recall he was having some headaches.
Q. Were you aware that he was seeing a psychiatrist?
A. Yes.
Q. Were you aware of the reasons he was seeing a psychiatrist?
A. Absolutely not.
Q. Were you ever in the psychiatrist's office with him?
A. Yes.
Q. For what reason?
A. I wanted to have a conversation with him.
Q. About?
A. About some personal issues that I wanted to

discuss with him.

Q. Personal issues such as?

MR. ROSE: Can I get clarification? Are you talking about you wanted to -- he may have a privilege.

You were discussing Simon's issues or your own personal issues?

THE WITNESS: They were both intertwined together.

MR. ROSE: I think it's subject to a privilege.

THE COURT: All right. Well, you've been warned by your attorney you've got a psychologist-client privilege, so use it as you will.

MR. BERNSTEIN: He's not a client of the psychiatrist, I don't think.

THE COURT: I beg to differ with you.

MR. BERNSTEIN: Oh, he is?

THE COURT: Because the answer just clarified that he was in part seeking to be a client. Did you listen to his clarification of his answer?

MR. BERNSTEIN: No.

THE COURT: Well, I did very closely.

MR. BERNSTEIN: What was it?

THE COURT: Next question, please.

MR. BERNSTEIN: Okay. I'll just see it on the transcript.

BY MR. BERNSTEIN:

Q. Were you aware of any medical conditions, depression, anything like that your father was experiencing prior to his death?

A. I never found our father to suffer from any kind of depression or anything like that during his lifetime.

Q. So after your mother died, he wasn't depressed?

A. No.

MR. ROSE: Could I again ask Mr. Bernstein to step to the podium and not be so close to my client?

THE COURT: If you speak into the microphone, it'll be even more easy to hear your questions. Thank you.

BY MR. BERNSTEIN:

Q. So, according to you, your father's state of mind was perfectly fine after his wife died of -- a number of years --

A. I didn't say that.

Q. Okay. He wasn't depressed?

A. That's what I said.
Q. Were you aware of any medications he was on?
A. I was, yes.
Q. Such as?
A. From time to time, he would take something for your heart when you would have angina pains. But that he was doing for 30 years, for a good 30 years, that I knew dad was taking, whatever that medicine is when you have some chest pain.
Q. Did you have any problems with your father prior to his death?
MR. ROSE: Objection. Relevance.
THE COURT: The question is, did you have any problems with your dad before he died?
I'll sustain the objection.
BY MR. BERNSTEIN:
Q. Are you aware of any problems between you and your father that were causing him stress?
MR. ROSE: Objection. Relevance.
THE COURT: Sustained.
BY MR. BERNSTEIN:
Q. Were you aware that your father was changing his documents allegedly due to stress caused by certain of his children?
A. No.

Q. Were you on a May 10th phone call?
A. Yes.
Q. In that phone call, did your father --
MR. ROSE: Objection. It's beyond the scope -- well --
MR. BERNSTEIN: It has to do with the changes of the documents and the state of mind.
THE COURT: Do you have a question you want to ask? He's withdrawn whatever he was saying, so you can finish your question.
BY MR. BERNSTEIN:
Q. Okay. So on May 10th, at that meeting, your father stated that he was having trouble with certain of his children, and this would solve those problems.
Are you aware of that?
A. No, I don't -- not from the way you're characterizing that phone call.
Q. Well, how do you characterize that?
A. He wanted to have a conversation with his five children about some changes he was making to his documents.
Q. And you had never talked to him about the changes, that your family was disinherited?
A. No.
Q. Prior to that call?

A. No.
Q. When did you learn that you were disinherited?
A. I think when I first saw documents with -- maybe after dad -- once dad passed away.
Q. Were you aware of the contact with your sister Pam regarding her anger at your father for cutting both of you out of the will?
A. I'm aware of that.
Q. So that was before your father passed?
A. Excuse me. Can you ask -- say the end of that sentence again.
MR. BERNSTEIN: Can you read that back?
(A portion of the record was read by the reporter.)
THE WITNESS: I'm sorry. You asked me a question, and I had answered too quickly. What was the end of the question prior to that?
(A portion of the record was read by the reporter.)
THE WITNESS: I'm aware that she was angry with him about how -- that he -- she was not in his documents.
BY MR. BERNSTEIN:
Q. You didn't learn right there that you weren't in the documents?

A. I can't remember if it was then or if it was when dad died.

Q. Well, this is very important so can you think back to that time.

While your father was alive, did I invite you to a Passover holiday at my home?

MR. ROSE: Objection. Relevance.

THE WITNESS: I don't recall.

MR. BERNSTEIN: Okay.

THE COURT: What's the relevance?

MR. BERNSTEIN: Well, it's relevance to the state of mind my dad was in while --

THE COURT: Well, you're asking did this guy get invited to your home. You didn't ask about your dad, so I'll sustain the objection.

BY MR. BERNSTEIN:

Q. Okay. Did you get invited to a Passover dinner at my home that your father was attending?

A. I don't recall the circumstances of what -- whatever it is you're referring to.

Q. Do you recall saying you wouldn't come to the Passover dinner?

MR. ROSE: Objection. Relevance.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q. Do you recall writing me a email that stated that your family was dead for all intensive [sic] purposes?

MR. ROSE: Objection. Relevance.

THE COURT: What's the relevance to the validity of these documents?

MR. BERNSTEIN: If Si was in the right state of mind or if he was being, you know, forced at a gun to make these changes by children who had --

THE COURT: Your question asked this witness if he wrote you a letter that said his family was dead for all intents and purposes. What's that got to do with the validity of these documents?

MR. BERNSTEIN: Well, it establishes Simon's state of mind.

THE COURT: Okay. I'll sustain the objection.

MR. BERNSTEIN: Okay. All right. Well, then, I'm all done then.

THE COURT: All right.

Is there any cross?

MR. ROSE: I already crossed.

THE COURT: Oh, that's true. So you're all set. You're done. Thank you.

Next witness, please.

MR. BERNSTEIN: Alan Rose.
MR. ROSE: I object. Improper.
THE COURT: You've got 11 minutes yet.
MR. BERNSTEIN: Well, he's a witness to the chain of custody in these documents.
THE COURT: Well, you can call anybody you want. I just wanted you to know how much time you had left.
MR. BERNSTEIN: Oh, okay.
MR. ROSE: He wants to call me, and I object to being called as a witness.
THE COURT: Okay.
MR. ROSE: I don't think that's proper.
THE COURT: I don't think that's proper to call an attorney from the other side as your witness. So I accept the objection. Anybody else?
MR. BERNSTEIN: Your Honor, I would agree with that normally --
THE COURT: Well, thanks.
MR. BERNSTEIN: -- but there's a small problem. The chain of custody we're trying to follow in these documents for other reasons, other criminal reasons, is Mr. Rose has pertinent information to; meaning, he claims to have discovered some of these documents and taken them

off the property.

THE COURT: I thought you said you wanted a chain of custody?

MR. BERNSTEIN: Right. Meaning --

THE COURT: Well, the chain of custody to me means the chain of custody after the time they were executed.

MR. BERNSTEIN: Right.

THE COURT: All right. He wasn't around when they were executed.

MR. BERNSTEIN: No, but he found documents that are being inserted into this court case as originals, second originals that he found personally, and wrote a letter stating, I just happened to find these documents in Simon's home --

THE COURT: Well, I'm going to sustain the objection to you calling him as a surprise witness. He's a representative of your own. Do you have any other witnesses?

MR. BERNSTEIN: No. I'm good.

THE COURT: Okay. So you rest?

MR. BERNSTEIN: I rest.

THE COURT: Okay. Is there any rebuttal evidence from the plaintiff's side?

MR. ROSE: No, sir.

THE COURT: Okay. So the evidence is closed. We'll have time for brief closing arguments. And I'll take those now. Let me hear first from the plaintiff's side.

MR. ROSE: I'm sorry. Did you say it was time for me to speak?

THE COURT: Yes. I'm taking closing arguments now.

MR. ROSE: Okay. Thank you. May it please the Court.

We're here on a very narrow issue. And we -- you know, I apologize to the extent I put on a little bit of background. We've had an extensive litigation before Judge Colin. This is our first time here. And if any of my background bored you, I apologize.

There are five documents that are at issue, which we talked about before we started; the 2008 will and trust of Shirley Bernstein, as well as the amendment that she signed, and then the 2012 will and trust of Simon Bernstein.

So the uncontroverted evidence that you've heard was from Robert Spallina, who is an attesting witness to the documents and he was a draftsman of the documents.

I don't believe it's directly relevant to your inquiry, but you certainly heard evidence that what Simon Bernstein intended and what he communicated were his wishes; the exercise of a power of appointment through a will, the changing of the beneficiaries of his trust document by way of an amended and restated 2012 document, to give his money -- leave his wealth to his ten grandchildren. The final documents as drafted and signed are consistent with what.

But what we're here to decide is, are these documents valid and enforceable? And there are self-proving affidavits attached to the documents. And by themselves, if you find the self-proving affidavits to be valid, then the wills themselves are valid and enforceable.

Now, the only question that's been raised as to the self-proving affidavit is an issue with notarization. And we have two cases to cite to the Court on the notarization issue. One is from the Florida Supreme Court called The House of Lyons, and one is from a sister court in the State of North Carolina.

THE COURT: Just a second.

Sir, would you just have a seat. You're

making me nervous.

MR. BERNSTEIN: Sure.

THE COURT: Thanks.

MR. BERNSTEIN: Just aching.

THE COURT: Well, I understand. But just have a seat. That'll be better. Thanks.

And I'm sorry for the interruption.

MR. ROSE: No, that's all right.

If I may I approach with the two cases we would rely on.

THE COURT: All right.

MR. ROSE: The House of Lyons. The second is a case from Georgia. The House of Lyons case is from the Florida Supreme Court. It deals in a slightly different context, but it deals with notarization. And so what you have here is, we've put on evidence. The documents that are in evidence, that these documents were signed properly. The witnesses were in the presence of each other, and the testator and the notary notarized them.

Shirley's documents from 2008, there's no question that all the boxes were checked. There is a question that's been raised with regard to Simon's 2012 will and his 2012 trust; that the

notary -- rather than the law firm employee notarizing them, these were notarized by Simon's -- the testimony is by an employee of Simon's company, not a legal expert. And if on the face of the two documents -- and for the record, these would be Exhibits 4, which is Simon's will, and Exhibit 5, which is Simon's trust.

On Exhibit 4, there's no box to check. The whole information is written out. And I don't believe there's any requirement that someone circled the word -- if you just read it as an English sentence, the notary confirmed that it was sworn to and ascribed before me the witness is Robert L. Spallina, who is personally known to me or who has produced no identification.

So I think the natural inference from that sentence is that person was known to him, Kimberly Moran, who was personally known to me, and Simon Bernstein, who was personally known to me. So on its face, I think it -- the only inference you could draw from this is that the person knew them.

Now, we've established from testimony that she in fact knew the three of them, and we've established by way of Exhibit 16, which was signed on the same day and notarized by the same person.

And Exhibit 16, unlike Exhibit 4, which doesn't have a little check mark, Exhibit 16 has a check mark, and the notary properly checks personally known to the people that she was notarizing.

So I believe -- and the In Re Lyon case stands for substantial compliance with a notary is sufficient. And the North Carolina case is actually more directly on point. The Florida Supreme Court case, Lyons -- and we've highlighted it for the Court, but it says, clerical errors will not be permitted to defeat acknowledges -- acknowledgments when they, considered either alone or in connection with the instrument acknowledged and viewed in light of the statute controlling them, fairly show a substantial compliance with the statute.

The North Carolina case is a will case, In Re Will of Durham. And there it's exactly our case. The notary affidavit was silent as to whether the person was personally known or not. And the Court held the caveat was self-proving. The fact that the notary's affidavit is silent as to whether decedent was personally known to the notary or produced satisfactory evidence of his identity does not show a lack of compliance with the notary

statute, given the issues of personal knowledge or satisfactory evidence are simply not addressed in that affidavit.

So we have a Florida case and we have the North Carolina case, which I think is -- it's obviously not binding, but it is sort of persuasive. If they're self-proved, we would win without any further inquiry. The reason we had a trial and the reason we had to file a complaint was everything in this case -- you've slogged through the mud with us for a day, but we've been slogging through the mud for -- basically, I got directly involved in January of 2014, after the Tescher Spallina firm -- after the issues with the firm came to light. So we've been slogging through this.

But we did file a complaint. We went the next step. So the next step says to you, assume the notaries are invalid, which they aren't invalid; but if they were, all we need to establish these documents is the testimony of any attesting witness. So we put on the testimony of an attesting witness, Mr. Spallina. He testified to the preparation of the documents. And I do think it's relevant and it will give the Court comfort in

making findings of fact that there was an extensive set of meetings between Mr. Spallina and his clients when they did the documents.

I mean, we documented for the first set of documents, you know, four meetings, a letter with some drafts, then a meeting to sign the documents, some phone calls and some amending the documents. And in 2012, we've documented at least one meeting with notes involving Simon; telephone conferences between Simon and his client; eventually, when a decision was made, a conference call of all the children; drafts of the documents sent; the document being executed.

And so I think if you look at the evidence, the totality of the evidence, there's nothing to suggest that these five documents do not reflect the true intent of Simon and Shirley Bernstein. There's nothing to suggest that they weren't prepared by the law firm; that they weren't signed by the people that purport to sign them; that undisputed testimony from an attesting witness was that all three people were present, and it was signed by the testator and the two witnesses in the presence of each other.

So under either scenario, you get the document

admitted. In fact, the documents are in evidence. They've been admitted to probate. But the testimony under 732.502, 503, the testimony of the drafting attorney, who attested -- who was an attesting witness, is sufficient for these documents.

There's absolutely no evidence put on the Court that Simon Bernstein lacked mental capacity. In fact, the evidence is directly to the contrary. Every witness testified that he was mentally sharp; making intelligent decisions; having a conference call with his children to explain his wishes. And there's simply no evidence in the record to determine that he lacked testamentary capacity.

So if I have Mr. Bernstein, Simon Bernstein, with testamentary capacity signing documents in the presence of two subscribing witnesses, the 2012 documents should be upheld. I don't know if there's a question at all even about Shirley Bernstein's 2008 document, but the testimony is undisputed that the documents were consistent with her wishes. You saw a draft letter that explained to her exactly what was happening. She signed the documents. The self-proving affidavits for the Shirley documents are all checked perfectly. And

even if they weren't, we have an attesting witness here.

And, frankly, I think Eliot Bernstein likes these documents. And all he wants to do is argue what they mean and how much money you get from them. And we didn't really need to spend a day arguing this, but we have and we're here. And we believe that the evidence conclusively demonstrates that these documents are valid.

Now, you've heard some nonsense and some shenanigans. There were a couple of problems in the case; one with the notarization of documents. And it's sort of a sad and tortured story, but it's -- it was clearly wrong for someone to send documents into Judge Colin's courtroom that had been altered. The correct documents were submitted and the estate should have been closed.

And when the documents were returned, someone should have gone and filed a motion with Judge Colin to accept the un-notarized documents, since there was no dispute they were signed. And we wouldn't be here. But for whatever reason, that happened. And it's unfortunate that happened, but there's no evidence that Ted Bernstein, either of his sisters, or Eliot Bernstein, or any of the

grandchildren played any role in the fabrication of that document -- the false notarization.

The fabricated amendment to Shirley's trust document is a very disturbing fact, and we took immediate action to correct it. No one's purported to validate that document. We filed an action to have the Court construe the documents, tell us which are valid, tell us what they mean. And that's where we should be focusing our time on. And this is, in my view, step one toward that.

But if you look at the evidence we've presented, if you -- I understand you've got to deal with the witnesses that you're handed. And I think Mr. Spallina's testimony, notwithstanding the two issues that we addressed, was persuasive, it was unrebutted.

And we would ask that you uphold the five documents and determine, as we have pled, that the five testamentary documents that are in evidence, I believe, as 1, 2, 3, 4, and 5 be upheld and determined to be the valid and final testamentary documents of Simon and Shirley Bernstein. To the extent there's any question the document that has been admitted to be not genuine be determined to be an inoperative and ungenuine document, we would ask

that you enter judgment for us on Count II and reserve jurisdiction to deal with the rest of the issues as swiftly as we can.

THE COURT: All right. Thank you.

Any closing argument from the other side? Okay.

I keep forgetting that you've got a right to be heard, so please forgive me.

MR. MORRISSEY: Judge, if I may approach, I have some case law and statutes that I may refer to. And I'll try to be brief and not cumulative.

MR. BERNSTEIN: Could I get the other case law that was submitted? Do you have a copy of that?

MR. ROSE: Sure.

MR. MORRISSEY: Judge, the relevant statute with respect to the execution of wills is 732.502. It says that every will must be in writing and executed as follows. And I'll just recite from the relevant parts, that is to say relevant with respect to our case.

The testator must sign at the end of the will and it must be in the presence of at least two attesting witnesses. And if we drop down to Subsection C, the attesting witnesses must sign the will in the presence of the testator and in the

presence of each other.

Judge, that was established and uncontroverted in connection with Mr. Spallina's testimony. So 732.502 was complied with.

Now, I think that we -- there was kind of a distraction with respect to the self-proving affidavits at the end. As Your Honor's aware, a self-proving affidavit is of no consequence in connection with the execution of a will. Execution of a will as dealt with in 732.502 merely requires execution at the end by the testator or the testatrix, and then two witnesses who go ahead and attest as to the testator's signature.

Now, the self-proving affidavit at the end is in addition to. So the fact that there may or may not have been a proper notarization is of no consequence in connection with a determination of the validity of any of these documents. So that's number one.

Number two, I've also provided Your Honor with another -- a statutory section, 733.107, and it's titled "The Burden of Proof in Contest." And it says there, in Subsection 1, "In all proceedings contesting the validity of a will, the burden shall be upon the proponent of the will to establish,

prima facie, its formal execution and attestation."

I would submit to the Court that that was done today. We had Mr. Spallina's testimony, which was uncontroverted, that indicated that 732.502 was complied with. The statute goes on to state, "A self-proving affidavit executed in accordance with 733.502 or an oath of an attesting witness executed as required under the statutes is admissible and establishes, prima facie, the formal execution and attestation of the will."

So, once again, I would submit to the Court that there were self-proving affidavits with respect to all of these testamentary documents. They were proper in form, and therefore comply or comport with the second sentence of the statute. But even if not, we had Mr. Spallina testify today so as to comply with this second sentence of Subsection 1.

So if we drop down to the third sentence of this Subsection 1, it says that, "Thereafter, the contestant shall have the burden of establishing the grounds on which probate of the will is opposed or revocation is sought."

That was not done today by Mr. Eliot Bernstein. He did not present any evidence or meet

any burden to overturn these valid wills.

Judge, there is the competency argument. The testamentary competency, I'm now going to quote from In Re Wilmott's Estate, 66 So.2d 465. "A testamentary competency means the ability to understand generally the nature and extent of one's property, the relationship of those who would be the natural objects of the testator's bounty, and the practical effect of the will."

The only testimony, I elicited that from Mr. Spallina. His is the only testimony that we have in this regard. And it's uncontroverted that both of these decedents met those very specific criteria which -- with respect to each and every one of the five documents that are submitted for your Court's validation today.

There's also case law, In Re Estate of Weihe, W-E-I-H-E. That's 268 So.2d 446. That's a Fourth DCA case that says, "Competency is generally presumed and the burden of proving incompetency is on the contestant." So even if we didn't have Mr. Spallina's testimony today, which I elicited, competency on the part of both Shirley and Si Bernstein would be presumed. And it would be the contestant, Mr. Eliot Bernstein, who would have to

come up with the -- or would have the burden of showing that they were incompetent. He presented no evidence today in that regard or in that respect.

Lastly, there's the In Re Carnegie's estate, 153 Florida 7. It's a 1943 case. That says that testamentary capacity refers to competency at the time that the will was executed, so on that date.

The only testimony we have with respect to any issues of competency on the date -- on the specific dates that these testamentary documents were signed was from Mr. Spallina. And on all such dates and times, Mr. Spallina testified that these requisites with respect to competency -- or testamentary competency were met.

Finally, Judge, undue influence, that would be a reason for invalidating a will. Mr. Bernstein, once again, did not present any evidence to go ahead and suggest that these wills or trusts documents should be overturned on the grounds of undue influence. And in that regard, I provided Your Honor with the Estate of Carpenter, 253 So.2d 697. To prove undue influence, one must demonstrate that a beneficiary had a confidential relationship with the decedent and actively

procured the will or trust.

Mr. Eliot Bernstein did not even suggest today that any of the beneficiaries actively procured the document. Why? Beneficiaries are essentially -- are ultimately the ten grandchildren. Mr. Bernstein, Eliot Bernstein, did not suggest today that any one of the ten grandchildren, who are ultimately beneficiaries, were active in procuring any of the five documents, nor did Mr. Bernstein submit to the Court any evidence of confidential relationship by anyone in connection with the various criteria to raise the presumption of undue influence, nor did Eliot Bernstein raise the presumption by satisfying any or enough of the criteria under the Carpenter case to go ahead and raise the presumption that anyone, any substantial beneficiary, had committed undue influence with respect to any of these documents.

For those various, multifarious reasons, Judge, I would submit to the Court that these documents are valid and should be held as such.

THE COURT: All right. Thank you.

Any closing from the defendant's side?

MR. BERNSTEIN: Oh, yeah.

THE COURT: You've got eight minutes

remaining.

MR. BERNSTEIN: Okay. Your Honor, we're really here today because of a complex fraud on the court and on beneficiaries like myself and my children. The only witness they procured to validate these documents has consented to the SEC and felony charges recently with his partner for insider trading. He came up on the stand and admitted that he committed fraud, and that his law firm forged documents and frauded documents, and then submitted them not only to the court, but beneficiaries' attorneys as part of a very complex fraud to not only change beneficiaries, but to seize dominion and control of the estates through these very contestable documents.

They've been shown by the governor's office to not be properly notarized. The two people who are going -- well, one is --

MR. ROSE: I don't want to object to --

MR. BERNSTEIN: -- has no --

MR. ROSE: Can I object? He's so far talking about things that aren't in evidence.

THE COURT: Sustained.

You can only argue those things that were received in evidence.

MR. ROSE: And I realize Your Honor has a good memory of the evidence --

MR. BERNSTEIN: I put in evidence that Mr. Spallina was SEC --

THE COURT: No, I sustained objections to those questions.

MR. BERNSTEIN: Oh, okay.

THE COURT: You can only argue those things that came into evidence.

MR. BERNSTEIN: Okay. They didn't bring in any of the necessary parties to validate these documents, other than Mr. Spallina, who admitted to the Court today that he fraudulently altered the trust document. Can I now say that?

THE COURT: It's not good for you to ask me questions. I've got to rule on objections, and I'm trying to give you some guidance so that you don't screw up. But I can't answer your legal questions.

MR. BERNSTEIN: Okay. So the only witness has admitted in this very case that his law firm submitted forged and fraudulent documents to the Court already in this case; that he himself did those frauds. And we're relying on his sole testimony.

None of the other people who signed these

documents are here today to validate or even confirm his statements. So it's a highly uncredible [sic] witness to the documents, especially when Mr. Spallina drafted, signed as a witness, gained interest in the documents himself personally as a trustee, and seems to clearly have then taken it upon himself to mislead beneficiaries as to the actual documents.

I have asked for production of these documents. Today there were no originals produced to this Court for you to examine.

And more importantly, there's a few last things I wanted to state to the Court. My children are not represented here today as beneficiaries. They were supposed to be represented by a trustee of a trust that does not exist in our possession. So they were -- I was sued as a trustee of a trust I've never been given to represent my children, who are alleged beneficiaries by these guys. And the estate's done nothing to provide counsel to three minor children, and left them here today without counsel, and me as a trustee of a trust that doesn't exist, as far as we know. I've never signed it. They haven't submitted it to the Court, to anybody.

I want to bring up Rule 1.20, pretrial procedure, case management conference process provides, "The matter to be considered shall be specified in the order of notice setting the conference."

So I just want to say that we had a status conference in Simon Bernstein's estate, and only Simon Bernstein's estate, and that this trial was scheduled in Simon's status conference, which violates that very rule. So this trial, in my view, was conducted improperly.

Like I said, if you look at the hearing transcript of that day, you'll see that Mr. Rose misleads the Court to think that all these cases were noticed up that day. But Mr. O'Connell, the PR, had only noticed it up for Simon's estate. So what I'm doing here at a trial in Shirley's trust violates Rule 1.20.

There are some other things that are violated and not -- I believe we didn't get to discuss the -- at the case management, the fact that, you know -- and I did try to get this out -- that we would need a lot more time for a competency hearing, for a removal of Ted process, which should have come first before doing this and letting them

argue, where it's been alleged that there's some serious problems with Ted Bernstein's representation, including the fact that the PR of the estate of Simon has filed with this Court notice that he's not a valid trustee.

MR. ROSE: Objection. Outside -- not in evidence.

THE COURT: Okay. If you're not going to argue the facts that are in evidence in this trial, then I'm going to ask you to stop.

MR. BERNSTEIN: Okay. Well, I'll keep going on my -- see, that's what's confusing. What trial? We had a case management. I was prepared for a Simon, where I have Simon trust construction, all those things ready, and I didn't come with any notes about Shirley. And I've tried to notice the Court that under 1.200, this trial was scheduled improperly in the estate of Simon, and should have been reheard or rescheduled or something.

But that seems not to matter. It doesn't matter that we follow the rules. I follow the rules, but it seems that the other side doesn't follow any of the rules; doesn't submit documents properly to courts; commits frauds on courts; and then wants you to believe the validity of these

documents based on a felony statement to the Court, who's under a consent with the SEC.

THE COURT: You've got two minutes remaining.

MR. BERNSTEIN: There were outstanding discovery requests. I was denied all these documents. I was denied the trust that I'm sued under representing my children. So I can't get any of those documents. We would have brought all that up at a real status conference had it been a real status conference and not a corralling or, as you called it, a wrangling of octopuses.

THE COURT: That's vivid imagery. Isn't it? I pride myself on that one.

MR. BERNSTEIN: Oh, yeah. Well, I was wrangled, technically, into the wrong case here today, in a status conference that you should have corrected upon learning about this. And Mr. Rose has been aware of his mistake in misleading the Court that all these cases were noticed up, when they weren't. And he didn't come to the Court to correct it. Kind of like they didn't come to the Court to correct the validity of these documents before acting under them, knowing they needed to be not only challenged on validity, but on construction of terms, which will come next, which

is going to just go right back into the same circle of fraud.

So their star witness is a felon. Their star witness has committed fraud upon this Court in this case. That's who they're relying on, and hoping you bank on his words to validate documents.

I, Your Honor, am asking that you don't validate the documents; that we move forward to have the documents properly forensically analyzed. They were the subject of ongoing criminal investigations, which are just getting kicked off. In fact, I got 7200 documents from Mr. Spallina, where almost, I think, 7200 are fraud.

THE COURT: Your time is more than elapsed. I was letting you finish up as a courtesy, but you're getting off into things that aren't in evidence --

MR. BERNSTEIN: Okay. Well, I don't think the trial was conducted fairly. I think that my due process rights have been denied under the law.

THE COURT: Your time is more than up. Thank you.

MR. BERNSTEIN: Okay.

THE COURT: Is there any rebuttal?

MR. BERNSTEIN: And I still would like to move for your disqualification, on the record.

THE COURT: On the record doesn't count. You've got to put it in writing.

MR. BERNSTEIN: Are you sure? I thought I saw in the rules --

THE COURT: I'll tell you what. You proceed under your understanding of the law and the rules. That's fine.

MR. BERNSTEIN: Okay.

THE COURT: Before I take this --

MR. BERNSTEIN: I rest.

THE COURT: -- before I take this rebuttal argument, I'll let you put your request for recusal in writing. We'll be out of session five minutes.

Is that something you want me to read?

MR. ROSE: I just want to make my final --

THE COURT: I just want to make sure that there's been no possibility that this gentleman won't have his moment to shine.

So go ahead and go put that in writing, sir. Be back in five minutes.

(A break was taken.)

THE COURT: Did you get that written down?

MR. BERNSTEIN: Can I approach?

THE COURT: Sure. All approaches are okay.

MR. BERNSTEIN: Do you want to wait for

everybody?

THE COURT: Do you have something that you wanted to file, a written motion to recuse?

MR. BERNSTEIN: Yeah. In freestyle.

THE COURT: All right. I'll take a look at it. Thank you.

MR. BERNSTEIN: Can I ask a question?

THE COURT: I'll be in recess. I'll take a look at this written motion. Thank you. It'll take me just a minute. Don't anybody go away.

(A break was taken.)

THE COURT: The stack of documents handed up to me by the defendant are duplicates of documents that he filed, it looks like, twice with the clerk on December 4th, and they've already been ruled upon by me. But I am also ruling today by handwritten order on the face of one of the documents that the disqualification motion is denied as legally insufficient; already ruled upon in the order of 12/8/15, at Docket Entry No. 98; identical to motions filed by defendant on 12/4/2015 at Docket Entries Nos. 94 and 98; done in order of John Phillips, 12/15/15. And since I have skills, I made copies of my handwritten order for everybody.

Gary, if you could, just hand these out. That'll take care of all that.

Now we can go back to talking about the case. I was going to take the rebuttal argument from Plaintiff's side. I'd take that now.

MR. ROSE: I have just the exhibits that we put in evidence on the plaintiff's side, if that's easier for the Court.

THE COURT: That would be much easier. Thank you.

MR. ROSE: And I have a proposed final judgment. And I wanted to talk about one paragraph of the final judgment in particular.

MR. BERNSTEIN: I haven't had time to review any final judgment or anything.

THE COURT: You're interrupting the argument. Thank you.

MR. ROSE: So the complaint alleges -- and I realize we didn't cover every issue in the entire case, but we do it within the four corners of Count II of the complaint. Count II of the complaint was stated in paragraph 79 through 88 of the complaint.

And the answer that's filed in this case on Count II at paragraph 80 alleges that there's been a fraud on the court by Ted Bernstein, including,

but not limited to, proven forgery, fraudulent notarizations, fraud on the court, altercation [sic] of trust documents, et cetera, et cetera. And in paragraph 82, the answer says that Ted should be removed for his ongoing involvement in fraud which is dealing with these documents.

Ted Bernstein is serving as a fiduciary. You've heard -- that was the defense to this case. That's stated in the complaint. You heard no evidence that Ted Bernstein was involved in the preparation or creation of any fraudulent documents. In fact, the evidence from Mr. Spallina was to the contrary.

So our final judgment in paragraph 5 asks the Court to make a ruling on the issues that are pled in the answer, specifically that there was no evidence that Ted was involved and that the evidence was to the contrary.

So we have no rebuttal. We believe we've established our case, and we proposed a final judgment for Your Honor's consideration that discusses that this is an action to adjudicate five documents to be the testamentary documents. Based on the evidence presented, they're genuine, authentic, valid and enforceable; has the requisite

findings. Paragraph 5, which I've explained, the reason we believe it's appropriate in the final judgment, given the pleadings that were made and the lack of evidence on those pleadings. And we didn't get into it today, but --

THE COURT: Well, if we didn't get into it today, then it's not proper for argument.

MR. ROSE: Well, it's alleged in the complaint and not proven, so I think it's appropriate to make a finding on it. You didn't actually hear testimony that was relevant to those issues about Ted Bernstein. And I would ask you to consider that 5 is supported by the evidence and the pleadings.

And 6, we would like you to declare the unauthorized one invalid, because it does change potentially something, and we want to know what we're doing going forward. And I don't think anyone disputes that Exhibit 6 that's in evidence was not valid. And then it just states this is intended to be a final order under the rules of probate code.

So that's our order. We would ask you to enter our judgment or a judgment similar to it; find in favor of the plaintiff; reserve

jurisdiction for numerous other matters that we need to deal with as quickly as we can. But, hopefully, with the guidance we get today, we'll be able to do it more quickly and more efficiently. So thank you.

THE COURT: All right. Thanks.

We'll be in recess. It was fun spending time with you all.

Sir, do you have any proposed final judgment you want me to consider? I've received one from the plaintiff's side. Is there some from the defendant's side?

MR. BERNSTEIN: No. I haven't received one from them. And seeing theirs --

THE COURT: Okay. Thank you.

Then we'll be in recess. Thank you all very much. I'll get this order out as quickly as I can.

(At 4:48 p.m. the trial was concluded.)

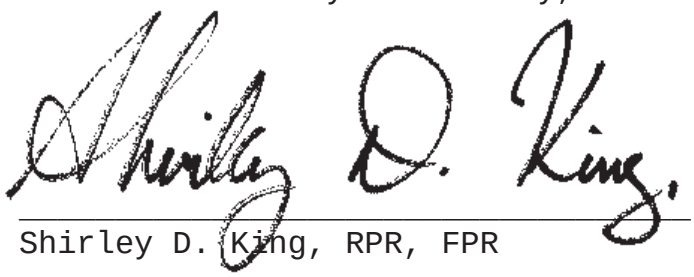
C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Shirley D. King, Registered Professional Reporter, State of Florida at large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 4th day of January, 2016.



Shirley D. King, RPR, FPR

Job #1358198-VOL 2

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# FIRST AMENDMENT TO SHIRLEY BERNSTEIN TRUST AGREEMENT

This First Amendment is dated this 18 day of Nov, 2008, and is between SHIRLEY BERNSTEIN of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN of Palm Beach County, Florida as trustee (referred to as the "***Trustee***," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SHIRLEY BERNSTEIN TRUST AGREEMENT (the "***Trust Agreement,***" which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke the said Trust Agreement, in whole or in part.

NOW THEREFORE, by executing this instrument, I hereby amend the Trust Agreement as follows:

1. I hereby delete Paragraph B. of Article II. in its entirety.

2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("***TED***") and PAMELA B. SIMON ("***PAM***"), shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

3. I hereby ratify and reaffirm the Trust Agreement as amended by this First Amendment.

*[remainder of page intentionally left blank]*



2014CP003698
Bloomberg Law Firm
PLAINTIFF'S EXHIBIT 6
12-15-15
TS001397

# FIRST AMENDMENT TO SHIRLEY BERNSTEIN TRUST AGREEMENT

This First Amendment is dated this _____ day of _____, 2008, and is between SHIRLEY BERNSTEIN of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN of Palm Beach County, Florida as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SHIRLEY BERNSTEIN TRUST AGREEMENT (the "*Trust Agreement*," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke the said Trust Agreement, in whole or in part.

NOW THEREFORE, by executing this instrument, I hereby amend the Trust Agreement as follows:

1. I hereby delete Paragraph B. of Article II, in its entirety.

3. I hereby ratify and reaffirm the Trust Agreement as amended by this First Amendment.

*[remainder of page intentionally left blank]*

2014CP003698

PLAINTIFF'S EXHIBIT 13

P3 12-15-15

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

SETTLOR and TRUSTEE:

SHIRLEY BERNSTEIN

This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 12 day of Nov, 2008:

Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

Print Name: Rachel Walker
Address: 700 Plaza Real South
Apt. 308
Boca Raton, FL 33432

STATE OF FLORIDA )
) SS.
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 12 day of November, 2008, by SHIRLEY BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission #DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

[Seal with Commission Expiration Date]

Kimberly Moran
Signature - Notary Public-State of Florida

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

N:\WPDATA\Ahl\Bernstein, Shirley & Simon\2008 Estate Planning\First Amendment to Shirley Bernstein Trust Agreement.wpd [11:09:26 11/08]



Evidence20151215Hearing040StansburyCopy20160110

***From the Desk of :***

***Joshua Ennio Zander Bernstein***

**2753 NW 34th Street, Boca Raton, FL 33434**

July 11, 2017

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 Telephone
dzlewis@aol.com
(Fla. Bar No. 351350)

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

Attention Diana Lewis, Esq.,

My name is Joshua Ennio Zander Bernstein and it has come to my attention that you are an attorney and former Judge in Palm Beach County and Officer of the Court, allegedly acting as Guardian Ad Litem for me since since April 07, 2016 allegedly as a "minor child" of Eliot Ivan Bernstein and Candice Michelle Bernstein.

I make this voluntary request for you to now Cease and Desist all actions allegedly as my Guardian Ad Litem, turn over all records, discovery and information obtained in the course of your actions as my alleged Guardian and correct any and all frauds in all Courts or elsewhere impacted by this illegal Guardianship, including but not limited to, the Estate and Trust cases of my deceased grandparents, Simon and Shirley Bernstein.



**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

---

As I show in this letter, at all times relevant in these Estate and Trust cases both Ted Bernstein who is my uncle, his lawyer Alan Rose, lawyer Steven Lessne and yourself have all had actual knowledge that I was over the age of 18 before this Guardianship via a Guardian Ad Litem for minors was ever established and thus was never a "Minor". Therefore, since I was over the age of 18 years at the time of the "Guardianship" this could only occur after a "competency hearing" which of course has never occurred and you, Ted Bernstein, Alan Rose, Brian O'Connell and Steven Lessne have at all times had actual knowledge of these facts and the illegality of the Guardianship which appears to have been used as a predatory weapon against my family to interfere in proper rights of Inheritance and to cover up frauds in the cases.

Further, all of you actually know and have known that no "competency hearing" was ever held against me nor have I ever been provided ANY Due Process Notice or been served to appear in any proceeding or have an Opportunity to be heard at any of the relevant proceedings to date.

What is even more egregious about your conduct as a former Judge and done as an "Officer of the Court" is that you not only have continued in your actions as alleged Guardian in this illegal Guardianship despite being specifically advised that I was over the age of 18 years prior to the Guardianship itself, but have even gone as far as to give alleged "Consents" on my behalf to various actions by Ted Bernstein and Alan Rose and entered into "Settlements" on my behalf again giving "Consent" all without my knowledge, without my Consent and without any Notice of Opportunity to be heard provided to myself. In fact, as you actually know. you and I have never even spoken to one another.

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

---

I have come to learn that under Federal law under Title 18 USC Sec.242 it is a Federal Criminal Offense for Civil Rights Violations for 2 or more persons to conspire to Violate my US Constitutional rights, which have been violated by your actions in this case together in common with Attorney Alan Rose and Steven Lessne, Fiduciary Ted Bernstein and with the compliance and acquiescence of attorney Brian O'Connell as current Personal Representative of my grandfather Simon's Estate.

Please take notice that I have copied the US Dept of Justice Civil Rights Division head Tom Wheeler and offices of the FBI and US Attorney on this request.

I have further learned the following from the US Dept. of Justice Website:

> "Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

For the purpose of Section 242, acts under "color of law" **include acts not only done by federal, state, or local officials within the their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prisons guards and other law enforcement officials, as well as judges,** care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim.



The offense is punishable by a range of imprisonment up to a life term, or the death penalty, depending upon the circumstances of the crime, and the resulting injury, if any." See, https://www.justice.gov/crt/deprivation-rights-under-color-law.

Ted Bernstein, who is my uncle by blood. and his attorney Alan Rose have at all times known my Birthdate particularly in relation to exorbitant and fraudulent legal Fees billed after the passing of my grandfather Simon Bernstein and the refusal to release my car Registration to me, which had been a birthday gift to me from my Grandfather only days before he passed that Ted and others tried to claim was an asset of the Estate of my grandfather. My birthdate was specifically raised in those proceedings and the Guardian Ad Litem proceedings and thus, these parties at all times knew that I was not a "minor" at the time the predatory Guardian Ad Litem was approved.

You apparently accepted Guardian Ad Litem over me as a "minor", however, I have been Sui Juris since my 18th birthday on August 27, 2015 having been born on August 27, 1997.

Having been over the age of 18 years and thus not a "minor" under Florida law as of August 27, 2015, the Petitions filed on January 04, 2016 in the Shirley Trust case and January 07, 2017 in the Oppenheimer case and the Orders appointing you as Guardian Ad Litem on March 01, 2016 in the Shirley Trust case and March 03, 2016 in the Oppenheimer case, and your Acceptance of the appointments in both cases on April 07, 2016 all were done illegally and with knowledge that I was Sui Juris at the time and therefore every action taken on my behalf through the Guardian Ad Litem must now be corrected to reflect your lack of proper and legal jurisdiction over me.

I have never spoken with you, met with you, granted you any authority over me and in any way enabled or allowed your acting in any capacity and in any matter on my behalf as an adult. This is a Cease and Desist demand to stop all further illegal acts on my behalf.



**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

---

On March 01, 2016, while I was Sui Juris, in CASE NO.: 502014CP003698XXXX (NB)

"Shirley Bernstein Trust" styled,

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Plaintiff,

v.
ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, **and on behalf of his minor children D.B., Ja. B. and Jo. B.** [**emphasis added**]; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.,

Defendants.
_____/

in the Florida Probate Court an Order (SEE EXHIBIT 1 – GAL ORDER) was issued for Guardian Ad Litem based on pleadings filed that represented that **the GAL was for minor children** of Eliot and Candice. The Order states in part,

> "2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his **minor children**, as their parent and natural guardian, in this Trust Proceeding." [**emphasis added**]
>
> "4. …Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her **minor child**. Mistretta v. Mistretta, 566 So. 2d 836, 83 7-38 (Fla. 1st DCA 1990) (best interests of a **minor** are not fully protected when adverse to the interests of the parent); Florida Na1. Bank & Trust Co. at Miami v. Blake, 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for **minor child** when it was apparent that the interests of the **minor** conflicted with the interests of the mother and father); Gilbertson v. Boggs, 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed when the parents' interests were adverse to the **minor childs**)." [**emphasis added**]
>
> "5. …Second, Fla. Stat. 731.303 (4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... **a minor** ... "[**emphasis added**]

On April 04, 2016, while I was Sui Juris, you were appointed as the Guardian Ad Litem to represent the interests of Eliot Bernstein's **MINOR** children. See (SEE EXHIBIT 2 –SHIRLEY TRUST GAL Order)

On March 03, 2016, while I was Sui Juris, in CASE NO.: 502014CP002815XXXXNB (IH) titled,

> "OPPENHEIMER TRUST COMPANY OF DELAWARE, in its capacity as Resigned Trustee of the Simon Bernstein Irrevocable Trusts created for the benefit of Joshua, Jake and Daniel Bernstein,

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

---

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN,
in their capacity as parents and natural
guardians of JOSHUA, JAKE AND
DANIEL BERNSTEIN, minors, [emphasis added]

Respondents.
_____/"

in the Florida Probate Court an Order (SEE EXHIBIT 3 – GAL ORDER OPPENHEIMER) was issued. That Order states in part the following;

> "…(the "Motion") filed by Petitioner, Oppenheimer Trust Company Of Delaware ("Oppenheimer"), in its capacity as the resigned trustee of three Irrevocable Trusts settled by Simon Bernstein on September 7, 2006 for the benefit of his grandchildren, **minors, Joshua, Jake and Daniel Bernstein** (the "Grandchildren Trusts")." [**emphasis added**]
> "1. The sole beneficiaries of the Grandchildren Trusts, and the only real parties in interest in this litigation (other than Oppenheimer), **are Joshua, Jake and Daniel Bernstein (the "Minor Beneficiaries").** Neither Eliot nor Candice Bernstein (the "Bemsteins") were sued in their individual capacities by Oppenheimer, nor have they moved for, or been granted, permission to intervene in their individual capacities. They have been afforded standing in these proceedings, to date, solely as the parents and natural guardians of the Minor Beneficiaries. [**emphasis added**]
> "2. The Bernsteins have been shown to have multiple conflicts of interest with the **Minor Beneficiaries**…All of the above, and certainly in combination, render the Bemsteins inappropriate and inadequate representatives for the **Minor Beneficiaries** in this litigation. [**emphasis added**]

On April 07, 2016, while I was Sui Juris, you filed a "NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR Jo.B., Ja.B. AND D.B.IN THE ABOVE STYLED CASE" in the Shirley Trust Construction case (Filing # 40000163 E-Filed 04/07/2016 04:06:21 PM) (SEE EXHIBIT 4 – NOTICE) which states in part;

> "NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR Jo.B., Ja.B. AND D.B.IN THE ABOVE STYLED CASE COMES NOW Diana Lewis and notifies the court of her **acceptance of appointment as Guardian ad litem for Eliot Bernstein's minor children, Jo.B., Ja.B. and D.B.** pursuant to this court's order dated April 4, 2016, and the terms and conditions set forth therein." [**emphasis added**]

Similarly, on April 07, 2016, while I was Sui Juris, you filed a "NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR JOSHUA, JAKE AND DANIEL BERNSTEIN IN THE ABOVE STYLED CASE" in the Oppenheimer Case (Filing # 39999717 E-Filed 04/07/2016 04:03:08 PM), which states in part;

> COMES NOW Diana Lewis and notifies the court of her acceptance of appointment as Guardian ad litem for JOSHUA, JAKE and DANIEL BERNSTEIN **(the "Minor Beneficiaries")** pursuant to this court's order dated April 4, 2016. [**emphasis added**]

I am unaware of any Guardian Ad Litem Orders entered in the Simon and Shirley Probate Cases ( Case # 502012CP004391XXXXSB – Simon Bernstein Estate and Case # 502011CP000653XXXXSB – Shirley Bernstein Estate) giving you any guardianship powers over me to make any representations or take any actions on my behalf in those cases.

The March 01, 2016 Oppenheimer Order states,

> "4. For the above reasons, the guardian ad /item appointed in Case No.: 502014CP003698XXXXNB shall be deemed appointed simultaneously as the guardian ad /item for the Minor Beneficiaries in this case, **with sole and exclusive authority to represent the Minor Beneficiaries' interests in this case** .Jo.B., Ja.B. AND D.B. IN THE ABOVE STYLED CASE" [**emphasis added**]

The Shirley Bernstein Trust Order Appointing Guardianship is similarly limited to legal authority of the guardianship in that case only and only for MINOR CHILDREN.

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

---

As you can see from my birthday listed above I turned 18 on August 27, 2015 and AT NO TIME IN THESE PROCEEDINGS WAS I A MINOR AND I WAS SUI JURIS WHEN ORDERS WERE ISSUED AND PLEADINGS WERE MADE BY ATTORNEYS AT LAW ALAN B. ROSE and STEVEN LESSNE to gain a predatory guardianship on me while I was an Adult by falsely pleading to the Court that I was a Minor and I have been advised that this guardianship is in violation of Florida Criminal and Civil Statutes and perhaps Federal law.

> The 2016 Florida Statutes - Title XLIII - DOMESTIC RELATIONS - Chapter 744 - GUARDIANSHIP
> 744.521 Termination of guardianship.—**When a ward becomes sui juris** or is restored to capacity, when the guardian has been unable to locate the ward through diligent search, or, for a guardian of the property, when the property subject to the guardianship has been exhausted, the guardian shall file a final report and receive his or her discharge. A guardian of the person is discharged without further proceeding upon filing a certified copy of the ward's death certificate. The court may require proof of the removal of incapacity.
> History.—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222; s. 4, ch. 86-120; s. 89, ch. 89-96; s. 63, ch. 90-271; s. 1110, ch. 97-102.
> Note.—Created from former s. 746.12.
> "Minor Ward Reaches 18 Unless the minor is incapacitated, at the age of 18 he or she is no longer a minor and is deemed to be legally old enough to manage his or her own finances or property. The guardianship is terminated and the assets are distributed to the minor."
> https://umshare.miami.edu/web/wda/ethics/gurardianship_rev1-07.pdf

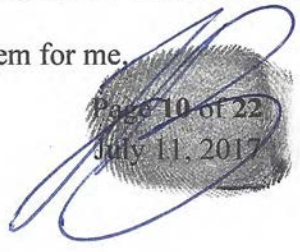
No adult Guardianship proceedings under The 2016 Florida Statutes - Title XLIII - DOMESTIC RELATIONS GUARDIANSHIP Chapter 744 took place for me as legally required as I was an adult at the time guardianship was sought for and gained over me and no capacity hearing was held at any time. As you can see from the Pleadings and Orders submitted in the case and outlined herein the Guardian Ad Litem was ILLEGALLY gained over me while an adult and I



was misrepresented to the Court as a minor by Officers of the Court, Alan B. Rose, Esq. and Steven Lessne, Esq. and Fiduciary of the Estates and Trusts of my grandparents Simon and Shirley Bernstein, my uncle Ted Bernstein. I have been made aware that my uncle Ted and all other parties knew at the time my legal age and that I was Sui Juris.

Therefore, due to your lack of legal authority over me despite any Court Orders gained through simulated legal process, immediately;

1. **CEASE AND DESIST** from any further representations of myself, Joshua Bernstein, in any proceedings, settlements or other matters involving me.
2. **NOTIFY** the Florida Court that ALL OF YOUR PRIOR REPRESENTATIONS AND ACTS ON BEHALF OF JOSHUA BERNSTEIN are and always have been improper and illegal and cease and desist this KNOWINGLY, GROSS, WILLFUL, WANTON and RECKLESS criminal violation of your fiduciary duties as a Guardian Ad Litem .
3. **WITHDRAW** any and all Consent you have given in any matters relating to Joshua Bernstein.
4. **FILE** immediately within or without the final report the fact that I, Joshua Bernstein, was placed as an adult illegally in a guardianship for minors and that no legal adult guardianship proceedings were held giving you legal authority from the onset of your legal representations on my behalf, receive discharge and turn over all records and properties regarding the guardianships as required.
5. **MAKE NO** further appearances in Court on my behalf or state in any pleadings consent on my behalf or take any any action whatsoever on my behalf claiming that you are a acting as Guardian Ad Litem for me.



6. **NOTIFY ALAN ROSE AND STEVEN LESSNE** to similarly take all actions to remove and strike all pleadings, orders, settlements, etc. in any court cases made on my behalf as a minor and cease and desist any further acts on my behalf.
7. **NOTIFY ALL COURTS** affected by your actions that you have never had proper guardianship for me as an adult.
8. **NOTIFY ALL COURTS** that you have made improper representations in pleadings and hearings in the Simon and Shirley Bernstein Estate cases and the Oppenheimer cases where you have never been granted a legal guardianship over me. The Courts to be notified and cases related to your actions that have been affected by the misconduct shall include but not be limited to,
    a. The Florida Probate Court – HONORABLE Judge Rosemarie Scher, cases:
        i. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
        ii. Case # 502015CP001162XXXXNB – Simon Bernstein Trust to Remove Ted Bernstein
            1. OLD CASE # Was Civil but Colin transferred to Probate ? 502014CA014637XXXXMB
        iii. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
        iv. Case # 502014CP003698XXXXNB – Shirley Trust Construction
        v. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
        vi. Case # 502015CP002717XXXX Colin Closed and transferred to Coates Eliot Bernstein v. Simon Estate Case for Claims
        vii. Case # 502014CA014637XXXXMB BERNSTEIN, ELIOT I VS BERNSTEIN, THEODORE S
        viii. Case # 50-2010-CP-003128-XXXX-SB – Joshua Bernstein alleged 2010 Trust Case Colin
        ix. Case # 50-2010-CP-003125-XXXX-SB - – Jacob Jake Bernstein alleged 2010 Trust Case Colin
        x. Case # 50-2010-CP-003123-XXXX-SB– Daniel Danny Bernstein alleged 2010 Trust Case Colin



b. The Florida 15th Judicial Civil Circuit Court and HONORABLE JUDGE Cymonie Rowe, case:

   i. Case # 502012CA013933XXXXMB William E. Stansbury v. Ted S. Bernstein et al. -

c. The Florida 4th District Court of Appeals – Note – Do not submit any information to Chief Judge Corey Ciklin who is conflicted in these matters already as being a former law partner of Personal Representative of the Estate of Simon Bernstein, Brian O'Connell's law firm, Ciklin Lubitz Martens & O'Connell, where Judge Ciklin already has Sua Sponte removed himself from proceedings he was involved with in these matters and removed his name from several prior issued Orders at that court.

   i. Case 15-3849 ELIOT BERNSTEIN ESTATE OF SIMON BERNSTEIN
   ii. Case 16-1449 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
   iii. Case 16-1476 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
   iv. Case 16-2249 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
   v. Case 16-0222 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ET AL.
   vi. Case 16-1478 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.
   vii. Case 16-3314 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.
   viii. Case 16-0064 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE. ET AL.
   ix. Case 16-3162 ELIOT IVAN BERNSTEIN WILLIAM E. STANSBURY, et al.
   x. Case 16-4120 ELIOT IVAN BERNSTEIN WILLIAM E. STANSBURY, et al.



d. The Florida Supreme Court – Note – Do not submit any information to Chief Judge Jorge Labarga as he is conflicted with the Eliot Bernstein family in these matters.

   i. SC16-29

e. The United States District Court Northern District of Illinois Case 1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company – HONORABLE Judge John Robert Blakey and Chief Judge Ruben Castillo.

   i. Case # 13-cv-03643 - Federal Lawsuit in the US District Court of Eastern Illinois

f. United States Court of Appeals for the Seventh Circuit - Chief Judge Diane P. Wood in relation to the Lower Court Case 1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company.

   i. Case No. 17-1461 APPEAL UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

9. **TURN OVER** all of your professional and individual insurance policies and bonding information to me as claims against you individually and professionally and your firm, will be forthcoming for the massive damages caused to me from your breaches of fiduciary duties and other misconduct. Your firm appears as follows and I believe it was set up specifically for liability purposes for these matters with my family, immediately prior to your acceptance of Guardian Ad Litem for me:

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive



West Palm Beach, FL 33409
(561) 758-3017 Telephone
Email: dzlewis@aol.com
By: /s/ Diana Lewis
(Fla. Bar No. 351350)

10. **TURN OVER** all records. documents, emails, faxes, information of any kind regarding me obtained by and during these illegal actions to my attention at my permanent address of, 2753 NW 34th Street, Boca Raton, FL 33434.

I have been notified that on repeated occasions over the past year my father and mother Eliot and Candice Bernstein have notified you directly of my Sui Juris status and you have refused to take any actions to end the improper Guardian Ad Litem and continue to make representations, agreements and settlements on my behalf and hopefully this notice will cause you to **IMMEDIATELY CEASE AND DESIST THIS ILLEGAL CONDUCT**.

I have also been made aware that my father and mother, Eliot and Candice Bernstein have notified state and federal authorities of your misconduct on my behalf, including but not limited to acts such as,

1. Dissolving various Trusts in my name set up by my grandparents,
2. Dissolving Bernstein Family Realty, LLC, set up by my grandparents of which I am a 33% owner,
3. Making appearances in various court and legal proceedings illegally on my behalf,
4. Consenting to various legal agreements illegally on my behalf,
5. Consenting to various settlements illegally on my behalf.

I have learned that in Case # 502014CP003698XXXXNB – Shirley Bernstein Trust in the Fifteenth Judicial Probate Court you are acting under an alleged Trust created in my name that I

was sued as a defendant under with my father, Eliot Bernstein, as Trustee and where I have never received formal notice of any such trust, nor do I believe my parents or any other party, including the courts have received, although I am a beneficiary allegedly under this trust. The Trust I am sued under is titled,

> ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd **9/13/12**, **and on behalf of his minor children D.B., Ja. B. and Jo. B**.

Please provide a copy of the "**Simon L. Bernstein Trust Dtd 9/13/12**" and any subtrusts held thereunder in my name supposedly created on 9/13/12 the date of my grandfather's death. If you are in possession of any such trust or subtrust OR ANY OTHER TRUST in my name, please instantly turn over all records regarding this legal entity I have been sued under and that you are acting illegally as a Guardian Ad Litem over my person in such legal action under such trust.

I have done preliminary research into your name online since learning of this predatory Guardian Ad Litem placed knowingly upon me as an adult and have learned that you are a FORMER Judge and no longer a Florida Registered Judge who has lost her judgeship to Jennifer Ticktin since on or about 2014[1] [2] [3] where I learned from the attached articles, "But Ticktin, a 35-year-old

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[1] "Ugly PBC judicial campaign pits Diana Lewis and Jessica Ticktin" By Jane Musgrave - Palm Beach Post Staff Writer
Updated: 12:41 p.m. Friday, August 08, 2014 | Posted: 7:00 a.m. Friday, August 08, 2014
http://www.mypalmbeachpost.com/news/local-govt--politics/ugly-pbc-judicial-campaign-pits-diana-lewis-and-jessica-ticktin/NczV3oHgQuXksyXpl11JdI

[2] "Race for Palm Beach County Circuit Judge Group 14 seat is personal" July 19, 2014|By Brittany Shammas, Sun Sentinel
http://articles.sun-sentinel.com/2014-07-19/news/fl-election-palm-circuit-judges-14-20140719_1_lewis-incumbent-judge-ticktin-law-group

partner at Ticktin Law Group and a Boca Raton resident, says she targeted Lewis for a reason. She cited a 2013 Palm Beach County Bar poll in which Lewis ranked last among 34 circuit court judges in categories including knowledge and application of the law, impartiality and judicial demeanor. "I think that right now we have an issue with the incumbent judge," Ticktin said. "Last time she was given a second chance, and I don't think that she did well with that second chance. I think it's time for change." In noting your bar association number above I believe that as both a former judge and current registered attorney at law I need not educate you on your obligations to notify all tribunals, criminal and civil and all parties with any liabilities resulting from your and others you worked in conspire with actions, as required by both State and Federal - Civil, Criminal and Ethical Rules and Statutes.

That these Knowingly, Gross, Willful, Wanton and Reckless Acts, which appear as Financial Exploitation of an Adult through an ILLEGAL GUARDIAN AD LITEM FOR A MINOR and further appear part of a larger conspiracy against the rights of my father, my mother and my brothers are simultaneously being forwarded to state and federal criminal authorities to investigate and prosecute any prior and future criminal acts, so please **govern yourself accordingly** in any future actions you may take in any matters relating to my family and myself.

[3] "Palm Beach Judge Diana Lewis Loses Judicial Seat to Challenger Raising Issues with Demeanor" Florida You Judge Wednesday, August 27th, 2014 at 5:26 pm by admin by Haydee Oropesa http://www.floridayoujudge.com/palm-beach-judge-diana-lewis-loses-judicial-seat-to-challenger-raising-issues-with-demeanor/

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

---

I authorize this Statement and Cease and Desist Request to be filed in any and all state and federal proceedings as relevant and necessary.

Sincerely,

X:_____ Dated: 7/11/17

Joshua Ennio Zander Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Witness:

X:_____ Dated: 7/11/17

Name: Jacob Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

EXHIBIT 1

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

TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended,

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.,

Defendants.
_____/

Probate Division
Case No.: 502014CP003698XXXXNB

**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO APPOINT A GUARDIAN AD LITEM; FOR A GAG ORDER TO PROTECT THE GUARDIAN AND OTHERS; AND TO STRIKE ELIOT BERNSTEIN'S FILINGS**

THIS CAUSE came before the Court for evidentiary hearing on February 25, 2016, on Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children etc. (the "Motion"). The Court, having considered the record, heard argument of counsel and being otherwise fully advised in the premises, hereby

ORDERS AND ADJUDGES:

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Shirley Bernstein Trust Agreement dated 5/20/2008 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust. This Court entered a written order dated February 1, 2016, determining Eliot Bernstein lacks standing to participate in this proceeding and striking his individual filings.

2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his minor children, as their parent and natural guardian, in this Trust Proceeding.

3. ~~Despite his status as natural guardian, Eliot will not be permitted to do so, and~~ The Court will appoint a Guardian ad Litem, because there is a conflict of interest between the parent and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children.

4. First, as to the conflict, Eliot's position throughout the case and at trial was that he was a beneficiary of the Trust. He continued advancing that position after trial by prosecuting an appeal of the December 16, 2015 Final Judgment. Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *Mistretta v. Mistretta,* 566 So. 2d 836, 837-38 (Fla. 1st DCA 1990)(best interests of a minor are ***not*** fully protected when adverse to the interests of the parent); *Florida Nat. Bank & Trust Co. at Miami v. Blake,* 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was

apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs,* 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed ~~then~~ when the parents' interests were adverse to the minor childs).

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..."[1] Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and based upon the Court's review of various motions filed by Eliot Bernstein since the trial, it is apparent Eliot Bernstein is not an adequate representative of the best interests of his children. In fact, his actions are adverse & destructive to the children's interest

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost to the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein,

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[1] In addition, under section 744.3025, the court *may* appoint a guardian ad litem to represent a minor's interest before approving a settlement of the minor's portion of any cause of action in which the gross settlement of the claim exceeds $15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest, and "shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds $50,000." Here, it is likely that there will be a settlement at some point in which each of minors receives a substantial distribution, and it is likely Eliot will oppose any such settlement.

on behalf of his children, ~~is~~ are hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

8. The parties shall attempt to mutually agree on a guardian ad litem. The Court will appoint whomever the parties agree upon within the next three business days. Eliot Bernstein may participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to agree on a guardian ad litem, ~~upon notice from the Trustee's counsel the Court shall randomly appoint a guardian ad litem for Ja.B., Jo.B. and D.B. or schedule a further hearing to appoint a suitable Guardian Ad Litem.~~ each of the parties shall submit a list of three names of potential Guardian Ad Litems, each of whom has agreed to accept the appointment if selected. Those lists shall be filed with the Clerk with courtesy copy to the undersigned, no later than 10 days from this date.*

9. The Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall ~~make no effort to~~ not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; ~~(b) shall make no statement of any kind about the guardian, nor post information about the guardian on the internet in any fashion; and~~ (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian, and ~~all information concerning this guardianship shall be treated as private and confidential.~~ Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

* Parties shall furnish an Order appointing GAL proposed with the lists. The Court will act without further hearing on the appointment, if possible.

11. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE and ORDERED in Chambers, North County Courthouse on 3-1-16, 2016.

HONORABLE JOHN L. PHILLIPS

cc: Attached service list

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
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Pamela Beth Simon
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Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
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West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

JOHN L. PHILLIPS
CIRCUIT JUDGE
NORTH COUNTY COURTHOUSE
3188 PGA BOULEVARD
PALM BEACH GARDENS, FL 33410




Eliot Bernstein and Candice Bernstein
2753 NW 34th Street
Boca Raton, FL 33434



EXHIBIT 2

Filing # 39817850 E-Filed 04/04/2016 03:19:38 PM

RECEIVED, 5/18/2016 4:40 PM, Clerk, Fourth District Court of Appeal

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

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and ou behalf of her minor child, C.F.,

Defendants.
_____/

Probate Division
Case No.: 502014CP003698XXXXNBIH

**ORDER APPOINTING DIANA LEWIS AS GUARDIAN AD LITEM FOR ELIOT BERNSTEIN's CHILDREN, JO.B.; JA. B.; and D.B.**

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016, on Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children etc. (the "Motion"). Having considered the Motion and the arguments of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly advised in the premises, the Court entered an Order in this matter, and a companion order in Case No. 502014CP002815XXXXNB, granting motions to appoint a guardian ad litem for Eliot's

children, Jo.B., Ja.B. and D.B., and setting forth a protocol for selecting a guardian ad litem. Having received the parties' notices contemplated under the companion order, the Court hereby appoints a guardian ad litem as follows:

1. Diana Lewis is hereby appointed as the guardian ad litem for Jo.B., Ja.B. and D.B. in this case, with sole and exclusive authority to represent their interests in this case. The guardian ad litem shall be entitled to petition the Court for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Jo.B., Ja.B. and D.B. from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

2. The guardian ad litem shall file an acceptance of appointment with this Court, with a copy to the parties listed at the end of this Order, within 5 business of the date of this Order; otherwise, the parties shall notify the Court by letter that the appointment has not been accepted, in which case the Court will either appoint an alternate guardian ad litem without further hearing or hold an additional hearing to select an alternate guardian ad litem.

3. The guardian ad litem shall have sufficient time after his/her acceptance of this appointment to within which to prepare necessary court filings and prepare for mediation as ordered by the Court at a hearing held on March 7, in the related case of Estate of Simon Bernstein.

4. Trustee and the guardian ad litem shall confer in good faith regarding a resolution of this matter and/or a time frame within which to try any unresolved issues.

5. Pursuant to the Order dated March 1, 2016, the Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court

for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

6. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; and (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

7. The guardian ad litem shall notify this Court and Trustee of any actions taken by Eliot and/or Candice Bernstein which interfere with the guardian ad litem's duties hereunder.

DONE and ORDERED in Chambers, North County Courthouse on 4.4., 2016.

HONORABLE JOHN L. PHILLIPS

cc: Attached service list

**SERVICE LIST** Case No.: 502014CP003698XXXXNBIH

Eliot Bernstein and Candice Bernstein,
as Parents of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
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(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

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Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

STATE OF FLORIDA • PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the record in my office.
THIS 18 DAY OF Nov, 20 16
SHARON R. BOCK
CLERK & COMPTROLLER
By Victoria Ranger
DEPUTY CLERK

EXHIBIT 3

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

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXNB (IH)

OPPENHEIMER TRUST COMPANY OF DELAWARE, in its capacity as Resigned Trustee of the Simon Bernstein Irrevocable Trusts created for the benefit of Joshua, Jake and Daniel Bernstein,

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN, in their capacity as parents and natural guardians of JOSHUA, JAKE AND DANIEL BERNSTEIN, minors,

Respondents.
_____/

**ORDER APPOINTING GUARDIAN *AD LITEM* FOR MINORS, JOSHUA, JAKE AND DANIEL BERNSTEIN**

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016 upon the *Omnibus Motion (I) To Appoint A Guardian Ad Litem For The Minor Beneficiaries Of The "Grandchildren Trusts;" (II) To Hold Eliot And Candice Bernstein In Contempt Of Court For Their Continued Violation Of A Court Order And Repeated Statements Assaulting The Dignity Of The Court; And (III) To Establish A Schedule And Protocol For Accounting And Turnover Proceedings* (the "Motion") filed by Petitioner, Oppenheimer Trust Company Of Delaware ("Oppenheimer"), in its capacity as the resigned trustee of three Irrevocable Trusts settled by Simon Bernstein on September 7, 2006 for the benefit of his grandchildren, minors, Joshua, Jake and Daniel Bernstein (the "Grandchildren Trusts"). Having considered the Motion

and the arguments of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly advised in the premises, the Court rules as follows:

1. The sole beneficiaries of the Grandchildren Trusts, and the only real parties in interest in this litigation (other than Oppenheimer), are Joshua, Jake and Daniel Bernstein (the "Minor Beneficiaries"). Neither Eliot nor Candice Bernstein (the "Bernsteins") were sued in their individual capacities by Oppenheimer, nor have they moved for, or been granted, permission to intervene in their individual capacities. They have been afforded standing in these proceedings, to date, solely as the parents and natural guardians of the Minor Beneficiaries.

2. The Bernsteins have been shown to have multiple conflicts of interest with the Minor Beneficiaries. For example, in their pleadings, they repeatedly allege that the trusts created for the Minor Beneficiaries' benefit are fraudulent and that they, and not their children, are the true beneficiaries. *Counter-Complaint, ¶¶ 44-50, 52-60, 65, 109-110, 186 and 253; Objection to Oppenheimer Accountings, pp. 1 and 20.* In addition, the Bernsteins insist that their overarching goal in this litigation "is to bring about a change in the legal system in efforts to root out systemic corruption at the highest levels by a rogue group of criminals disguised as attorneys at law, judges, politicians and more." *Counter-Complaint, ¶ 212.* No reasonable inference can be drawn that the Minor Beneficiaries have a similar interest or agenda, or that pursuing such an agenda at the risk of dissipating their own inheritance is in their best interest.

3. Eliot Bernstein also has a history of vexatious litigation and public disrespect for and disobedience to the judicial system and its officers, as detailed in Oppenheimer's Motion. Eliot Bernstein was adjudicated a vexatious litigant by the United States District Court for the Southn Distreict of New York and enjoined from filing further specified claims in any court without its prior permission. Yet, Eliot Bernstein asserted those enjoined claims in his Counter-

Complaint in apparent violation of the injunction. The Bernsteins are in continucd violation of a May 4, 2015 Order entered by Judge Martin Colin, which required compliance over nine months ago, and in recent filings with Florida appellate courts, the Bernsteins insist that all orders entered in this case "are void as a matter of law, and are of no legal force and effect." *Petition for All Writs (dated January 29, 2016), ¶ 101.* Further, the Bernsteins have repeatedly alleged that multiple judges have committed fraud in their official capacities in these proceedings and that all Florida judges have conflicts of interest which prohibit them from presiding over these proceedings. *Id., ¶ 106-107.* All of the above, and certainly in combination, render the Bernsteins inappropriate and inadequate representatives for the Minor Beneficiaries in this litigation.

4. For the above reasons, the guardian *ad litem* appointed in Case No.: 502014CP003698XXXXNB shall be deemed appointed simultaneously as the guardian *ad litem* for the Minor Beneficiaries in this case, with sole and exclusive authority to represent the Minor Beneficiaries' interests in this case. The guardian *ad litem* shall be entitled to petition for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Minor Beneficiaries from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

5. The Answer and Counter-Complaint filed by Eliot and Candice Bernstein (which they purport to file (i) "Individually, PRO SE;" (ii) "as the Natural Guardians of [the Minor Beneficiaries];" (iii) "as Guardians of the members of Bernstein Family Realty, LLC;" and (iii) "as beneficiaries of [sixteen (16) Trusts, two (2) Estates, and multiple] Corporate Entities set up by Simon and Shirley Bernstein"), and the "Objection to Final Accounting; Petition for Formal, Detailed Audited and Forensic Accounting and Document Production" (the "Objection") filed by

Eliot and Candice Bernstein, "individually and on behalf of [their] minor children, who are alleged qualified beneficiaries of Settlor's Estate and Trusts," are hereby stricken.

6. The guardian *ad litem* shall have 45 days from his/her appointment within which to file a response to Oppenheimer's Petition and objections, if any, to Oppenheimer's accountings.

7. Oppenheimer and the guardian *ad litem* shall confer in good faith regarding a resolution of this matter and/or a timeframe within which to try any unresolved issues.

8. Neither Eliot nor Candice Bernstein shall take any action which interferes with the guardian *ad litem's* duties.

9. The pending Motion for Contempt as to Eliot and Candice Bernstein ~~are also held to be in contempt of court~~ for their willful violation of Judge Martin Colin's May 4, 2015 Order is moot. ~~The Court withholds coercive sanctions based upon the appointment of a guardian *ad litem* and striking of the Bernsteins' pleadings, which renders the Bernsteins' compliance moot.~~

DONE AND ORDERED in Chambers, Palm Beach County, Florida on 3-1-, 2016.

Hon. John L. Phillips, Circuit Judge

Copies furnished to:

Steven A. Lessne, Esq.
Gunster, Yoakley & Stewart, P.A.
4855 Technology Way, Suite 630
Boca Raton, FL 33431

Eliot and Candice Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434

EXHIBIT 4

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

TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended,

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.,

Defendants.
_____/

Probate Division
Case No.: 502014CP003698XXXXNBIH

**NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: ☐ Facsimile and U.S. Mail; ☐ U.S. Mail; ■ Email Electronic Transmission; ☐ FedEx; ☐ Hand Delivery this 7th day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
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*Attorneys for Ted S. Bernstein*

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

Eliot Bernstein and Candice Bernstein,
as Parents of D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
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(561) 245-8644 - Facsimile
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Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
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Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA**

TED BERNSTEIN, as Trustee
Of the Shirley Bernstein Trust Agreement
Dated May 20, 2008, as amended.

Plaintiff,

v.

Probate Division
Case No.:2014CP003698 (IH)

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMO; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd. 9/13/12; ELIOT BERNSTEIN, individually as Trustee f/b/o D.B., Ja. B and Jo. B. under the Simon L. Bernstein Trust Dtd. 9/13/12 and on behalf of his minor children D.B., Ja.B. and Jo.B.; JILL IANTONI, individually, as Trustee f/b/o of J.I. under the Simon L. Bernstein Trust Dtd. 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, individually, as Trustee f/b/o Max Friedman and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on bealf of her minor child, C.F.,

Defendants.

_____/

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN *AD LITEM* FOR Jo.B., Ja.B. AND D.B.IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her **acceptance** of appointment as Guardian *ad litem* for Eliot Bernstein's minor children, Jo.B., Ja.B. and D.B. pursuant to this court's order dated April 4, 2016, and the terms and conditions set forth therein.

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been furnished to the parties by E-mail Electronic Transmission on the attached Service List for Case No.: 2014CP003698 (IH) this 7th day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 Telephone
Email: dzlewis@aol.com

By: /s/ Diana Lewis
Diana Lewis (Fla. Bar No. 351350)
(Mediator No.:32461 R)

**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

Eliot Bernstein and Candice Bernstein,
as Parents of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
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(561) 245-8588 - Telephone
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Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor
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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT**
**IN AND FOR PALM BEACH COUNTY, FLORIDA**

| | |
|---|---|
| OPPENHEIMER TRUST COMPANY OF DELAWARE, in its Capacity As Resigned Trustee of the Simon Bernstein Irrevocable Trusts Created for the Benefit of of Jo. B., Ja. B., and D.B., Minors<br><br>Petitioner,<br><br>v.<br><br>ELIOT AND CANDICE BERNSTEIN, in their Capacity as Parents and Natural Guardians of Jo. B., Ja. B., and D.B., Minors<br>Respondents.<br>_____/ | Probate Division<br>Case No.: 502014CP002815XXXXSB(IY) |

**NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE**

Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: ☐ Facsimile and U.S. Mail; ☐ U.S. Mail; ■ Email Electronic Transmission; ☐ FedEx; ☐ Hand Delivery this 7th day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
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By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST**

Eliot Bernstein
Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
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*Counsel for Petitioner*

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

OPPENHEIMER TRUST COMPANY OF DELAWARE,
in its capacity as Resigned Trustee of
the Simon Bernstein Irrevocable Trusts
created for the benefit of Joshua, Jake
and Daniel Bernstein,

Petitioner,

vs.

Probate Division
Case No.:2014CP002815 (IH)

ELIOT AND CANDICE BERNSTEIN,
in their capacity as parents and
natural guardians of JOSHUA, JAKE
AND DANIEL BERNSTEIN, minors,

Respondents.

_____/

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN *AD LITEM* FOR JOSHUA, JAKE AND DANIEL BERNSTEIN IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her **acceptance** of appointment as Guardian *ad litem* for JOSHUA, JAKE and DANIEL BERNSTEIN (the "Minor Beneficiaries") pursuant to this court's order dated April 4, 2016.

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been furnished to the parties by E-mail Electronic Transmission on the attached Service List for Case No.: 2014CP002815 (IH) this 7th day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 Telephone
Email: dzlewis@aol.com
By: /s/ Diana Lewis
(Fla. Bar No. 351350)

**SERVICE LIST Case No.: 2014CP002815**

Steven A. Lessne
Gunster, Yoakley & Stuart, P.A.
4855 Technology Way, Suite 630
Boca Raton, FL 33431

Eliot and Candice Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434

***From the Desk of :***

***Jacob Bernstein***

**2753 NW 34th Street, Boca Raton, FL 33434**

July 11, 2017

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 Telephone
dzlewis@aol.com
(Fla. Bar No. 351350)

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

Attention Diana Lewis, Esq.,

My name is Jacob Noah Archie Bernstein and it has come to my attention that you are an attorney and former Judge in Palm Beach County and Officer of the Court, allegedly continuing to act as Guardian Ad Litem for me since April 07, 2016 allegedly as a "minor child" of Eliot Ivan Bernstein and Candice Michelle Bernstein.

While I understand that there is likely major legal problems with the proceedings leading up to your Appointment and Acceptance as Guardian ad Litem on my behalf, I turned 18 on January 01, 2017 and have not been a "Minor' for over 6 months and yet you have failed to Discharge the Guardianship and knowingly continue to purport to act on my behalf as a minor and make Court appearances for me and tender "Consents" on my behalf which were never provided to you and you have done this at all times knowing that there has never been any "incapacity" or

"competency" Hearing since I turned 18 and thus no basis in law or fact to continue to act on my behalf after my 18th Birthday.

I now make this voluntary request for you to Cease and Desist all actions allegedly as my Guardian Ad Litem, turn over all records, discovery and information obtained in the course of your actions as my alleged Guardian and correct any and all frauds in all Courts or elsewhere impacted by this illegal Guardianship, including but not limited to, the Estate and Trust cases of my deceased grandparents, Simon and Shirley Bernstein.

Since I have been over the age of 18 years since January 01, 2017, you, Ted Bernstein, Alan Rose, Brian O'Connell and Steven Lessne have at all times had actual knowledge of these facts and the requirement to Discharge the Guardianship or conduct a proper Hearing with Due Process Notice and thus have continued to illegally use this Guardianship as a predatory weapon against myself and my family to interfere in proper rights of Inheritance and to cover up frauds in these cases.

Further, all of you actually know and have known that no "competency hearing" was ever held against me in over 6 months since turning the age of majority of 18, nor have I ever been provided ANY Due Process Notice or been served to appear in any proceeding or have an Opportunity to be heard at any of the relevant proceedings to date.

What is even more egregious about your conduct as a former Judge and done as an "Officer of the Court" is that you not only have continued in your actions as alleged Guardian in this illegal Guardianship despite being specifically advised that I was now over the age of 18 years but have also even gone as far as to give alleged "Consents" on my behalf to various actions by Ted

Bernstein and Alan Rose and entered into "Settlements" on my behalf again giving "Consent" all without my knowledge, without my Consent and without any Notice of Opportunity to be heard provided to myself. In fact, as you actually know. you and I have never even spoken to one another.

Like my older brother Joshua who was 18 even before the Guardian Ad Litem was created and accepted by you, I have come to learn that under Federal law under Title 18 USC Sec.242 it is a Federal Criminal Offense for Civil Rights Violations for 2 or more persons to conspire to Violate my US Constitutional rights, which have been violated by your actions in this case together in common with Attorney Alan Rose, Fiduciary Ted Bernstein and with the compliance and acquiescence of attorney Brian O'Connell as current Personal Representative of my grandfather Simon's Estate.

Please take notice that I have copied the US Dept of Justice Civil Rights Division head Tom Wheeler and offices of the FBI and US Attorney on this request.

I have further learned the following from the US Dept. of Justice Website:

> "Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

For the purpose of Section 242, acts under "color of law" **include acts not only done by federal, state, or local officials within the their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prisons guards and**

**other law enforcement officials, as well as judges,** care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim.

The offense is punishable by a range of imprisonment up to a life term, or the death penalty, depending upon the circumstances of the crime, and the resulting injury, if any." See, https://www.justice.gov/crt/deprivation-rights-under-color-law.

I have never spoken with you, met with you, granted you any authority over me and in any way enabled or allowed your acting in any capacity and in any matter on my behalf as an adult. This is a Cease and Desist demand to stop all further illegal acts on my behalf.

I am unaware of any Guardian Ad Litem Orders entered in the Simon and Shirley Probate Cases ( Case # 502012CP004391XXXXSB – Simon Bernstein Estate and Case # 502011CP000653XXXXSB – Shirley Bernstein Estate) giving you any guardianship powers over me to make any representations or take any actions on my behalf in those cases.

> Ja.B. AND D.B. IN THE ABOVE STYLED CASE" [**emphasis added**]

The Shirley Bernstein Trust Order Appointing Guardianship is similarly limited to legal authority of the guardianship in that case only and only for MINOR CHILDREN.

> The 2016 Florida Statutes - Title XLIII - DOMESTIC RELATIONS - Chapter 744 - GUARDIANSHIP
> 744.521 Termination of guardianship.—**When a ward becomes sui juris** or is restored to capacity, when the guardian has been unable to locate the ward through diligent search, or, for a guardian

> of the property, when the property subject to the guardianship has been exhausted, the guardian shall file a final report and receive his or her discharge. A guardian of the person is discharged without further proceeding upon filing a certified copy of the ward's death certificate. The court may require proof of the removal of incapacity.
> History.—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222; s. 4, ch. 86-120; s. 89, ch. 89-96; s. 63, ch. 90-271; s. 1110, ch. 97-102.
> Note.—Created from former s. 746.12.
> "Minor Ward Reaches 18 Unless the minor is incapacitated, at the age of 18 he or she is no longer a minor and is deemed to be legally old enough to manage his or her own finances or property. The guardianship is terminated and the assets are distributed to the minor."
> https://umshare.miami.edu/web/wda/ethics/gurardianship_rev1-07.pdf

Therefore, due to your lack of legal authority over me despite any Court Orders gained through simulated legal process, I immediately request that you;

1. **CEASE AND DESIST** from any further representations of myself, Jacob Noah Archie Bernstein, in any proceedings, settlements or other matters involving me.
2. **NOTIFY** the Florida Courts and Correct all actions taken on my behalf since turning the age of majority on January 01, 2017, have been improper and illegal and cease and desist this KNOWINGLY, GROSS, WILLFUL, WANTON and RECKLESS criminal violation of your fiduciary duties as a Guardian Ad Litem .
3. **WITHDRAW** any and all Consent you have given in any matters relating to Jacob Bernstein.
4. **FILE** immediately within or without the final report the fact that I, Jacob Bernstein, turned the age of majority on Jan. 01, 2017 and that no legal adult guardianship proceedings were held giving you legal authority from such date to the present,

discharge the Guardianship and turn over all records and properties regarding the guardianships as required.

5. **MAKE NO** further appearances in Court on my behalf or state in any pleadings consent on my behalf or take any any action whatsoever on my behalf claiming that you are a acting as Guardian Ad Litem for me.
6. **NOTIFY ALAN ROSE AND STEVEN LESSNE** to similarly take all actions to remove and strike all pleadings, orders, settlements, etc. in any court cases made on my behalf as a minor and correct any and all Court Orders and actions impacted by these defects and cease and desist any further acts on my behalf.
7. **NOTIFY ALL COURTS** affected by your actions since I turned the age of majority of 18 on Jan. 01, 2017.
8. **NOTIFY ALL COURTS** that you have made improper representations in pleadings and hearings in the Simon and Shirley Bernstein Estate and Trust cases and the Oppenheimer cases where you have never been granted a legal guardianship over me. The Courts to be notified and cases related to your actions that have been affected by the misconduct shall include but not be limited to,

    a. The Florida Probate Court – HONORABLE Judge Rosemarie Scher, cases:

        i. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
        ii. Case # 502015CP001162XXXXNB – Simon Bernstein Trust to Remove Ted Bernstein
            1. OLD CASE # Was Civil but Colin transferred to Probate ? 502014CA014637XXXXMB
        iii. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
        iv. Case # 502014CP003698XXXXNB – Shirley Trust Construction
        v. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

vi. Case # 502015CP002717XXXX Colin Closed and transferred to Coates Eliot Bernstein v. Simon Estate Case for Claims
vii. Case # 502014CA014637XXXXMB BERNSTEIN, ELIOT I VS BERNSTEIN, THEODORE S
viii. Case # 50-2010-CP-003128-XXXX-SB – Joshua Bernstein alleged 2010 Trust Case Colin
ix. Case # 50-2010-CP-003125-XXXX-SB - – Jacob Jake Bernstein alleged 2010 Trust Case Colin
x. Case # 50-2010-CP-003123-XXXX-SB– Daniel Danny Bernstein alleged 2010 Trust Case Colin

b. The Florida 15th Judicial Civil Circuit Court and HONORABLE JUDGE Cymonie Rowe, case:

i. Case # 502012CA013933XXXXMB William E. Stansbury v. Ted S. Bernstein et al. -

c. The Florida 4th District Court of Appeals – Note – Do not submit any information to Chief Judge Corey Ciklin who is conflicted in these matters already as being a former law partner of Personal Representative of the Estate of Simon Bernstein, Brian O'Connell's law firm, Ciklin Lubitz Martens & O'Connell, where Judge Ciklin already has Sua Sponte removed himself from proceedings he was involved with in these matters and removed his name from several prior issued Orders at that court.

i. Case 15-3849 ELIOT BERNSTEIN ESTATE OF SIMON BERNSTEIN
ii. Case 16-1449 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
iii. Case 16-1476 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
iv. Case 16-2249 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
v. Case 16-0222 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ET AL.
vi. Case 16-1478 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.

vii. Case 16-3314 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.
viii. Case 16-0064 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE. ET AL.
ix. Case 16-3162 ELIOT IVAN BERNSTEIN WILLIAM E. STANSBURY, et al.
x. Case 16-4120 ELIOT IVAN BERNSTEIN WILLIAM E. STANSBURY, et al.

d. The Florida Supreme Court – Note – Do not submit any information to Chief Judge Jorge Labarga as he is conflicted with the Eliot Bernstein family in these matters.

i. SC16-29

e. The United States District Court Northern District of Illinois Case 1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company – HONORABLE Judge John Robert Blakey and Chief Judge Ruben Castillo.

i. Case # 13-cv-03643 - Federal Lawsuit in the US District Court of Eastern Illinois

f. United States Court of Appeals for the Seventh Circuit - Chief Judge Diane P. Wood in relation to the Lower Court Case 1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company.

i. Case No. 17-1461 APPEAL UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

9. **TURN OVER** all of your professional and individual insurance policies and bonding information to me as claims against you individually and professionally and your firm,

will be forthcoming for the massive damages caused to me from your breaches of fiduciary duties and other misconduct. Your firm appears as follows and I believe it was set up specifically for liability purposes for these matters with my family, immediately prior to your acceptance of Guardian Ad Litem for me:

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 Telephone
Email: dzlewis@aol.com
By: /s/ Diana Lewis
(Fla. Bar No. 351350)

10. **TURN OVER** all records. documents, emails, faxes, information of any kind regarding me obtained by and during these illegal actions to my attention at my permanent address of, 2753 NW 34th Street, Boca Raton, FL 33434.

I have been notified that on repeated occasions over the past year my father and mother Eliot and Candice Bernstein have notified you directly of my Sui Juris status and you have refused to take any actions to end the improper Guardian Ad Litem and continue to make representations, agreements and settlements on my behalf and hopefully this notice will cause you to **IMMEDIATELY CEASE AND DESIST THIS ILLEGAL CONDUCT.**

I have also been made aware that my father and mother, Eliot and Candice Bernstein have notified state and federal authorities of your misconduct on my behalf, including but not limited to acts such as,

1. Dissolving various Trusts in my name set up by my grandparents,

2. Dissolving Bernstein Family Realty, LLC, set up by my grandparents of which I am a 33% owner,
3. Making appearances in various court and legal proceedings illegally on my behalf,
4. Consenting to various legal agreements illegally on my behalf,
5. Consenting to various settlements illegally on my behalf.

I have learned that in Case # 502014CP003698XXXXNB – Shirley Bernstein Trust in the Fifteenth Judicial Probate Court you are acting under an alleged Trust created in my name that I was sued as a defendant under with my father, Eliot Bernstein, as Trustee and where I have never received formal notice of any such trust, nor do I believe my parents or any other party, including the courts have received, although I am a beneficiary allegedly under this trust. The Trust I am sued under is titled,

> ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the **Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B.** **[Emphasis added]**

Please provide a copy of the "**Simon L. Bernstein Trust Dtd 9/13/12**" and any subtrusts held thereunder in my name supposedly created on 9/13/12 the date of my grandfather's death. If you are in possession of any such trust or subtrust OR ANY OTHER TRUST in my name, please instantly turn over all records regarding this legal entity I have been sued under and that you are acting illegally as a Guardian Ad Litem over my person in such legal action under such trust.

I have done preliminary research into your name online since learning of this predatory Guardian Ad Litem placed knowingly upon me as an adult and have learned that you are a FORMER

Judge and no longer a Florida Registered Judge who has lost her judgeship to Jennifer Ticktin since on or about 2014[1] [2] [3] where I learned from the attached articles, "But Ticktin, a 35-year-old partner at Ticktin Law Group and a Boca Raton resident, says she targeted Lewis for a reason. She cited a 2013 Palm Beach County Bar poll in which Lewis ranked last among 34 circuit court judges in categories including knowledge and application of the law, impartiality and judicial demeanor. "I think that right now we have an issue with the incumbent judge," Ticktin said. "Last time she was given a second chance, and I don't think that she did well with that second chance. I think it's time for change." In noting your bar association number above I believe that as both a former judge and current registered attorney at law I need not educate you on your obligations to notify all tribunals, criminal and civil and all parties with any liabilities resulting from your and others you worked in conspire with actions, as required by both State and Federal - Civil, Criminal and Ethical Rules and Statutes.

That these Knowingly, Gross, Willful, Wanton and Reckless Acts, which appear as Financial Exploitation of an Adult through an ILLEGAL GUARDIAN AD LITEM FOR A MINOR and further appear part of a larger conspiracy against the rights of my father, my mother and my brothers are simultaneously being forwarded to state and federal criminal authorities to

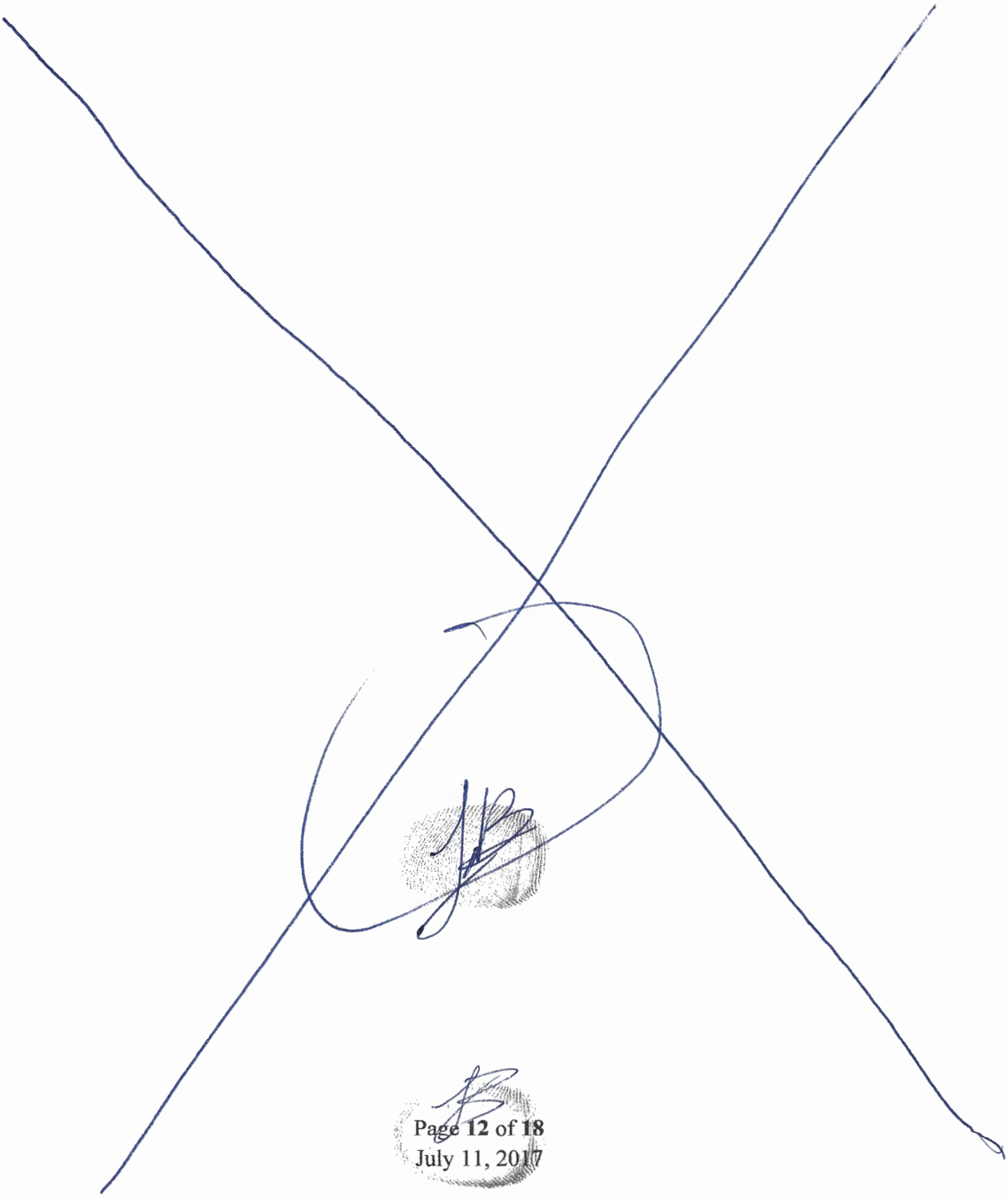
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[1] "Ugly PBC judicial campaign pits Diana Lewis and Jessica Ticktin" By Jane Musgrave - Palm Beach Post Staff Writer
Updated: 12:41 p.m. Friday, August 08, 2014 | Posted: 7:00 a.m. Friday, August 08, 2014
http://www.mypalmbeachpost.com/news/local-govt--politics/ugly-pbc-judicial-campaign-pits-diana-lewis-and-jessica-ticktin/NczV3oHgQuXksyXpl11JdI

[2] "Race for Palm Beach County Circuit Judge Group 14 seat is personal" July 19, 2014|By Brittany Shammas, Sun Sentinel
http://articles.sun-sentinel.com/2014-07-19/news/fl-election-palm-circuit-judges-14-20140719_1_lewis-incumbent-judge-ticktin-law-group

[3] "Palm Beach Judge Diana Lewis Loses Judicial Seat to Challenger Raising Issues with Demeanor" Florida You Judge Wednesday, August 27th, 2014 at 5:26 pm by admin by Haydee Oropesa
http://www.floridayoujudge.com/palm-beach-judge-diana-lewis-loses-judicial-seat-to-challenger-raising-issues-with-demeanor/

investigate and prosecute any prior and future criminal acts, so please **govern yourself accordingly** in any future actions you may take in any matters relating to my family and myself.



**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

---

I authorize this Statement and Cease and Desist Request to be filed in any and all state and federal proceedings as relevant and necessary.

Sincerely,

X:_____ Dated: 7-11-17

Jacob Noah Archie Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Witness:

X:_____ Dated: 7/11/17

Name: Joshua Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

EXHIBIT 1

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

TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended,

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.,

Defendants.
_____/

Probate Division
Case No.: 502014CP003698XXXXNB

**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO APPOINT A GUARDIAN AD LITEM; FOR A GAG ORDER TO PROTECT THE GUARDIAN AND OTHERS; AND TO STRIKE ELIOT BERNSTEIN'S FILINGS**

THIS CAUSE came before the Court for evidentiary hearing on February 25, 2016, on Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children etc. (the "Motion"). The Court, having considered the record, heard argument of counsel and being otherwise fully advised in the premises, hereby

ORDERS AND ADJUDGES:

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Shirley Bernstein Trust Agreement dated 5/20/2008 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust. This Court entered a written order dated February 1, 2016, determining Eliot Bernstein lacks standing to participate in this proceeding and striking his individual filings.

2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his minor children, as their parent and natural guardian, in this Trust Proceeding.

3. ~~Despite his status as natural guardian, Eliot will not be permitted to do so, and~~ The Court will appoint a Guardian ad Litem, because there is a conflict of interest between the parent and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children.

4. First, as to the conflict, Eliot's position throughout the case and at trial was that he was a beneficiary of the Trust. He continued advancing that position after trial by prosecuting an appeal of the December 16, 2015 Final Judgment. Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *Mistretta v. Mistretta,* 566 So. 2d 836, 837-38 (Fla. 1st DCA 1990)(best interests of a minor are ***not*** fully protected when adverse to the interests of the parent); *Florida Nat. Bank & Trust Co. at Miami v. Blake,* 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was

apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs,* 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed ~~then~~ when the parents' interests were adverse to the minor childs).

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..."[1] Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and based upon the Court's review of various motions filed by Eliot Bernstein since the trial, it is apparent Eliot Bernstein is not an adequate representative of the best interests of his children. In fact, his actions are adverse & destructive to the children's interest

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost to the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein,

---

[1] In addition, under section 744.3025, the court *may* appoint a guardian ad litem to represent a minor's interest before approving a settlement of the minor's portion of any cause of action in which the gross settlement of the claim exceeds $15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest, and "shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds $50,000." Here, it is likely that there will be a settlement at some point in which each of minors receives a substantial distribution, and it is likely Eliot will oppose any such settlement.

on behalf of his children, ~~is~~ are hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

8. The parties shall attempt to mutually agree on a guardian ad litem. The Court will appoint whomever the parties agree upon within the next three business days. Eliot Bernstein may participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to agree on a guardian ad litem, ~~upon notice from the Trustee's counsel the Court shall randomly appoint a guardian ad litem for Ja.B., Jo.B. and D.B. or schedule a further hearing to appoint a suitable Guardian Ad Litem.~~ each of the parties shall submit a list of three names of potential Guardian Ad Litems, each of whom has agreed to accept the appointment if selected. Those lists shall be filed with the Clerk with courtesy copy to the undersigned, no later than 10 days from this date.*

9. The Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall ~~make no effort to~~ not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; ~~(b) shall make no statement of any kind about the guardian, nor post information about the guardian on the internet in any fashion; and~~ (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian, and ~~all information concerning this guardianship shall be treated as private and confidential.~~ Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

* Parties shall furnish an Order appointing GAL proposed with the lists. The Court will act without further hearing on the appointment, if possible.

11. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE and ORDERED in Chambers, North County Courthouse on 3-1-16, 2016.

HONORABLE JOHN L. PHILLIPS

cc: Attached service list

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
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Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

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(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

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slobdell@ciklinlubitz.com

JOHN L. PHILLIPS
CIRCUIT JUDGE
NORTH COUNTY COURTHOUSE
3188 PGA BOULEVARD
PALM BEACH GARDENS, FL 33410




Eliot Bernstein and Candice Bernstein
2753 NW 34th Street
Boca Raton, FL 33434



EXHIBIT 2

Filing # 39817850 E-Filed 04/04/2016 03:19:38 PM

RECEIVED, 5/18/2016 4:40 PM, Clerk, Fourth District Court of Appeal

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

TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended,

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and ou behalf of her minor child, C.F.,

Defendants.
_____/

Probate Division
Case No.: 502014CP003698XXXXNBIH

**ORDER APPOINTING DIANA LEWIS AS GUARDIAN AD LITEM FOR ELIOT BERNSTEIN's CHILDREN, JO.B.; JA. B.; and D.B.**

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016, on Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children etc. (the "Motion"). Having considered the Motion and the arguments of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly advised in the premises, the Court entered an Order in this matter, and a companion order in Case No. 502014CP002815XXXXNB, granting motions to appoint a guardian ad litem for Eliot's

FILED: PALM BEACH COUNTY, FL, SHARON R. BOCK, CLERK, 04/04/2016 03:19:38 PM

children, Jo.B., Ja.B. and D.B., and setting forth a protocol for selecting a guardian ad litem. Having received the parties' notices contemplated under the companion order, the Court hereby appoints a guardian ad litem as follows:

1. Diana Lewis is hereby appointed as the guardian ad litem for Jo.B., Ja.B. and D.B. in this case, with sole and exclusive authority to represent their interests in this case. The guardian ad litem shall be entitled to petition the Court for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Jo.B., Ja.B. and D.B. from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

2. The guardian ad litem shall file an acceptance of appointment with this Court, with a copy to the parties listed at the end of this Order, within 5 business of the date of this Order; otherwise, the parties shall notify the Court by letter that the appointment has not been accepted, in which case the Court will either appoint an alternate guardian ad litem without further hearing or hold an additional hearing to select an alternate guardian ad litem.

3. The guardian ad litem shall have sufficient time after his/her acceptance of this appointment to within which to prepare necessary court filings and prepare for mediation as ordered by the Court at a hearing held on March 7, in the related case of Estate of Simon Bernstein.

4. Trustee and the guardian ad litem shall confer in good faith regarding a resolution of this matter and/or a time frame within which to try any unresolved issues.

5. Pursuant to the Order dated March 1, 2016, the Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court

for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

6. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; and (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

7. The guardian ad litem shall notify this Court and Trustee of any actions taken by Eliot and/or Candice Bernstein which interfere with the guardian ad litem's duties hereunder.

DONE and ORDERED in Chambers, North County Courthouse on 4.4., 2016.

HONORABLE JOHN L. PHILLIPS

cc: Attached service list

**SERVICE LIST** Case No.: 502014CP003698XXXXNBIH

Eliot Bernstein and Candice Bernstein,
as Parents of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
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Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein

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Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor
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service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

STATE OF FLORIDA • PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the record in my office.
THIS 18 DAY OF Nov, 20 16
SHARON R. BOCK
CLERK & COMPTROLLER
By Victoria Ranger
DEPUTY CLERK

EXHIBIT 3

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

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXNB (IH)

OPPENHEIMER TRUST COMPANY OF DELAWARE, in its capacity as Resigned Trustee of the Simon Bernstein Irrevocable Trusts created for the benefit of Joshua, Jake and Daniel Bernstein,

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN, in their capacity as parents and natural guardians of JOSHUA, JAKE AND DANIEL BERNSTEIN, minors,

Respondents.
_____/

**ORDER APPOINTING GUARDIAN *AD LITEM* FOR MINORS, JOSHUA, JAKE AND DANIEL BERNSTEIN**

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016 upon the *Omnibus Motion (I) To Appoint A Guardian Ad Litem For The Minor Beneficiaries Of The "Grandchildren Trusts;" (II) To Hold Eliot And Candice Bernstein In Contempt Of Court For Their Continued Violation Of A Court Order And Repeated Statements Assaulting The Dignity Of The Court; And (III) To Establish A Schedule And Protocol For Accounting And Turnover Proceedings* (the "Motion") filed by Petitioner, Oppenheimer Trust Company Of Delaware ("Oppenheimer"), in its capacity as the resigned trustee of three Irrevocable Trusts settled by Simon Bernstein on September 7, 2006 for the benefit of his grandchildren, minors, Joshua, Jake and Daniel Bernstein (the "Grandchildren Trusts"). Having considered the Motion

and the arguments of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly advised in the premises, the Court rules as follows:

1. The sole beneficiaries of the Grandchildren Trusts, and the only real parties in interest in this litigation (other than Oppenheimer), are Joshua, Jake and Daniel Bernstein (the "Minor Beneficiaries"). Neither Eliot nor Candice Bernstein (the "Bernsteins") were sued in their individual capacities by Oppenheimer, nor have they moved for, or been granted, permission to intervene in their individual capacities. They have been afforded standing in these proceedings, to date, solely as the parents and natural guardians of the Minor Beneficiaries.

2. The Bernsteins have been shown to have multiple conflicts of interest with the Minor Beneficiaries. For example, in their pleadings, they repeatedly allege that the trusts created for the Minor Beneficiaries' benefit are fraudulent and that they, and not their children, are the true beneficiaries. *Counter-Complaint, ¶¶ 44-50, 52-60, 65, 109-110, 186 and 253; Objection to Oppenheimer Accountings, pp. 1 and 20.* In addition, the Bernsteins insist that their overarching goal in this litigation "is to bring about a change in the legal system in efforts to root out systemic corruption at the highest levels by a rogue group of criminals disguised as attorneys at law, judges, politicians and more." *Counter-Complaint, ¶ 212.* No reasonable inference can be drawn that the Minor Beneficiaries have a similar interest or agenda, or that pursuing such an agenda at the risk of dissipating their own inheritance is in their best interest.

3. Eliot Bernstein also has a history of vexatious litigation and public disrespect for and disobedience to the judicial system and its officers, as detailed in Oppenheimer's Motion. Eliot Bernstein was adjudicated a vexatious litigant by the United States District Court for the Southn Distreict of New York and enjoined from filing further specified claims in any court without its prior permission. Yet, Eliot Bernstein asserted those enjoined claims in his Counter-

Complaint in apparent violation of the injunction. The Bernsteins are in continucd violation of a May 4, 2015 Order entered by Judge Martin Colin, which required compliance over nine months ago, and in recent filings with Florida appellate courts, the Bernsteins insist that all orders entered in this case "are void as a matter of law, and are of no legal force and effect." *Petition for All Writs (dated January 29, 2016), ¶ 101.* Further, the Bernsteins have repeatedly alleged that multiple judges have committed fraud in their official capacities in these proceedings and that all Florida judges have conflicts of interest which prohibit them from presiding over these proceedings. *Id., ¶ 106-107.* All of the above, and certainly in combination, render the Bernsteins inappropriate and inadequate representatives for the Minor Beneficiaries in this litigation.

4. For the above reasons, the guardian *ad litem* appointed in Case No.: 502014CP003698XXXXNB shall be deemed appointed simultaneously as the guardian *ad litem* for the Minor Beneficiaries in this case, with sole and exclusive authority to represent the Minor Beneficiaries' interests in this case. The guardian *ad litem* shall be entitled to petition for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Minor Beneficiaries from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

5. The Answer and Counter-Complaint filed by Eliot and Candice Bernstein (which they purport to file (i) "Individually, PRO SE;" (ii) "as the Natural Guardians of [the Minor Beneficiaries];" (iii) "as Guardians of the members of Bernstein Family Realty, LLC;" and (iii) "as beneficiaries of [sixteen (16) Trusts, two (2) Estates, and multiple] Corporate Entities set up by Simon and Shirley Bernstein"), and the "Objection to Final Accounting; Petition for Formal, Detailed Audited and Forensic Accounting and Document Production" (the "Objection") filed by

Eliot and Candice Bernstein, "individually and on behalf of [their] minor children, who are alleged qualified beneficiaries of Settlor's Estate and Trusts," are hereby stricken.

6. The guardian *ad litem* shall have 45 days from his/her appointment within which to file a response to Oppenheimer's Petition and objections, if any, to Oppenheimer's accountings.

7. Oppenheimer and the guardian *ad litem* shall confer in good faith regarding a resolution of this matter and/or a timeframe within which to try any unresolved issues.

8. Neither Eliot nor Candice Bernstein shall take any action which interferes with the guardian *ad litem's* duties.

9. The pending Motion for Contempt as to Eliot and Candice Bernstein ~~are also held to be in contempt of court~~ for their willful violation of Judge Martin Colin's May 4, 2015 Order is moot. ~~The Court withholds coercive sanctions based upon the appointment of a guardian *ad litem* and striking of the Bernsteins' pleadings, which renders the Bernsteins' compliance moot.~~

DONE AND ORDERED in Chambers, Palm Beach County, Florida on 3-1-, 2016.

Hon. John L. Phillips, Circuit Judge

Copies furnished to:

Steven A. Lessne, Esq.
Gunster, Yoakley & Stewart, P.A.
4855 Technology Way, Suite 630
Boca Raton, FL 33431

Eliot and Candice Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434

EXHIBIT 4

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

TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended,

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.,

Defendants.
_____/

Probate Division
Case No.: 502014CP003698XXXXNBIH

**NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: ☐ Facsimile and U.S. Mail; ☐ U.S. Mail; ■ Email Electronic Transmission; ☐ FedEx; ☐ Hand Delivery this 7th day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
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*Attorneys for Ted S. Bernstein*

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

Eliot Bernstein and Candice Bernstein,
as Parents of D.B., Ja. B. and Jo. B, Minors
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Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

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slobdell@ciklinlubitz.com

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

TED BERNSTEIN, as Trustee
Of the Shirley Bernstein Trust Agreement
Dated May 20, 2008, as amended.

Plaintiff,

v.

Probate Division
Case No.:2014CP003698 (IH)

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMO; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd. 9/13/12; ELIOT BERNSTEIN, individually as Trustee f/b/o D.B., Ja. B and Jo. B. under the Simon L. Bernstein Trust Dtd. 9/13/12 and on behalf of his minor children D.B., Ja.B. and Jo.B.; JILL IANTONI, individually, as Trustee f/b/o of J.I. under the Simon L. Bernstein Trust Dtd. 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, individually, as Trustee f/b/o Max Friedman and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on bealf of her minor child, C.F.,

Defendants.

_____/

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN *AD LITEM* FOR Jo.B., Ja.B. AND D.B.IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her **acceptance** of appointment as Guardian *ad litem* for Eliot Bernstein's minor children, Jo.B., Ja.B. and D.B. pursuant to this court's order dated April 4, 2016, and the terms and conditions set forth therein.

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been furnished to the parties by E-mail Electronic Transmission on the attached Service List for Case No.: 2014CP003698 (IH) this 7th day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 Telephone
Email: dzlewis@aol.com

By: /s/ Diana Lewis
Diana Lewis (Fla. Bar No. 351350)
(Mediator No.:32461 R)

**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

Eliot Bernstein and Candice Bernstein,
as Parents of
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Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein
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Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor
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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT**
**IN AND FOR PALM BEACH COUNTY, FLORIDA**

| | |
|---|---|
| OPPENHEIMER TRUST COMPANY OF DELAWARE, in its Capacity As Resigned Trustee of the Simon Bernstein Irrevocable Trusts Created for the Benefit of of Jo. B., Ja. B., and D.B., Minors<br><br>Petitioner,<br><br>v.<br><br>ELIOT AND CANDICE BERNSTEIN, in their Capacity as Parents and Natural Guardians of Jo. B., Ja. B., and D.B., Minors<br>Respondents.<br>_____/ | Probate Division<br>Case No.: 502014CP002815XXXXSB(IY) |

**NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE**

Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: ☐ Facsimile and U.S. Mail; ☐ U.S. Mail; ■ Email Electronic Transmission; ☐ FedEx; ☐ Hand Delivery this 7th day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
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West Palm Beach, FL 33401
(561) 655-2250 Telephone | (561) 655-5537 Facsimile
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Secondary: mchandler@mrachek-law.com

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST**

Eliot Bernstein
Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
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*Counsel for Petitioner*

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

OPPENHEIMER TRUST COMPANY OF DELAWARE,
in its capacity as Resigned Trustee of
the Simon Bernstein Irrevocable Trusts
created for the benefit of Joshua, Jake
and Daniel Bernstein,

Petitioner,

vs.

Probate Division
Case No.:2014CP002815 (IH)

ELIOT AND CANDICE BERNSTEIN,
in their capacity as parents and
natural guardians of JOSHUA, JAKE
AND DANIEL BERNSTEIN, minors,

Respondents.

_____/

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN *AD LITEM* FOR JOSHUA, JAKE AND DANIEL BERNSTEIN IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her **acceptance** of appointment as Guardian *ad litem* for JOSHUA, JAKE and DANIEL BERNSTEIN (the "Minor Beneficiaries") pursuant to this court's order dated April 4, 2016.

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been furnished to the parties by E-mail Electronic Transmission on the attached Service List for Case No.: 2014CP002815 (IH) this 7th day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 Telephone
Email: dzlewis@aol.com
By: /s/ Diana Lewis
(Fla. Bar No. 351350)

**SERVICE LIST Case No.: 2014CP002815**

Steven A. Lessne
Gunster, Yoakley & Stuart, P.A.
4855 Technology Way, Suite 630
Boca Raton, FL 33431

Eliot and Candice Bernstein
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Boca Raton, FL 33434

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA**
**FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401**

August 23, 2017

**CASE NO.: 4D17-1932**
L.T. No.: 502014CP003698XXXXNB

ELIOT IVAN BERNSTEIN v. TED BERNSTEIN, AS TRUSTEE, ET AL.

Appellant / Petitioner(s) Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that on July 19, 2017, this court ordered appellant to show cause why sanctions should not be imposed. Having considered appellant's August 8 and August 18, 2017 partial responses and motions for extension of time to respond, we deny the request for extension of time in the August 18, 2017 motion (we granted a short extension requested in the August 8, 2017 motion) and determine that sanctions are appropriate. For the reasons set forth in the July 19, 2017 order to show cause, we now impose sanctions pursuant to *Johnson v. Bank of New York Mellon Trust Co*., 136 So. 3d 507, 508 (Fla. 2014); *Lomax v. Taylor*, 149 So. 3d 1135, 1137 (Fla. 2014); *Riethmiller v. Riethmiller*, 133 So. 3d 926 (Fla. 2013). The Clerk of this Court is directed to no longer accept any paper filed by Eliot Ivan Bernstein unless the document has been reviewed and signed by a member in good standing of the Florida Bar who certifies that a good faith basis exists for each claim presented.

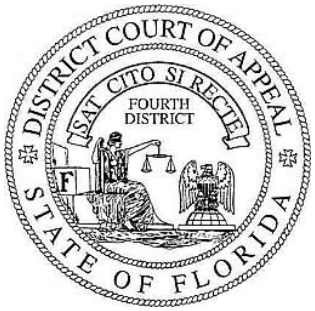
Served:

cc: Lorin Louis Mrachek
Gary R. Shendell
John P. Morrissey
Alan Benjamin Rose
Joielle A. Foglietta
Ralph S. Janvey
Albert Gortz
Eliot Ivan Bernstein
Theodore Stuart Bernstein
James Dimon
Neil Wolfson
Cbiz Mhm, Llc
Brian Moynihan
Clerk Palm Beach
Brian M. O'Connell
Steven A. Lessne
Kenneth S. Pollock
Peter Marshall Feaman
Dennis McNamara
Joseph M. Leccese
Byrd "biff" F. Marshall, Jr.
Lisa Friedstein
Pamela Beth Simon
William McCabe
Stp Enterprises, Inc.
Heritage Union Life Ins.
Life Insurance Concepts
Mark R. Manceri
Charles D. Rubin
John Pankauski
Donald R. Tescher
Kimberly Moran
Hunt Worth
Robert Spallina
Jill Iantoni
Dennis G. Bedley
Gerald Lewin
Lindsay Baxley
David Lanciotti
T&s Registered Agents, Llc

ka

Lonn Weissblum

LONN WEISSBLUM, Clerk
**Fourth District Court of Appeal**



**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA**
**FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401**

November 01, 2017

**CASE NO.: 4D17-1608**
L.T. No.: 2012CP004391

ELIOT IVAN BERNSTEIN v. ESTATE OF SIMON L. BERNSTEIN

Appellant / Petitioner(s) Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that appellee's October 9, 2017 motion to dismiss is granted, and the above-styled case is dismissed for lack of prosecution.

GERBER, C.J., LEVINE and FORST, JJ., concur.

Served:

cc:
Lorin Louis Mrachek
Gary R. Shendell
Kenneth S. Pollock
Peter Marshall Feaman
Kimberly Moran
Steven A. Lessne
Lisa Friedstein
Theodore Stuart Bernstein
Dennis G. Bedley
Kimberly Moran
STP Enterprises, Inc.
Cbiz Mhm, LLC
Heritage Union Life Ins.
Hunt Worth
C. F. , A Minor
Pankauski Law Firm PLLC
Brian M. O'Connell
Steven A. Lessne
John Pankauski
Donald R. Tescher
Albert Gortz
Charles D. Rubin
Jill Iantoni
Pamela Beth Simon
James Dimon
Gerald Lewin
Ralph S. Janvey
T&S Registered Agents
David Lanciotti
Byrd "biff" F. Marshall, Jr.
M. F. , A Minor
Adr & Mediations Services
Mark R. Manceri
John P. Morrissey
Alan Benjamin Rose
Joielle A. Foglietta
Robert Louis Spallina
Eliot Ivan Bernstein
Theodore Stuart Bernstein
Dennis McNamara
William McCabe
Neil Wolfson
Lindsay Baxley
Joseph M. Leccese
Brian Moynihan
J. I. , A Minor
Tescher & Spallina, P. A.
Clerk Palm Beach

kh

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

DISTRICT COURT OF APPEAL
FOURTH DISTRICT
STATE OF FLORIDA

**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.**

APPEARING ON BEHALF OF CLAIMANT WILLIAM STANSBURY:

Peter Feaman, Esq.
PETER M. FEAMAN, P.A.
3695 Boynton Beach Boulevard, Suite 9
Boynton Beach, Florida, 33436

APPEARING ON BEHALF OF TRUSTEE TED BERNSTEIN:

Alan B. Rose, Esq.
PAGE, MRACHEK, FITZGERALD & ROSE, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401

APPEARING ON BEHALF OF PERSONAL REPRESENTATIVE OF THE ESTATE:

Brian M. O'Connell, Esq.
Ashley Crispin Ackal, Esq.
CIKLIN, LUBITZ & O'CONNELL
515 North Flagler Drive, 20th Floor
West Palm Beach, Florida 33401

ELLIOT BERNSTEIN, Pro Se

- - -

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

- - -

# I N D E X


| WITNESSES: | | |
|---|---|---|
| BRIAN O'CONNELL | DIRECT | CROSS |
| By Ms. Crispin | 9 | |
| By Mr. Feaman | | 18 |
| By Mr. Bernstein | | 24 |
| By Mr. Rose | | 35 |
| BRIAN O'CONNELL | | |
| By Mr. Bernstein | 41 | |
| JAMES STAMOS | | |
| By Ms. Crispin | 52 | |
| By Mr. Feaman | | 55 |
| By Mr. Bernstein | | 59 |
| By Mr. Rose | | 62 |

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

Appearances for the record, please.

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

THE COURT: Thank you.

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

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

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

THE COURT: Thank you very much.

Mr. Elliot?

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

THE COURT: Yes. That's fine.

MR. BERNSTEIN: It isn't fine.

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

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

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

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

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

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

O'Connell to the stand.

MR. FEAMAN: If it please the Court, I'd just like to put a statement on the record if I could before we actually begin the testimony.

THE COURT: Yes. Mr. O'Connell -- do you mind if he sits there?

MR. FEAMAN: No, not at all.

On behalf of Mr. Stansbury, Your Honor, we just -- even though you have already denied our motion, our amended motion to specially sequence this hearing behind another one, we just want to reiterate our position that this hearing should not go forward at this time until the propriety of Mr. Ted Bernstein's position as successor trustee be determined by the Court one way or the other. I'm mindful that Your Honor has already denied that request but I wanted to put it on the record so there wouldn't be any construction of waiver or anything like that.

THE COURT: Fair enough.

MR. BERNSTEIN: Your Honor, could I put something on the record? We were told that my two adult children were going to be notified of this hearing as necessary parties by Mr. Rose.

They haven't even been notified they're beneficiaries ever, but in court he said he was going to notify them and have them here and they're not here and they're necessary parties to a settlement that's happening that they don't even know about. They haven't been involved, haven't been summoned, nothing served.

THE COURT: If they're adult children, you can't represent them.

MR. BERNSTEIN: I'm not representing them.

THE COURT: No, but you are --

MR. BERNSTEIN: I'm saying they're necessary parties on the hearing.

THE COURT: Mr. Elliot, if you want to say that, that's fine, but you cannot speak on their behalf if they are an adult.

MR. BERNSTEIN: I'm not going to. I'm going to speak about them in the hearing, I think, but they're not here. And, by the way, there's one more point. There's one more point. They have counsel and they've been trying to enter this case now almost for over a year or so, but Mr. Rose is refusing their counsel to give them any of the dispositive

documents or trusts regarding that.

THE COURT: All right. That is so noted. Obviously it's a public court file. They can get the -- I don't have a notice of appearance but --

MR. BERNSTEIN: But she's asking for the full records.

THE COURT: That would be a different hearing. Okay. Are we ready to proceed?

MR. ROSE: Just for the record, I dispute what he just said. The only thing I would just say, just so you know where we stand, my client's position is he's in favor of the settlement. I think Mr. Feaman --

THE COURT: Thank you. I mean thank you for your position.

MR. ROSE: Mr. Feaman, I think his client advised us both on several occasions is taking no position with regard to settlement. The only person objecting is Elliot Bernstein.

THE COURT: Okay. Thank you.

All right. You may proceed.

THEREUPON,

BRIAN M. O'CONNELL, ESQ.,

called as a witness in his behalf, having been first

duly sworn by the Court, in answer to questions propounded, was examined and testified as follows:

MS. CRISPIN: Your Honor, we're here, just so the court reporter has it, we're here on Mr. O'Connell's verified motion for approval of settlement agreement entered in the Illinois federal action. I have another copy for Mr. Bernstein if you need it.

Do you need it?

MR. BERNSTEIN: What is it?

MS. CRISPIN: Another copy of the motion set for today.

Your Honor, I'd also like to approach the witness. I've marked it as Exhibit 1 although it's already in the court file.

THE COURT: Sure. And I have a copy. Thank you.

DIRECT EXAMINATION

BY MS. CRISPIN:

Q Mr. O'Connell, please state your name and your position in this matter.

A Brian O'Connell, and I'm the personal representative of the Estate of Simon Bernstein.

Q And for how long have you been serving?

A At this point since 2014, June of 2014, so

a little over three years, almost three and a half years.

Q And you're currently aware of a pending litigation entitled Simon Bernstein Irrevocable Insurance Trust, et al, vs. Heritage Union Life Insurance Company, correct?

A I'm familiar with that litigation, yes.

Q Okay. For how long have you been familiar with the litigation?

A Pretty much since my appointment.

Q So since June or so of 2014?

A Yes.

Q And has the estate entered an appearance in that litigation?

A It has.

Q And you have counsel in your role as personal representative?

A I do.

Q And who is that?

A James Stamos.

Q And has that always been the counsel that's represented the estate and thus you?

A To my knowledge, yes.

Q And can you just give me generally what the nature of that litigation is?

A That was a dispute over who was the beneficiary of an insurance policy, whether it would be a trust, a free-standing trust that was alleged to be the beneficiary by some of the Bernstein family members, or the default being the estate, probate estate being the beneficiary.

Q Okay. And in the litigation, if you can explain, really there was competing positions by the insurance trust and by the estate?

A Oh, absolutely.

Q And tell me what the position of the insurance trust is to the best of your knowledge as a litigant.

A Well, the trust through the trustee was claiming a hundred percent of the policy proceeds. The estate through myself was claiming we were entitled, the estate was entitled to a hundred percent of the policy proceeds.

Q And to the best of your knowledge, who is the trustee of the irrevocable insurance trust as part of that litigation?

A Ted Bernstein.

Q And other than you, has there ever been a prior fiduciary that appeared in that proceeding on behalf of the estate?

A Ben Brown who was a curator was allowed to intervene in that litigation for some period of time. I don't think it was very long.

Q Now, did there come a time when you had made the decision to explore settlement in the case?

A Correct.

Q And when was that?

A It actually started probably six, eight months ago, the beginnings of discussions, to see if some resolutions could be made. Prior to that, there might have been some isolated talk but nothing real concrete.

Q And can you take a look at what I've marked as Exhibit 1?

A Yes.

Q And is this your motion for approval of the settlement agreement?

A It is.

Q And have you signed it and read the facts that are alleged in the motion?

A I have.

Q And do you believe that they're true to the best of your knowledge?

A I do.

Q Okay. One of the attachments to the

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

works out in part an analysis about why this settlement agreement is in the best interest of the estate and its beneficiaries?

A Sure. The way the litigation is posited right now, it's an all-or-nothing situation, as in either the estate gets all of the policy proceeds, about a million, seven hundred thousand dollars, or none of the proceeds. There's no middle ground. There's no way you approach 50 percent or something of that nature.

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

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

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

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

A Roughly.

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

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

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

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

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

A Payment of some fees.

Q Savings of fees or...?

A Payment of fees being, I guess, eliminated.

Q Okay.

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

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

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

the balance going to him towards fees.

Q And that would be a best-day scenario?

A Best day.

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

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

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

A Correct.

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

THE COURT: Thank you. So admitted. You

may proceed.

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

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

THE COURT: So noted. So admitted.

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

THE COURT: Mr. Rose?

MR. ROSE: No questions.

THE COURT: Mr. Feaman?

MR. FEAMAN: Just a few, Your Honor.

MR. ROSE: Can I reserve, Your Honor?

THE COURT: You may.

CROSS EXAMINATION

BY MR. FEAMAN:

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

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

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

A Probably from when the settlement agreement was entered into.

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

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

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

A No.

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

A That's true.

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

MR. ROSE: Objection, relevance.

MS. CRISPIN: Objection, relevance.
THE COURT: Sustained.
MR. FEAMAN: The relevance is I'm laying a predicate for when we come back for fees, Your Honor.
THE COURT: It's not relevant for today though.
BY MR. FEAMAN:
Q With regard to those settlement negotiations, Mr. Stansbury in the May, June time frame, he was not involved in the negotiations, correct?
A Not to my knowledge.
Q And, in fact, to your knowledge, I was not involved, correct?
A I don't believe you were, sir.
Q And to your knowledge, nobody from my office was involved, correct?
A I don't recall anyone from your office being involved.
Q Okay. And you mentioned Ben Brown was the first one that intervened, he was allowed by the Court. Do you recall that that was actually at the behest of Mr. Stansbury's motion, is that correct?
MR. ROSE: Objection, relevance to the

issues today.

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

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

BY MR. FEAMAN:

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

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

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

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

mediator would call one side and then call the other side. It wasn't -- just to sketch it for the Court, it wasn't like an en masse mediation with everyone present at the same time. So I have to be a little cautious as to exactly who was involved in that.

Q That's fine. And who was Mr. Rose representing?

A I'm not sure.

MR. ROSE: Objection as to relevance.

THE COURT: Mr. Feaman, do you not want me to approve? Because I thought you weren't taking a position. I'm losing why we're talking about this now.

MR. FEAMAN: Well, we previously raised the issue of conflict, Your Honor.

THE COURT: Yes, and I denied the order and we're here today and you said you're not taking a position on approval of the settlement.

MR. FEAMAN: Not on the merits of the --

THE COURT: Yes, so that will discontinue the questions.

MR. FEAMAN: I don't think we're in a position to comment on the merits one way or the other not having been involved in the

litigation directly other than causing it to happen.

THE COURT: Exactly. So for purposes of today, I ask that you stay on point.

MR. FEAMAN: Okay. Thank you.

BY MR. FEAMAN:

Q Do you have an opinion as to the probability of success by the estate if the case were to go to trial?

MS. CRISPIN: To the extent it calls for attorney-client privilege or work product, I'd object and instruct you not to answer.

THE WITNESS: I would have to draw on some privileged information, Your Honor, from counsel here.

MS. CRISPIN: He asked for analysis.

THE WITNESS: I can try to answer it on my own.

MS. CRISPIN: I wouldn't have a problem with that.

THE COURT: Answer what you can without drawing on any privilege.

THE WITNESS: Sure.

A I think it was a good case as in the probabilities were more in favor of the estate, but

nothing being a hundred percent in light, again, of what I mentioned before. Of course, when we had summary judgment denied, obviously that makes it more of a horse race than it would be if summary judgment were granted, case over. But just to kind of sketch that out for you, it was certainly a meritorious case that was worth pursuing, ergo I did.

MR. FEAMAN: Thank you.

THE COURT: Mr. Elliot?

MR. BERNSTEIN: Your Honor, can I stay here? Just so I don't fall up there.

THE COURT: Absolutely.

MR. BERNSTEIN: Thank you.

CROSS EXAMINATION

BY MR. BERNSTEIN:

Q Mr. O'Connell, your pleading today states that you entered the settlement with Ted Bernstein as trustee of a 1995 trust. Are you in possession of that trust?

MR. ROSE: Objection, relevance.

THE COURT: Overruled. Go ahead.

A Not an original, to be specific.

BY MR. BERNSTEIN:

Q Excuse me?

A I don't have an original of that trust.
Q Do you have an executed copy?
A I don't.
Q So you've never seen the trust. How do you know Ted Bernstein is the trustee of that trust then?
A Because that was the claim that they were making.
Q Okay. And are you aware that Judge Blakey in the Illinois case which is hearing this matter properly in the Federal Court has determined that that trust hasn't been proven and it's one of the reasons summary judgment was denied?
A I don't have the summary judgment in front of me. When you're saying proven, I'm a little uncertain about --
MR. BERNSTEIN: I'd like to enter that summary judgment as evidence, please.
MS. CRISPIN: I haven't seen it.
MR. BERNSTEIN: Anybody else need it?
There is two of them. Can somebody give Brian the copy I gave, maybe his attorney for Brian as a witness?
THE COURT: No. His attorney right now is reviewing it. Do you have an extra copy for

Mr. O'Connell?

MR. BERNSTEIN: If I don't give one to the judge.

THE COURT: You're supposed to bring one for everybody.

MR. BERNSTEIN: I didn't know how many people were here.

THE BAILIFF: These are the extra copies.

MR. BERNSTEIN: So here's one for the judge and I need one.

THE COURT: Mr. Elliot, be mindful of your time. I'm keeping track of how long everybody has spoken. So you have about four more minutes.

MR. BERNSTEIN: What?

THE COURT: Yes, you have about four more minutes with this witness. Go ahead, ask your question.

MR. BERNSTEIN: Okay. He needs one of these too. That's the second summary judgment.

Do you need it?

THE COURT: I don't know what it is.

MR. BERNSTEIN: It's a summary judgment in the Illinois court.

THE COURT: Thank you.

BY MR. BERNSTEIN:

Q Have you seen this document?

A In the past, yes.

Q And are you aware that in the second summary judgment -- in the first summary judgment, I'm a party to the action and in the second one, I'm dismissed from the complaint based on the fact that I'm not a beneficiary with standing in my father's estate?

MR. ROSE: Objection, relevance to today.

MR. BERNSTEIN: It's all going to be relevant to today's settlement.

BY MR. BERNSTEIN:

Q Judge Blakey in this, if you go to the first order --

THE COURT: He's disputing the settlement so he gets to talk about --

BY MR. BERNSTEIN:

Q The date is on the top, 3-15-16.

A I see it, yes.

Q Do you see on Page 4, the last two paragraphs, can you read that?

A Does that start, while the above sources?

Q Right.

A While the above sources do provide some

evidence that the trust was created --

Q Which trust, the 1995 trust?

A The '95 trust.

Q Okay. Just to be clear.

A That evidence is far from dispositive of the issue. In fact, the intervenor has presented argument and evidence casting material doubt on whether, one, the trust was actually created and, two, the terms of the trust are as explained by the plaintiffs.

Want me to keep going?

Q Well, let me ask you a real quick question. Are you the intervenor?

A No.

Q You're not?

A The estate is, not me.

Q So you're representing the estate?

A Yes, me as personal representative, not me individually. That's what I thought you were asking.

Q So, in fact, the estate has made the argument that this trust does not exist?

A Correct.

Q And there are no terms that are applicable, so how can you be saying that you know

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

of the trust are just as what was explained by the plaintiffs, not the trust because you don't know the terms because we don't have a valid copy, correct?

A The position that the estate took is what's set forth in Judge Blakey's order, correct.

Q Okay. And then read Judge Blakey's next statement.

THE COURT: I'm just reminding you that you have about three more minutes.

MR. BERNSTEIN: Well, I need some more time, Your Honor. This is going to take a long time.

THE COURT: Well, it's going to take till 2:30 as this was set for an hour and giving equal time. So you can keep on moving and ask a question.

MR. BERNSTEIN: Where does it say it was set for an hour? I thought it was until five.

THE COURT: I believe I was asked by Mr. Rose on the phone the other day and I said you have an hour reserved.

MR. BERNSTEIN: You never told us that.

THE COURT: Well, I'm telling you now.

MR. BERNSTEIN: This is going to take me hours.

THE COURT: Well, sorry about that. Ask the next question.

MR. BERNSTEIN: This is a serious settlement.

THE COURT: Would you rather take the time arguing with the Court or --

MR. BERNSTEIN: Well, can we get it extended?

THE COURT: No. Ask your next question.

MR. BERNSTEIN: Okay. I'll ask my next question.

BY MR. BERNSTEIN:

Q Can you read the next sentence?

A However -- there?

Q No. The results and timing of the plaintiff's search for the trust.

A The results and timing of the plaintiff's search for the trust raises doubts about their version of events. The plaintiffs claim that David Simon found a hard copy and electronic version of the trust in his office. David Simon has offered testimony here that he aided Simon Bernstein in creating the trust and that he kept both versions of the unexecuted trust.

Keep going?

Q No, that's good. And the missing trust was one of Judge Blakey's reasons for denying summary judgment, those are still issues of fact, if there is a trust, if Ted's the trustee, correct?

A The order speaks for itself.

Q Correct. So it's not been determined Ted Bernstein is a trustee of any trust because nobody has a copy, correct?

A In connection with this proceeding, the summary judgment?

Q In connection with this proceeding. Ted Bernstein hasn't been determined to be the trustee of the '95 trust that you are entering into settlement with because nobody has the trust, correct?

A Well, Ted Bernstein claims to be the trustee of the 1995 trust --

Q Before you entered into settlement --

THE COURT: Let him finish.

A -- and this settlement resolves the litigation over -- the entire litigation, who gets the proceeds, how much of the proceeds, how they're split between the defendant and the plaintiff.

Q So you haven't verified that Ted Bernstein is the trustee that you're entering into the

settlement?

A There's no way to verify whether Ted Bernstein is the trustee of the trust. We reached a settlement because of the doubt as to whether the trust existed or not, who was the trustee, so that journey is over. That's why you settle cases.

Q I'm sorry, you entered in this pleading that you settled with Ted Bernstein who is trustee, a factual assertion, of a 1995 trust. Are you stating that again today here?

A It's not my factual assertion. I think that's the problem we're having, Mr. Elliot.

Q Well, the heading in your pleading, you start out with, This settlement was entered into between Brian O'Connell, PR of the estate, and Ted Bernstein, trustee of a 1995 trust.

A That's true, because that's the capacity that he was seeking relief from the District Court under.

Q Okay. And I've got some other questions real quick. Am I beneficiary of my father's estate with standing?

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

MR. BERNSTEIN: He's the PR of the estate.

MR. ROSE: It's already been --
THE COURT: Overruled. You can answer the question.
A Are you a beneficiary of the tangible personal property of the estate? Yes.
BY MR. BERNSTEIN:
Q Okay. So I'm a beneficiary of the estate with standing?
THE COURT: Of tangible personal property.
BY MR. BERNSTEIN:
Q Whatever property, I'm a beneficiary, correct?
A You're a beneficiary of the tangible personal property.
THE COURT: Last question.
MR. BERNSTEIN: I need to finish --
THE COURT: No. Last question, Mr. Elliot.
MR. BERNSTEIN: This is just --
THE COURT: I'm sorry. What was that?
MR. BERNSTEIN: I'm rushing through.
THE COURT: Okay. Last question.
BY MR. BERNSTEIN:
Q Mr. O'Connell, are you aware that Judge Blakey dismissed me on summary judgment claiming

that I was not a beneficiary of my father's estate with standing?

A I recall your being dismissed but I'd have to review the --

Q Go ahead. It's right there.

MR. BERNSTEIN: It's the bigger thicker judgment, Your Honor, for your edification.

MR. ROSE: I object to relevance.

THE COURT: Sustained. Okay. Redirect?

MR. BERNSTEIN: Your Honor, what just happened? I'm a little slow.

THE COURT: I sustained the objection. Okay. Mr. Rose?

CROSS EXAMINATION

BY MR. ROSE:

Q Mr. O'Connell, is it fair to say that Judge Blakey also denied the estate's motion for summary judgment?

A He did.

Q The first motion for summary judgment was filed by the Illinois plaintiff, this insurance trust, correct?

A Correct.

Q And that was denied?

A Correct.

Q And on the strength of that, the estate moved for summary judgment, correct?
A And that was denied.
Q And part of the evidence that was submitted contrary to your claim was an affidavit of Mr. Spallina?
A Correct.
Q And it's Mr. Spallina's testimony, if it was believed, that Simon Bernstein discussed the terms of the 1995 insurance trust and Simon Bernstein intended that trust to give all the money, correct?
A That was his testimony per his affidavit.
Q And if you take the litigation all the way to the end, there's a chance that you would lose and end up with nothing?
A There's always that chance; hence we settled.
Q If Mr. Spallina's affidavit is believed by the judge, that would be strong evidence against your position?
A It would be and that would be one of the key points, is that believable or not.
Q And if you hire Mr. Stamos at a 40 percent contingency, my math on a million seven says that

the fee is going to be about $680,000?
A Correct.
Q A million dollars minus 680, $700,000 fee and some costs, I assume, your best case is a million?
A Under a contingency arrangement, that's the math I did too.
Q Because someone has to pay for you, Mr. O'Connell's time to fly to Chicago, sit through a trial, however long it takes, to interact with Mr. Stamos?
A Correct.
Q And you still have to pay back Mr. Stansbury for whatever he's incurred?
A Yes.
Q And in your view, the settlement is in the best interest taking everything into account including all the questions you were asked by all the parties?
A Yes.
MR. ROSE: Nothing further.
MR. BERNSTEIN: Can I ask more after that?
THE COURT: No. It goes back to Ms. Crispin.
MR. BERNSTEIN: Do I get another shot at

that?

THE COURT: No.

MS. CRISPIN: I have nothing further for this witness.

THE COURT: Okay. You may step down. Everybody has a copy of the proposed settlement, correct, the motion?

Mr. Elliot, did you want these two orders in evidence? You didn't actually --

MR. BERNSTEIN: I do.

THE COURT: I will mark them as a composite exhibit for you.

MR. BERNSTEIN: Thank you. So that would be 1?

THE COURT: Elliot's Composite Exhibit 1.

MR. BERNSTEIN: Okay. Thank you.

THE COURT: You're welcome.

All right. Next witness?

MS. CRISPIN: Mr. Stamos, please.

THE COURT: All right. Let me call.

Mr. Stamos? Hello?

MR. SIMON: This is Adam Simon.

THE COURT: All right.

MR. ROSE: I believe he's one of the counsel in --

THE COURT: I don't know.
MS. CRISPIN: That's not Mr. Stamos.
THE COURT: I know. Is Mr. Stamos available? He's not on court call. Is anyone calling Mr. Simon?
MR. SIMON: Mr. Simon is on the phone.
THE COURT: I know. I'm not sure why.
MR. ROSE: I think he's counsel of record in the Illinois case for the trust.
MR. SIMON: I'm just listening.
MR. BERNSTEIN: And I might want to ask him questions since he's there.
MS. CRISPIN: Judge, can I use my phone to call?
THE COURT: Yes.
Go ahead. Ask some questions, Mr. Bernstein.
Do you have a notary public there? Did you arrange to have a notary public for him if you wish to call him as a witness?
MR. BERNSTEIN: I'm not his lawyer.
THE COURT: I know, but if you wish to call a witness by telephone, you need to arrange that they have a notary public so they can be sworn in.

MR. BERNSTEIN: He's the counsel.
THE COURT: I know, but he still needs a notary public because he's not in front of me to swear him in.
MR. BERNSTEIN: So, no. I didn't know that he was going to be here.
THE COURT: All right. Next witness, Ms. Crispin? Oh, you're on the phone. Sorry.
MS. CRISPIN: Your Honor, I don't have anyone after Mr. Stamos.
THE COURT: Any witnesses, Mr. Rose?
MR. ROSE: No.
THE COURT: Any witnesses, Mr. Feaman?
MR. FEAMAN: No, Your Honor.
THE COURT: Call your first witness, Mr. Elliot.
MR. BERNSTEIN: I'm waiting for Mr. Stamos.
THE COURT: No. We're waiting and for court efficiency, call your first witness.
MR. BERNSTEIN: Brian O'Connell.
THE COURT: You can call him for about eight minutes.
MR. O'CONNELL: He's calling in now, Your Honor.

THE COURT: All right. He'll call in to court call. In the meantime, go ahead and get back on the stand. I told him he has about eight minutes and we'll have Mr. Stamos -- if you're on the phone with Mr. Stamos, you can tell him to be ready by ten to three.

MS. CRISPIN: Okay.

(Mr. O'Connell resumed the stand.)

THE COURT: You're still under oath.

Go ahead. It's all you.

DIRECT EXAMINATION

BY MR. BERNSTEIN:

Q Are you aware of a 2000 insurance trust that was executed that the policy in question has been assigned to in the year 2000?

MS. CRISPIN: Asked and answered.

THE COURT: Sustained. You already asked him that.

MR. BERNSTEIN: No, a 2000 insurance policy.

THE COURT: Oh, overruled. Thank you.

BY MR. BERNSTEIN:

Q That supersedes a 1995 trust?

A You'd have to show me a document.

Q Okay. Here.

MR. STAMOS: Hello?
THE COURT: Mr. Stamos?
MR. STAMOS: Yes, ma'am.
THE COURT: Okay. This is the judge. I'm going to ask you to just hang on while we complete the testimony of another witness.
MR. STAMOS: Okay. How long will that be, how long do you think?
THE COURT: About eight minutes.
MR. STAMOS: All right. I will step away from my desk for five minutes and I'll pick up then, okay?
THE COURT: Sounds good.
MR. STAMOS: Thank you.

BY MR. BERNSTEIN:

Q Mr. O'Connell, have you seen that trust before?

A Sitting here today, I don't recall it but it's possible in the volume of documents in this case that I could have, but I couldn't tell you definitively.

Q Do you notice that it's Bates stamped by Tescher & Spallina, the former attorneys who committed forgery and fraud in this matter that you replaced and those documents were transferred to you

by Ben Brown and you actually argued -- can you answer that question?

A I see Bates stamps at the bottom.

Q So these would be part of your record, correct?

A I'm not sure. I'd have to look on my record to be sure.

Q And you're aware that the state has argued in Illinois Federal Court that this 2000 trust supercedes the '95 trust, thereby rendering it moot, the '95 trust you're entering into settlement with, is that correct?

A I'd have to see some more documents. If you're talking about -- has there been something in writing submitted taking that position?

Q Yeah. Your summary judgment arguments rely on this 2000 trust superseding -- in that 2000 trust, can you read from Page 1, the trust, the first paragraph and the Number 1?

MR. ROSE: Objection. The document is not in evidence, hearsay.

THE COURT: Sustained.

MR. BERNSTEIN: Can I submit it as evidence?

THE COURT: Objections?

MR. ROSE: Authenticity.
THE COURT: Sustained.
MR. BERNSTEIN: It's Bates stamped.
THE COURT: It doesn't matter. Sustained.
MR. BERNSTEIN: It's been submitted into the record.
THE COURT: Sustained.
MR. BERNSTEIN: We can't enter this?
THE COURT: No. I sustained the objection. It's an evidentiary objection.
MR. BERNSTEIN: Okay. Am I allowed to ask him questions about this document?
THE COURT: If you ask a question and there's an objection, I'll entertain it. I can't tell you how to proceed.
MR. BERNSTEIN: Okay.
BY MR. BERNSTEIN:
Q Can you read the first paragraph and Number 1 of that document?
MR. ROSE: Objection, hearsay. The document is not in evidence.
THE COURT: Sustained.
MR. BERNSTEIN: Okay.
BY MR. BERNSTEIN:
Q You argued in Illinois in the federal

action on behalf of the estate that this 2000 document superseded the 1995 trust?

MS. CRISPIN: Asked and answered. He said he needed further documentation to see it in writing.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q In a recent similar case to this with allegations of fraud in the Bivens case, are you aware of the Oliver Bivens case?

MR. ROSE: Objection, relevance, materiality.

THE COURT: Sustained.

BY MR. BERNSTEIN:

Q Have you been charged with breach of fiduciary duties and negligence recently and found guilty by a jury of your peers in a federal court?

MR. ROSE: Objection, relevance.

MS. CRISPIN: Argumentative.

THE COURT: I have to overrule those objections because it would go to bias.

MS. CRISPIN: Your Honor, he used the word charged. That was my problem for the argumentative.

THE COURT: Okay. With regard to the word

charged, sustained.
BY MR. BERNSTEIN:
Q Is there a verdict that claims you breached fiduciary duties and negligence in the handling of an estate?
A There was a verdict but the matter has been settled and the case has been dismissed with prejudice pursuant to a confidential settlement.
Q Who was your attorney in that settlement?
A Wicker, Smith.
Q Was it Alan Rose?
A Alan Rose came in after the verdict to represent the law firm while Ms. Crispin and I were represented by the Wicker, Smith firm as we had been from the inception of the case.
Q So the verdict stood?
A No.
MR. STAMOS: Hello ?
THE COURT: Hang out for me, Mr. Stamos.
BY MR. BERNSTEIN:
Q So there was a jury verdict that you had breached and committed negligence with Ashley Crispin, correct?
MR. ROSE: Objection, relevance and repetitive.

THE COURT: Sustained.

MR. BERNSTEIN: By the way, Your Honor, something strange here has occurred. Mr. Rose is O'Connell's counsel.

THE COURT: Excuse me. Do you have a question for this witness? You have one question left.

BY MR. BERNSTEIN:

Q If there is a 2000 trust, would it not be a necessary party to any settlement if it deals with the same insurance policy?

A I'm not aware that that trust exists, the 2000 trust exists.

Q If it exists? Since I can't enter it into evidence.

A I'd have to review the documents to make sure.

Q But after you reviewed them, if you found that it existed, would it be a necessary part to any settlement?

MR. ROSE: Objection, calls for a legal conclusion and the facts are that trust and no trustee has intervened or sought to do anything in the Illinois case so it's an irrelevant question.

MR. BERNSTEIN: Your Honor, that's really relevant because the reason this trust is suppressed is because my sister, Pam Scott -- I'd like to enter another piece of evidence where they discussed suppressing this and hiding it from the court.

THE COURT: Sustained. Last question.

BY MR. BERNSTEIN:

Q When you found out that I was a beneficiary of my father's estate and Judge Blakey removed me on summary judgment claiming that I was not a beneficiary based on res judicata from this court, when you found out again and admitted in court at the first hearing that I attended with Judge Scher here in the courtroom that I was a beneficiary, did you notify the federal court that I was a beneficiary with standing in my dad's estate?

MR. ROSE: Objection, relevance, argumentative, and I think these issues are the ones that were decided by the federal judge in Illinois.

MS. CRISPIN: Objection, compound.

THE COURT: I'll let him answer the question. He either did or he didn't.

A I guess to answer your question, I'd have

to go back and review your intervention and review the order and --

BY MR. BERNSTEIN:

Q The order is there.

A It would take some time to do it to say whether that would be --

Q Well, let me ask you a question.

THE COURT: No, that was it.

MR. BERNSTEIN: It's the same question.

THE COURT: Then it's been asked and answered.

MR. BERNSTEIN: Well, let me help him answer what he said, Your Honor. Would that be okay?

THE COURT: That would be okay.

BY MR. BERNSTEIN:

Q The question is, after a review, if you found that I was a beneficiary with standing in the estate and the Illinois court was under the impression that I was not and had dismissed me, would I need to be reinstated as a party in that action who would be a party to this settlement?

A That would be between you and the Illinois federal court using that hypothetical.

THE COURT: Okay. That about does it for

that. Follow up, Ms. Crispin?
MS. CRISPIN: None.
THE COURT: You may step down, Mr. O'Connell.
We're ready to proceed. Do you have a notary public there with you, Mr. Stamos?
MR. STAMOS: Yes. It will just take one second, Your Honor.
THE COURT: Thank you.
MR. STAMOS: She's present. Okay. Shall we begin?
THE COURT: May I speak with the notary, please?
MR. STAMOS: Yes.
MS. VASQUEZ: I'm here.
THE COURT: Hello. This is Judge Rosemarie Scher. What is your name, ma'am?
MS. VASQUEZ: My name Denise Vasquez.
THE COURT: Are you a notary public in the State of Illinois?
MS. VASQUEZ: Yes, I am.
THE COURT: When does your commission expire?
MS. VASQUEZ: October 31st, 2021.
THE COURT: In Illinois, do you have a

number? Do you have a commission number?
MS. VASQUEZ: No.
THE COURT: In Florida we do. That's the only reason I'm asking.
All right. Do you know the gentleman in front of you?
MS. VASQUEZ: Yes, I do.
THE COURT: Do you know him personally or has he produced identification?
MS. VASQUEZ: Personally.
THE COURT: All right. Who is the gentleman in front of you?
MS. VASQUEZ: James Stamos.
THE COURT: All right. Would you please ask him to raise his right hand?
MS. VASQUEZ: Raise your right hand.
THE COURT: And swear or affirm to tell the truth?
MS. VASQUEZ: Do you swear or affirm to tell the truth?
MR. STAMOS: Yes, I do.
THE COURT: Excellent. Ms. Vasquez, thank you so much for serving the Court.
Mr. Stamos, you are on. Ms. Crispin will begin her questioning.

MR. STAMOS: Thank you.

DIRECT EXAMINATION

BY MS. CRISPIN:

Q Mr. Stamos, can you hear me?

A I can.

Q This is Ashley Crispin. We've met before. I represent Brian O'Connell. We share a client.

A Yes.

Q And I'm going to be asking you some questions. Your full name, please?

A James J. Stamos. Middle name is John.

Q And you currently represent who in the pending litigation Simon Bernstein Irrevocable Insurance Trust, et al, vs. Heritage Union Life Insurance Company, et al?

A I represent the estate.

Q And currently the fiduciary position is held by Mr. O'Connell as personal representative, correct?

A That's my understanding.

Q And how long have you been representing the estate in this litigation?

A Since 2015, if I'm correct. I think it was the summer of 2015.

Q And your primary area of practice?

A I'm a litigator. I do principally professional liability defense as well as commercial litigation.

Q And you're aware of the settlement agreement that was reached between the parties in this matter, correct?

A Yes, I am.

Q And you reviewed the settlement agreement before it was executed by Mr. O'Connell, correct?

A Yes. I think I might have suggested some changes.

Q But you reviewed the final version before Mr. O'Connell executed it, correct?

A Yes, I did.

Q And it's contingent on this Court, meaning the Probate Court in Palm Beach County's approval, correct?

A That's my understanding.

Q Now, without drawing on your attorney-client communications with Mr. O'Connell, are you able to give the Court an analysis of the settlement?

A I think I can without breaching confidentiality.

Q Okay. Can you do that, please?

A Let me ask you something. Tell me exactly what you'd like me to talk about. I'm not sure whether you want me to talk about whether it's reasonable or its terms.

Q Exactly, if it's reasonable. The Court has the terms in front of it so now we're just talking about whether or not it was a reasonable settlement.

A Yes. I think it is reasonable. I base that on, and I don't think this is an attorney-client or work product assessment, I base it on a number of factors. The first being that I believe that it's a case that we would be able to win, that we should be able to win, but I thought that there were a number of issues that could make that challenging. One was that the Court had not granted summary judgment for us when I thought the Court should have which made me think that perhaps his view of the facts would be slightly different than our view of the facts.

I also thought that our winning the case was really going to come down to a credibility question and while I thought we had a much better credibility argument, nonetheless the judge was going to have to look at the witnesses and make

decisions about whether he was going to believe the witnesses for the plaintiff in terms of why they thought the trust was -- frankly why they thought the trust existed and was entitled to money. And I thought the fact that there were basically the same people on both sides, I mean I realize they're different, they're the parents and they're the kids, might make it less certain that the judge would be as precise as he might otherwise be in deciding exactly who should win.

I thought that in light of the fact that if we lost, the estate would have no money from the trust and I thought the estate probably would want to have some money, that a compromise of this nature was reasonable.

MS. CRISPIN: Nothing further.

THE COURT: Questions?

MR. ROSE: I'll reserve. For now I don't have any questions.

THE COURT: Mr. Feaman?

CROSS EXAMINATION

BY MR. FEAMAN:

Q Mr. Stamos, this is Peter Feaman. Do you recall that I represent Bill Stansbury?

A I do. I recall that well.

Q Do you recall that it was our office that first brought you into the case?

MR. ROSE: Objection, relevance.

THE COURT: Sustained.

BY MR. FEAMAN:

Q Mr. Stamos, you determined early on in your representation of the estate that the estate had a very meritorious claim, didn't you?

A Yes, I did.

Q And there was a telephonic mediation in May. Did you attend?

A I did.

Q And who attended at that mediation?

MR. ROSE: Objection for the same reasons. You limited his questioning since he has no position.

THE COURT: Sustained.

BY MR. FEAMAN:

Q And did that get the ball rolling in earnest towards settlement?

MR. ROSE: Same objection.

MS. CRISPIN: And to the extent it calls for confidential mediation.

THE COURT: Sustained.

BY MR. FEAMAN:

Q Did the most serious settlement discussions take place in June of this year?

MR. ROSE: Same objection.

THE COURT: Sustained. I don't see the relevance to this hearing.

BY MR. FEAMAN:

Q Do you recall whether I was involved at all in those settlement discussions?

MR. ROSE: Same objection.

THE COURT: What is the relevance for this hearing, Mr. Feaman?

MR. FEAMAN: For this hearing?

THE COURT: For this hearing.

MR. FEAMAN: As to whether -- while we're taking no position, I want to set the record that we were not involved.

THE COURT: Okay. You've already done that. Thank you. Any other questions?

BY MR. FEAMAN:

Q Was Ted Bernstein involved in the settlement discussions as the plaintiff in the Chicago litigation or as the trustee for the trust as the only monetary beneficiary of this estate?

MR. ROSE: Same objection. It sounds like

it's a question leading toward a position.

THE COURT: Could you ask the question again, Mr. Feaman?

BY MR. FEAMAN:

Q Was Ted Bernstein involved in settlement negotiations as a plaintiff in the Chicago litigation that you're counsel involved in or as trustee for the trust that's the only monetary beneficiary of this estate?

THE COURT: I am sustaining the objection because, again, you've taken no position in approving the settlement and I know this goes to another issue you have that's not in front of the Court today.

MR. BERNSTEIN: Can I ask that same question?

THE COURT: No, you can't. It's not in front of the Court today.

BY MR. FEAMAN:

Q My last question, Mr. Stamos, is do you have an opinion as to what the probability of success by the estate would have been if you had gone to trial?

A Well, my judgment was that we were likely to win the case. I felt that we were likely to win

the case with the caveat that I described earlier.

MR. FEAMAN: Thank you. No further questions.

THE COURT: Mr. Elliot?

CROSS EXAMINATION

BY MR. BERNSTEIN:

Q Hi, Mr. Stamos. Has Judge Blakey adjudicated this settlement yet?

A Not -- candidly, I don't recall the exact procedural posture at this moment. I know it's been brought before him, I know he's aware that this hearing has to take place. As to what he has ruled on it, I don't recall where it stands with him.

Q Okay. Was I, Elliot Bernstein, at any settlement negotiations you're aware of?

A I don't know the answer to that.

Q Okay. Is it claimed that I'm a beneficiary of the insurance policy?

A I'm sorry, state that again. I couldn't hear you.

Q Is it claimed by the plaintiffs that I'm a beneficiary of the insurance policy?

A That wasn't how I understood the claim. I understood that they were attempting to prove that a particular trust was the beneficiary of the

insurance policy.
Q Okay. Have you ever seen that particular trust, an executed copy of the 1995 trust that's at the heart of this?
A No.
Q Okay. So then would you be able to determine in this settlement that Ted Bernstein is the trustee of the '95 trust?
A I don't know the answer to that question.
Q Did you depose Ted Bernstein on these very questions in the Illinois litigation?
A Yeah. The position, as I understand it, was that the trust -- there was no evidence that the trust was ever executed and there was no clarity because there were a couple of drafts that were being presented as being exemplars of what the trust was supposed to accomplish. But my recollection is there's an inconsistency as to who the trustee would be. I never saw any document that assigned anyone as the trustee because I never saw an executed document.
Q So then it couldn't be certain that Ted Bernstein is the trustee of the trust that nobody knows exists?
MR. ROSE: Objection, relevancy, not

before the Court today.
A Our position was that there was no trust.
BY MR. BERNSTEIN:
Q Okay. And you understand that this settlement is being entered into between the estate and Ted Bernstein as trustee in fact of the 1995 trust?
A My understanding is that is a function of the fact that we are compromising and one of the compromises is to make that recognition, so it's a compromise of a factual issue.
THE COURT: All right. We need to wrap this up. One last question.
BY MR. BERNSTEIN:
Q Mr. Stamos, are you aware of the 2000 insurance trust that this policy was assigned to?
A I recall there being a trust that was entitled a 2000 trust. I have to tell you I'm a little hazy as I'm sitting here as to what exactly the function it had in the case. I know that it was never promoted by anyone as a trust that was entitled to the funds from the policy.
THE COURT: Last question. That was it.
MR. ROSE: May I have my one question?
THE COURT: Yes.

CROSS EXAMINATION

BY MR. ROSE:

Q Mr. Stamos, are you aware that the documents that existed in the office of the insurance company that issued this policy continuously reflected the sole contingent beneficiary being this 1995 life insurance trust?

A I'm sorry, who's asking the question just so I know?

Q Alan Rose.

A Mr. Rose, if you're asking what was in the records of the issuing company, candidly I don't recall. I remember there was some changes, a beneficiary change form as to who it was ultimately. I just don't remember. I'm just blanking as to what actually was contained in the file.

MR. ROSE: Nothing further, Your Honor.

THE COURT: All right. Did you all give me the original -- I don't think so -- of the verified motion for approval of settlement? I'm just making sure I don't have an original here. It's double sided pages so I don't think so.

MS. CRISPIN: I don't believe so, Your Honor.

THE COURT: I don't believe so either. I'm just making sure. All right. Any other witnesses, Ms. Crispin?

MR. STAMOS: Am I excused, Your Honor?

THE COURT: Yes, you are excused. Thank you very much, Mr. Stamos. I'm disconnecting you.

MR. BERNSTEIN: Can I call him as a witness?

THE COURT: No. The hearing is ending.

MR. BERNSTEIN: I didn't get a chance -- it's ending now?

THE COURT: It is.

MR. BERNSTEIN: Okey dokey.

THE COURT: Do you have a proposed order?

MS. CRISPIN: Your Honor, I have a blank order here. I can fill it out here or I can hand Your Honor the blank one.

THE COURT: Okay. Thank you. I'll take the blank one. Thank you very much.

MS. CRISPIN: Your Honor, I'm just going to hand one copy because I know Your Honor will furnish it via email.

THE COURT: Absolutely. All right, everyone. I have as our next hearing

November 15th. I'm just saying just for the record.

MR. FEAMAN: My office gave me an order setting a hearing for November 9th at 1:30.

THE COURT: Which hearing is that? Isn't that the hearing I denied already?

MR. FEAMAN: No. It's on Mr. Stansbury's request for court intervention under Florida Statute 736.0706 filed back on February 15th of 2017, and in communications of my paralegal with your assistant, apparently it gave rise to her preparing an order setting that hearing for November 9th. She created it and gave it to me to confirm that there's a hearing on that date.

THE COURT: No, and you know what?

MR. FEAMAN: I didn't have any conversation with your office.

THE COURT: I understand that and actually it's not a complete shock to me. That's why I asked that. I need to look at that. My assistant is out for six weeks. So if you will hand me that, I need to look at that because in my world, I didn't think that was an issue.

MR. ROSE: Just for the record, Your Honor, this is the motion where he's asking

you --

THE COURT: I thought I denied it. I thought I entered an order denying it.

MR. ROSE: If you haven't, we ask you to.

THE COURT: Let me look at it and, Mr. Feaman, I'm sure at some point my assistant did a request for this, but like I said, she just had surgery. So let me take this, let me take the other blank order. I have a phone conference. Thank you very much.

MR. BERNSTEIN: Your Honor, I just want the record to reflect that I wasn't given a fair opportunity to be heard. I made no opening statement, was not allowed to call witnesses and there were no pretrial hearing procedures ordered by the Court or even followed by the Court.

THE COURT: So noted. Thank you so much. Feel better.

MR. ROSE: Thank you, Your Honor.

(The hearing was concluded.)

STATE OF FLORIDA

COUNTY OF PALM BEACH

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Dated this 27th day of October, 2017.



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

CASE NO.: 50-2014-CP-003698-XXXX-NB
PROBATE DIVISION: IH

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Plaintiff / Petitioner,

and

ALEXANDRA BERNSTEIN; et. al,
Defendants / Respondent.
_____/

**ORDER TO SHOW CAUSE WHY ELIOT BERNSTEIN SHOULD NOT BE HELD IN CONTEMPT OF COURT AND ORDER SETTING HEARING**

**THIS CAUSE** came before the Court on Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust Motion to Hold Eliot Bernstein in Contempt of Court or Issue Order to Show Cause Against Eliot Bernstein, and for Sanctions ("Motion") for Eliot's Bernstein's violation of Order on Successor Trustee's Motion to Appoint a Guardian ad Litem; for a Gag Order to Protect the Guardian and Others; and to Strike Eliot Bernstein's Filings dated March 1, 2016 (the "Order" D.E. 161).

The Court, having reviewed the Motion, the court file, and having been otherwise fully advised in the premises, finds as follows:

1. On March 1, 2017, this Court entered an Order on Successor Trustee's Motion to Appoint a Guardian ad Litem; for a Gag Order to Protect the Guardian and Others; and to Strike Eliot Bernstein's Filings dated March 1, 2016 (the "Order" D.E. 161).

2. The Court's Order stated as follows:

> 6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost to the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.
>
> 7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein, on behalf of his children, are hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

3. Plaintiff / Petitioner's Motion proffers emails sent directly to Diana Lewis, the guardian ad litem, in direct violation of the Order. The Court concludes the Petitioner's / Plaintiff's Motion for Contempt for refusal to obey this Court's Order is well taken. It is therefore

**ORDERED AND ADJUDGED**, as follows:

1. ELIOT BERNSTEIN is ordered to personally appear before this Court on **Thursday, March 22, 2018 at 1:30 p.m.,** in Courtroom 4 of the North County Courthouse, 3188 PGA Blvd., Palm Beach Gardens, Florida 33410, and show cause why she should not be held in contempt of this Court for willful refusal to obey its Order, attached hereto. One hour shall be reserved.

2. **FAILURE OF ELIOT BERNSTEIN TO PERSONALLY APPEAR MAY RESULT IN A FINDING OF CONTEMPT OF COURT, AN AWARD OF ATTORNEY'S FEES AND COSTS AGAINST ELIOT BERNSTEIN, THE ISSUANCE OF AN ORDER STRIKING ANY AND ALL FUTURE PARTICIPATION IN THIS CASE AND/OR ANY OTHER SANCTIONS THE COURT DEEMS FIT.**

3. Petitioner/Plaintiff's counsel, at his own cost, shall cause a copy of this Order to Show Cause and Order Setting Hearing to be personally served VIA SHERIFF OR PRIVATE PROCESS SERVER upon ELIOT BERNSTEIN and file proof of personal service upon receipt. The Court will reserve to award these fees against ELIOT BERNSTEIN.

4. This Court reserves jurisdiction to award such fees and costs as may be proper to Petitioner/Plaintiff.

**DONE AND ORDERED** in Chambers at Palm Beach Gardens, Palm Beach County, Florida, this 15th day of September, 2017.

15TH JUDICIAL CIRCUIT

ROSEMARIE SCHER
Circuit Judge

*Copies furnished to:*

*SEE ATTACHED SERVICE LIST*

This notice is provided pursuant to Administrative Order No. 2.207-1/15

**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Tammy Anton, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."**

**"Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Tammy Anton, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha programado es menos de 7 días; si usted tiene discapacitación del oído o de la voz, llame al 711."**

**"Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Tammy Anton, kòòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711."**

**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

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Eric Bernstein, Michael Bernstein

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

TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended,

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.,

Defendants.
_____/

Probate Division
Case No.: 502014CP003698XXXXNB

**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO APPOINT A GUARDIAN AD LITEM; FOR A GAG ORDER TO PROTECT THE GUARDIAN AND OTHERS; AND TO STRIKE ELIOT BERNSTEIN'S FILINGS**

THIS CAUSE came before the Court for evidentiary hearing on February 25, 2016, on Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children etc. (the "Motion"). The Court, having considered the record, heard argument of counsel and being otherwise fully advised in the premises, hereby

ORDERS AND ADJUDGES:

FILED
2015 MAR -2 PM 1:08
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL

FILED
MAR 2 PM 1:09
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
NORTH COUNTY BRANCH

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Shirley Bernstein Trust Agreement dated 5/20/2008 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust. This Court entered a written order dated February 1, 2016, determining Eliot Bernstein lacks standing to participate in this proceeding and striking his individual filings.

2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his minor children, as their parent and natural guardian, in this Trust Proceeding.

3. ~~Despite his status as natural guardian, Eliot will not be permitted to do so, and~~ The Court will appoint a Guardian ad Litem, because there is a conflict of interest between the parent and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children.

4. First, as to the conflict, Eliot's position throughout the case and at trial was that he was a beneficiary of the Trust. He continued advancing that position after trial by prosecuting an appeal of the December 16, 2015 Final Judgment. Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *Mistretta v. Mistretta,* 566 So. 2d 836, 837-38 (Fla. 1st DCA 1990)(best interests of a minor are ***not*** fully protected when adverse to the interests of the parent); *Florida Nat. Bank & Trust Co. at Miami v. Blake,* 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was

apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs,* 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed ~~then~~ when the parents' interests were adverse to the minor childs).

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..."[1] Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and based upon the Court's review of various motions filed by Eliot Bernstein since the trial, it is apparent Eliot Bernstein is not an adequate representative of the best interests of his children. In fact, his actions are adverse & destructive to the children's interest.

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost to the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein,

---

[1] In addition, under section 744.3025, the court *may* appoint a guardian ad litem to represent a minor's interest before approving a settlement of the minor's portion of any cause of action in which the gross settlement of the claim exceeds $15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest, and "shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds $50,000." Here, it is likely that there will be a settlement at some point in which each of minors receives a substantial distribution, and it is likely Eliot will oppose any such settlement.

on behalf of his children, ~~is~~ are hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

8. The parties shall attempt to mutually agree on a guardian ad litem. The Court will appoint whomever the parties agree upon within the next three business days. Eliot Bernstein may participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to agree on a guardian ad litem, ~~upon notice from the Trustee's counsel the Court shall randomly appoint a guardian ad litem for Ja.B., Jo.B. and D.B. or schedule a further hearing to appoint a suitable Guardian Ad Litem.~~ each of the parties shall submit a list of three names of potential Guardian Ad Litem's, each of whom has agreed to accept the appointment if selected. Those lists shall be filed with the Clerk with courtesy copy to the undersigned, no later than 10 days from this date.*

9. The Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall ~~make no effort to~~ not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; ~~(b) shall make no statement of any kind about the guardian, nor post information about the guardian on the internet in any fashion; and~~ (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian, and ~~all information concerning this guardianship shall be treated as private and confidential.~~ Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

* Parties shall furnish an Order appointing GAL with the lists. The Court will act without further hearing on the appointment, if possible. proposed

11. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE and ORDERED in Chambers, North County Courthouse on 3-1-16, 2016.

HONORABLE JOHN L. PHILLIPS

cc: Attached service list

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

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and Eliot and Candice Bernstein,
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slobdell@ciklinlubitz.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

| |
|---|
| SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br><br>v.<br><br>ROBERT L. SPALLINA, et al.,<br><br>Defendants. |

# CONSENT OF DEFENDANT ROBERT L. SPALLINA

1. Defendant Robert L. Spallina ("Defendant") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has agreed to plead guilty to criminal conduct relating to certain matters alleged in the complaint in this action and acknowledges that his conduct violated the federal securities laws. Specifically, Defendant has agreed to plead guilty to a one count information which charges him with committing securities fraud involving insider trading in the securities of Pharmasset, Inc. in a matter to be filed in the United States District Court for the District of New Jersey (the "Criminal Action").

3. Defendant hereby consents to the entry of the Final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Defendant from violation of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act")

[15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3];

(b) orders Defendant to pay disgorgement in the amount of $39,156, plus prejudgment interest thereon in the amount of $1,794; provided, however, that $39,156 shall be deemed satisfied in light of Defendant's consent to the entry of a forfeiture money judgment in the amount of $39,156 in connection with the Criminal Action; and

(c) orders Defendant to pay a civil penalty in the amount of $39,156 under Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

4. Defendant agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and

other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges that he has agreed to plead guilty for related conduct as described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this

proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. . Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

14. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local

rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

15. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

16. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 9/16/15

Robert L. Spallina

On Sept 16, 2015, Robert Spallina, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Notary Public
Commission expires:

Alexa Collevechio
COMMISSION # FF186462
EXPIRES: December 28, 2018
WWW.AARONNOTARY.COM

Approved as to form:

Lawrence S. Lustberg, Esquire
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
Counsel for Robert L. Spallina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

| |
|---|
| SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br><br>v.<br><br>ROBERT L. SPALLINA, et al.,<br><br>Defendants. |

**FINAL JUDGMENT AS TO DEFENDANT ROBERT L. SPALLINA**

The Securities and Exchange Commission having filed a Complaint and Defendant Robert L. Spallina having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; waived any right to appeal from this Final Judgment; and Defendant having admitted the facts set forth in the Consent of Robert L. Spallina and acknowledged that his conduct violated the federal securities laws:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or

instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

(a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been

acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

(b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

(i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;

(ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the

planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or

(iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of $39,156, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $1,794; provided, however, that $39,156 shall be deemed satisfied in light of Defendant's consent to the entry of a forfeiture money judgment in the amount of $39,156 in connection with the resolution of a parallel criminal action instituted in this Court; and a civil penalty in the amount of $39,156 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying $40,950 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Robert L. Spallina as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this

Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: Sept 29, 2015

Anne E Thompson
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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| SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br><br>v.<br><br>ROBERT L. SPALLINA, et al.,<br><br>Defendants. |

**FINAL JUDGMENT AS TO DEFENDANT ROBERT L. SPALLINA**

The Securities and Exchange Commission having filed a Complaint and Defendant Robert L. Spallina having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; waived any right to appeal from this Final Judgment; and Defendant having admitted the facts set forth in the Consent of Robert L. Spallina and acknowledged that his conduct violated the federal securities laws:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or

instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

(a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been

acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

(b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

(i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;

(ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the

planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or

(iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of $39,156, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $1,794; provided, however, that $39,156 shall be deemed satisfied in light of Defendant's consent to the entry of a forfeiture money judgment in the amount of $39,156 in connection with the resolution of a parallel criminal action instituted in this Court; and a civil penalty in the amount of $39,156 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying $40,950 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Robert L. Spallina as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this

Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: Sept 29 2015

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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| SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br><br>v.<br><br>DONALD R. TESCHER et al.,<br><br>Defendants. | C.A. No. __-____ |

# CONSENT OF DEFENDANT DONALD R. TESCHER

1. Defendant Donald R. Tescher ("Defendant") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as provided herein in paragraph 12 and except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Defendant from violation of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3];

(b) orders Defendant to pay disgorgement in the amount of $9,937, plus prejudgment interest thereon in the amount of $690; and

(c) orders Defendant to pay a civil penalty in the amount of $9,937 under Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

3. Defendant agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

4. Defendant acknowledges that the Court is not imposing a civil penalty in excess of $9,937 based on Defendant's cooperation in a Commission investigation and/or related enforcement action. Defendant consents that if at any time following the entry of the Final Judgment the Commission obtains information indicating that Defendant knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Commission may, at its sole discretion and without prior notice to the Defendant, petition the Court for an order requiring Defendant to pay an additional civil penalty. In connection with the Commission's motion for civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Judgment, this Consent, or any related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the

Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take any action or make or permit to be made any public statement

denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes,

Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good-faith settlement.

14. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

15. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

16. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 6/5/14

Donald R. Tescher

On June 5, 2014, Donald R. Tescher, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

Notary Public
Commission expires:

CHERYL J. GOMES NOTARY PUBLIC COMMONWEALTH OF MA

Approved as to form:

Norman A. Moscowitz, Esq.
Moscowitz & Moscowitz, P.A.
Sabadell Financial Center
1111Brickell Ave., Suite 2050
Miami, FL 33131

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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| SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br><br>v.<br><br>DONALD R. TESCHER et al.,<br><br>Defendants. | C.A. No. __-____ |

**FINAL JUDGMENT AS TO DEFENDANT DONALD R. TESCHER**

The Securities and Exchange Commission having filed a Complaint and Defendant Donald R. Tescher ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VI); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or

instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

(a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been

acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

(b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

(i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;

(ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the

planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or

(iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of $9,937, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $690, and a civil penalty in the amount of $9,937 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying $20,564 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Donald R. Tescher as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on Defendant's cooperation in a Commission investigation and/or related enforcement action, the Court is not ordering Defendant to pay a civil penalty in excess of $9,937. If at any time following the entry of the Final Judgment the Commission obtains information indicating that Defendant knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Commission may, at its sole discretion and without prior notice to the Defendant, petition the Court for an order requiring Defendant to pay an additional civil penalty. In connection with any such petition and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Judgment, this Consent, or any related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the

Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: Oct 1, 2015

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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| SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br><br>v.<br><br>DONALD R. TESCHER et al.,<br><br>Defendants. | C.A. No. __-____ |

**FINAL JUDGMENT AS TO DEFENDANT DONALD R. TESCHER**

The Securities and Exchange Commission having filed a Complaint and Defendant Donald R. Tescher ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VI); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or

instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

(a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been

acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

(b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

(i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;

(ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the

planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or

(iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of $9,937, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $690, and a civil penalty in the amount of $9,937 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying $20,564 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Donald R. Tescher as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on Defendant's cooperation in a Commission investigation and/or related enforcement action, the Court is not ordering Defendant to pay a civil penalty in excess of $9,937. If at any time following the entry of the Final Judgment the Commission obtains information indicating that Defendant knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Commission may, at its sole discretion and without prior notice to the Defendant, petition the Court for an order requiring Defendant to pay an additional civil penalty. In connection with any such petition and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Judgment, this Consent, or any related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the

Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: Oct 1 2015

UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**
**WEST PALM BEACH DIVISION**

**Case No.: _____**
**District Judge: _____**
**Magistrate Judge: _____**

JULIAN BIVINS, as Personal Representative
of the ancillary Estate of Oliver Wilson Bivins,

Plaintiff,
vs.
CURTIS CAHALLONER ROGERS, JR.,
as former guardian, STEPHEN M. KELLY,
as successor guardian, BRIAN M. O'CONNELL,
ASHLEY N. CRISPIN, CIKLIN LUBITZ &
O'CONNELL, KEITH B. STEIN,
BEYS LISTON MOBARGHA & BERLAND, LLP
f/k/a BEYS STEIN MOBARGHA & BERLAND, LLP,
and LAW OFFICES OF KEITH B. STEIN, PLLC,
n/k/a STEIN LAW, PLLC,
Defendants.

_____/

**COMPLAINT**

COMES NOW the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, by and through his undersigned counsel, and sues CURTIS CAHALLONER ROGERS, JR., the former guardian of Oliver Bivins (the "Ward"), STEPHEN M. KELLY, as successor guardian of the Ward, BRIAN M. O'CONNELL, ASHLEY N. CRISPIN, CIKLIN LUBITZ & O'CONNELL, KEITH B. STEIN, BEYS LISTON MOBARGHA & BERLAND, LLP f/k/a BEYS STEIN MOBARGHA & BERLAND, LLP, and LAW OFFICES OF KEITH B. STEIN, PLLC, n/k/a STEIN LAW, PLLC, and says:

## JURISDICTION AND VENUE

1. The Ward, Oliver Wilson Bivins, died on March 2, 2015. The Ward was a citizen of, and domiciled in, Amarillo, Potter County, Texas on the date of his death.

2. Julian Bivins (hereinafter, "Julian") is the Personal Representative of the ancillary Estate of the deceased Ward in Palm Beach County, Florida (the “Deceased Ward”).

3. Curtis Rogers (hereinafter, "Rogers") is the former guardian of the Deceased Ward. Rogers resides in Palm Beach County, Florida.

4. Stephen M. Kelly (hereinafter, “Kelly”) is the successor guardian of the Deceased Ward. Kelly resides in Boynton Beach, Palm Beach County, Florida.

5. Brian M. O'Connell (hereinafter, "O'Connell") resides and does business in Palm Beach County, Florida.

6. Ashley N. Crispin (hereinafter, "Crispin") resides and does business in Palm Beach County, Florida.

7. Ciklin Lubitz & O'Connell (hereinafter, "Ciklin") is a law firm with its principal place of business in Palm Beach County, Florida.

8. Keith B. Stein (hereinafter, "Stein") resides in New York, but does business in Palm Beach County, Florida.

9. Beys Liston Mobargha & Berland, LLP f/k/a Beys Stein Mobargha & Berland, LLP (hereinafter, "Beys") is a limited liability partnership doing business in Palm Beach County, Florida with its principal place of business in New York.

10. The Law Offices of Keith B. Stein, PLLC n/k/a Stein Law, PLLC (hereinafter, "Stein Law Firm") is a limited liability partnership doing business in Palm Beach County, Florida with its principal place of business in New York.

11. Stein, Beys, and Stein Law Firm committed tortious acts in Palm Beach County, Florida which resulted in the causes of actions under this complaint causing injury to the Estate of the Deceased Ward in Palm Beach County, Florida. Stein, Beys, and the Stein Law Firm expected or should reasonably have expected to have consequences in Palm Beach County, Florida because they each derived substantial revenue from the legal services they provided Rogers and Kelly from New York to Florida.

12. Plaintiff is a deemed a citizen of the State of Texas, the same state as the decedent under 28 U.S.C. § 1332 (c)(2).

13. Defendants are all citizens of states other than Texas for purposes of 28 U.S.C. §1332.

14. This is an action for money damages that exceed $75,000.00, exclusive of interest, attorney's fees and costs.

15. Accordingly, this is a civil action which falls within the Court's original jurisdiction under 28 U.S.C. § 1332 (diversity of citizenship).

**GENERAL ALLEGATIONS**

16. Oliver Bivins' (hereinafter, "Oliver Sr.") first marriage was to Dorothy Bivins and they had a child, Julian Bivins.

17. In 1961, Oliver Sr. married Lorna Bivins (hereinafter, "Lorna"), a woman 25 years younger from New York.

18. In approximately 1990, when Oliver Sr. was approximately 70 years old, he and Lorna adopted a child together, Oliver Bivins, Jr. (hereinafter "Oliver Jr.").

19. At all material times during the marriage, Oliver Sr. lived in Amarillo, Texas and Lorna and Oliver Jr. lived in New York, New York at 67th Street, although for intermittent periods

of time, Lorna and Oliver Jr. resided in Palm Beach, Florida at Lorna and Oliver Sr.'s condominium.

20. On March 5, 1992, Oliver Sr. created a joint trust with Lorna to which he transferred family owned oil and mineral rights in Amarillo, Texas (hereinafter the "Joint Trust").

21. In addition to the oil and mineral rights in Amarillo, Texas, the couple owned the following four properties as follows. Lorna owned a property at 82 Portland Place in London, England (hereinafter "London Property") and a property at 67th Street in New York, New York (hereinafter "67th Street") and Lorna and Oliver Sr. owned together, as tenants by the entirety, properties at 808 Lexington Avenue, New York, New York (hereinafter "808 Lexington") and 330 South Ocean Blvd., Palm Beach, Florida (hereinafter "Ocean Blvd"). (The properties identified in this paragraph will be collectively referred to herein as "The Properties".)

22. On April 12, 2010, Oliver Sr. filed for divorce from Lorna in Amarillo, Texas seeking to dissolve the marriage and terminate the Joint Trust.

23. On July 28, 2010, the Court entered a Final Decree of Divorce and an Order Terminating the Joint Trust.

24. In the divorce, Oliver Sr. received everything, including the oil and mineral rights in Amarillo, Texas.

25. The Texas Court made no provision in its order, however, with respect to The Properties and no Guardian or other Defendant made any effort to re-open the Texas divorce proceeding to address the property rights of the parties pertaining to the Properties.

26. Lorna continued to hold the London and 67th Street properties in her name alone, although Oliver Sr. funded these properties to the extent not covered by tenants renting the properties, and the properties at 808 Lexington Avenue and 330 Ocean Boulevard, which were

held as tenants by the entirety prior to the divorce, became held by Lorna and Oliver Sr. as tenants in common.

27. Following the divorce, Oliver Sr. transferred to Julian interests owned by Oliver Sr. in several parcels of real property, including the oil and mineral rights in Amarillo, Texas and a condominium in Amarillo, Texas.

28. On or about January 5, 2011, petitions to determine incapacity for both Oliver Sr. and Lorna were filed and an emergency temporary guardian, Stephen Kelly, was appointed over their person and property.

29. Lorna passed away in February 2011, shortly after the temporary guardianship was established.

30. Oliver Jr. was appointed the personal representative of the estate of Lorna Bivins.

31. On or about May 10, 2011, the Court appointed Rogers as the limited guardian of the person and property of Oliver Sr.

Texas Settlement

32. Rogers investigated the transfers of real property from Oliver Sr. to Julian and sought approval from the Florida guardianship court to bring an action against Julian and Julian simultaneously filed an action in Texas to validate the transfers.

33. The Florida guardianship court entered an order permitting Rogers to retain counsel on a contingency basis to prosecute and defend the actions involving the transfers.

34. Rogers, with a Texas supervising guardian, was appointed in Texas as guardian of Oliver Sr.'s property in Texas.

35. On or about February 27, 2013, Julian and Rogers entered into a settlement agreement as to the Texas proceedings (hereinafter “Texas Settlement”).

36. The Properties were not the subject of the Texas lawsuit and the Texas Settlement made no provision for them.

37. As part of the Texas Settlement, Julian was required to transfer back to Oliver Sr. all of the Texas real property previously transferred to Julian, except that Julian was permitted to keep the Ranch and all interim distributions and other proceeds Julian had already received from the real property.

38. The Texas properties were transferred to a trust for the benefit of Julian and Oliver Sr. (hereinafter the "Texas Trust") with Julian having a 37% interest in the Texas Trust and Oliver Sr. having a 63% interest in the Texas Trust.

39. As a major consideration for Julian entering into the Texas Settlement, Rogers was to resign as guardian of Oliver Sr. in Texas and Florida within thirty (30) days of court approval of the Texas settlement, and Steve Kelly was to serve as successor guardian.

40. Rogers was required to submit a final accounting and documents necessary to obtain an order of discharge from the Texas and Florida guardianships within 30 days of the approval of the Texas settlement by the Texas and Florida guardianship courts.

41. As part of the Texas Settlement, Rogers was released from liabilities for his errors and omissions and other breaches of his fiduciary obligation, only through the date of the Texas Settlement.

42. The Florida guardianship court approved the settlement on April 1, 2013.

New York Settlement

43. In November 2012, Rogers entered into a contingency fee/hybrid agreement with Ciklin to initiate an action in Florida requesting that the Court presiding over the Lorna estate (the “Lorna Court”) give no full faith and credit to the Texas Divorce Decree, so that the Lorna Court

would deem the Properties to pass to Oliver Sr. as though he were still married to Lorna at the time of her death. ("Florida Beneficiary Petition").

44. In or about October 2012, Rogers also engaged Keith Stein of Beys to partition the 808 Lexington property ("New York litigation").

45. Prior to initiating the partition action of 808 Lexington, Stein had only prepared, at best, one prior partition action in the course of his more than two decades of practice.

46. At the time of the partition action, and for several years prior, 808 Lexington was encumbered by a mortgage in the original principal sum of $850,000.00 ("808 Mortgage").

47. By the time of the partition action, the balance of the mortgage was approximately $387,000.00.

48. Prior to, and following the date of the Texas Settlement, Rogers failed to take any action to pay, monitor, negotiate, or prevent default, acceleration, or negative consequences to the Ward in connection with the 808 Mortgage.

49. On or about October 5, 2012, unbeknownst to Julian, and presumably because Rogers had not taken any action to manage the 808 Lexington asset or liabilities and the 808 Mortgage was in default, the son of the paralegal of Oliver Jr.'s attorney (who was also a close friend of Oliver Jr.) surreptitiously formed a corporation known as Beachton Tuxedo, LLC ("Beachton") and acquired the 808 Mortgage via an Assignment of Mortgage ("Assignment") for the outstanding balance owed on the mortgage.

50. As of the date of the Assignment, the notes secured by the Mortgage were in default, had been accelerated by Beachton and gave Beachton the right to foreclose on 808 Lexington. The default interest rate on the Beachton mortgage was 17%.

51. As further consideration for Beachton to acquire the 808 Mortgage and not foreclose on it, Oliver Jr., individually, and as personal representative of the Estate of Lorna, assigned to Beachton, 40% of the equity interest in 808 Lexington, which, at a bare minimum, provided Beachton with an interest of far more than a million dollars, (on a $387,000 mortgage) yet Beachton continued to charge interest at the maximum rate allowable under the 808 Mortgage.

52. Accordingly, the assignment by Oliver Jr. resulted in a potentially usurious interest being charged by Beachton on the 808 Mortgage, or alternatively, a satisfaction of the 808 Mortgage.

53. In July 2013, Roger, as guardian for Oliver Sr., Oliver Jr., individually and as personal representative of the Estate of Lorna, and Beachton entered into a settlement agreement to settle the Florida Beneficiary Petition and the New York Litigation (hereinafter referred to as the "New York Settlement." A true and correct copy of the New York Settlement Agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

54. Pursuant to the New York Settlement, Oliver Jr. agreed to transfer to Oliver Sr. the 50% interest of the Estate of Lorna in 808 Lexington and Ocean Boulevard, such that as a result of such transfers, Oliver Sr. would own 100% fee simple interest in 808 Lexington and Ocean Boulevard.

55. The Estate of Lorna was required to satisfy all real estate taxes and related charges through May 8, 2013, and one-half of the real estate taxes and related charges from May 9, 2013, through the date immediately prior to the closing date.

56. Additionally, in connection with the New York Settlement, Oliver Jr. and Beachton agreed that the 40% interest in the 808 Lexington that Oliver Jr. had assigned to Beachton when it took over the 808 Mortgage, would be transferred to a 20% interest in the 67th Street property,

which amounted to an interest by Beachton of well over a million dollars. (The percentage change in the transfer was due to the fact that the value of the 67th Street property was significantly higher that the value of 808 Lexington.

57. Notwithstanding Beachton's acceptance of the 20% interest in 67th Street, Beachton continued to charge the maximum interest rate allowable under the 808 Mortgage, plus late fees, which combined with the 20% interest in 67th Street, constituted a usurious rate of interest, or alternatively, a satisfaction of the 808 Mortgage.

58. The closing date under the New York Settlement was to occur within ten (10) business days of the date upon which all approvals have been received from the Florida court, and each such other court. No other such court approval was required to approve the New York Settlement besides the Florida Court, which did so on September 17, 2013. Accordingly, the closing date was October 1, 2013 ("Closing Date").

59. Under the terms of the New York Settlement, Rogers, acting as guardian for Oliver Sr., agreed to waive and/or relinquish in favor of the Estate of Lorna any and all right, title, and interest in and to 67th Street and the London Property.

60. The New York Settlement required Rogers, as guardian of Oliver Sr., to pay the Beachton mortgage debt in full on or before August 31, 2013, and in exchange, Beachton agreed to continue to forebear from taking action based on the purported failure to make payments under the 808 Mortgage that Beachton purchased, including foreclosure.

61. On or about November 2014, 67th Street sold for $22.5 million. Accordingly, Beachton's 20% interest in the 67th Street property was worth $4.5 million.

62. Any claim by Beachton that an outstanding balance was due on the Beachton mortgage was usurious as Beachton became entitled to receive, via its 20% equity interest in 67th Street, more than five (5) times the outstanding balance owed on the 808 Mortgage.

63. Neither Rogers nor his counsel took any action to have a Court declare the 808 Mortgage acquired by Beachton as having been satisfied or otherwise usurious.

64. Moreover, despite representations to the Florida guardianship Court that they would do so, Rogers neither made any genuine efforts to procure substitute financing for the Beachton mortgage at a lower interest rate than the default rate Beachton mortgage was charging, nor undertook any action to remove the Beachton lien from the 808 property due to it being usurious or satisfied.

65. The terms of the New York Settlement, to which Julian persistently objected, provided that all interest on the mortgage debt accruing after June 30, 2013, but on or before the date the Beachton mortgage debt is paid in full, was to be payable 50% by the Estate of Lorna and 50% by Rogers, as guardian of Oliver Sr.

66. Moreover, the New York Settlement agreement provides that if "any party fails to comply with any of the party's obligations set forth in Section 2 or 3 of this Agreement, the party to whom the obligation is owed shall have the right to enforce the terms set forth therein and the legal fees and costs incurred by the aggrieved party in enforcing such terms shall be paid by the Party found to be in breach of such terms."

808 Lexington Management

67. Rogers remained in office as guardian for Oliver Sr. until April 23, 2014, when Kelly was appointed by the Court as successor guardian of Oliver Sr.

68. From April 1, 2013 (the date of the Florida Court's approval of the Texas Settlement) until Rogers was discharged by the Court in April 2014, as Florida guardian for Oliver Sr. (the "Interim Guardianship"), Rogers had a duty to manage 808 Lexington as a rental property.

69. From April 23, 2014 (the date Kelly was appointed by the Court as successor guardian of Oliver Sr.) until the closing of the sale of 808 Lexington by Kelly, as guardian of Oliver Sr., Kelly had a duty to manage 808 Lexington as a rental property.

70. The 808 Lexington Property consisted of four floors. The first floor was rented out by a restaurant, Fig and Olive, which generated approximately $23,500 per month in rent. The lease for Fig and Olive was set to expire in November 2014.

71. The second floor of 808 Lexington was leased out to Pinafore Nursery and generated approximately $3,500 per month in rent. The lease for Pinafore Nursery expired on December 31, 2010, and there was no new written lease entered into by Pinafore Nursery. Following the expiration of the lease with Pinafore Nursery, it continued to pay a monthly rent of $3,500, notwithstanding that it was a holdover tenant without a lease.

72. The fourth floor apartment had been rented out to Kimberly Beamis for $2,300 per month, but she vacated the premises prior to January 1, 2013 due to the failure of Rogers to maintain the unit. Thereafter, fourth floor apartment became occupied by a person related to one of the owners of Beachton for $1,500 per month, which amount was paid to Oliver Jr. and nothing to the Rogers or Kelly on behalf of the Ward. The $1500, to the extent it was paid, was well below market value, no lease was in place, and Rogers or Kelly failed to investigate, participate, or take any action for the benefit of the Ward pertaining to this unit.

73. The third floor tenant was evicted in either 2012 or 2013. Neither Rogers nor Kelly undertook any efforts to re-rent this unit, which had a monthly rental value of several thousand dollars.

74. Prior to the New York Settlement, Rogers should have been collecting 50% of the rental income from 808 Lexington, and should have made efforts to obtain full market rent on the second, third, and fourth floor units.

75. Following the Court's approval of the New York Settlement, Rogers should have been collecting all of the rental income from 808 Lexington. Yet, during the period of Interim Guardianship, Rogers only passively collected 50% of the rental income from Fig and Olive. Rogers and Kelly ignored the remaining rent that Oliver Jr. was collecting on the other 50% of the rental income from Fig and Olive and ignored any effort to obtain any rental income from the other units or tenants.

76. Following his appointment as successor guardian, Kelly should have been collecting all of the rental income from 808 Lexington. Yet, until the sale of 808 Lexington, he only passively collected 50% of the rental income from Fig and Olive. Kelly ignored the remaining rent that Oliver Jr. was collecting on the other 50% of the rental income from Fig and Olive and ignored any effort to obtain any rental income from the other units or tenants.

77. Oliver Jr. has also not paid any money to the State of New York or to Rogers or Kelly for any past due property taxes pursuant to the New York Settlement, or for the amount of property taxes on 808 Lexington from May 9, 2013, to the date immediately prior to the Closing Date.

78. Oliver Jr. has not paid any of the interest that accrued on the 808 Mortgage from June 30, 2013, until it was paid in full.

79. During the period of Interim Guardianship, Rogers also failed to take actions for the benefit of the Ward, including, but not limited to, the following acts with respect to 808 Lexington:

a. Enter into discussions with Fig and Olive regarding renewing its lease or increasing the monthly rental payments;

b. Enter into discussions with Pinafore Nursery to sign a new lease and increase its rent from the monthly rent it was paying for the previous four years;

c. Take any action to market the third or fourth floor apartments;

d. Take any action with respect to repairing, renovating, or maintaining 808 Lexington, including, but not limited to, its common areas, to obtain the highest and best rental values for the property;

e. Collect the appropriate rental income due Oliver Sr. from the lease of 808 Lexington;

f. Bring an action against Oliver Jr. to force Oliver Jr. to use the rental income from 808 Lexington to pay down the Beachton mortgage and to enforce the New York Settlement;

g. Bring an action against Beachton for usury or satisfaction based upon the interest it received in 808 Lexington and thereafter 67th Street; and

h. Obtain commercial financing to pay off the 808 Mortgage assigned to Beachton to avoid the default interest rate it was accruing against 808 Lexington.

80. After his appointment as successor guardian of Oliver Sr. on April 23, 2014, Kelly also failed to take actions for the benefit of the Ward, including, but not limited to, the following acts with respect to 808 Lexington:

a. Enter into discussions with Fig and Olive regarding renewing its lease or increasing the monthly rental payments;

b. Enter into discussions with Pinafore Nursery to sign a new lease and increase its rent from the monthly rent it was paying for the previous four years;

c. Take any action to market the third or fourth floor apartments;

d. Take any action with respect to repairing, renovating, or maintaining 808 Lexington, including, but not limited to, its common areas, to obtain the highest and best rental values for the property;

e. Collect the appropriate rental income due Oliver Sr. from the lease of 808 Lexington;

f. Bring an action against Oliver Jr. to force Oliver Jr. to use the rental income from 808 Lexington to pay down the Beachton mortgage and to enforce the New York Settlement;

g. Bring an action against Beachton for usury or satisfaction based upon the interest it received in 808 Lexington and thereafter 67th Street; and

h. Obtain commercial financing to pay off the 808 Mortgage assigned to Beachton to avoid the default interest rate it was accruing against 808 Lexington.

Due Diligence as to New York Settlement

81. Prior to entering into the New York Settlement, Rogers failed to do any type of due diligence as to the true fair market value of 808 Lexington and 67th Street, including, but not limited to, obtaining appraisals of the properties. Yet, Rogers and his counsel represented to the Florida Court that the New York Settlement was in the best interests of Oliver Sr. and that the properties were approximately equal in value.

82. On or about the Closing Date, the fair market value of 808 Lexington was approximately $5 million and the true fair market value of 67th Street was more than $22.5 million.

83. The fair market value of the London property has never been addressed other than in a cursory fashion by Rogers or the attorneys he hired to protect the Ward's interest, despite the property being located in the most exclusive and high priced rental district in London.

84. As a result, the estate of Oliver Sr. received assets from the New York Settlement with a value substantially less than those received by the Estate of Lorna.

**COUNT I**
**Breach of Fiduciary Duty Against Defendants Rogers, O'Connell, Crispin, Ciklin, Stein, Beys, and Stein Law Firm)**

85. Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, hereby re-alleges and adopts by reference all allegations contained in paragraphs 1 through 84, *supra*, as if fully set forth herein.

86. During the period of the Interim Guardianship, Rogers had a fiduciary duty to Oliver Sr. to act in his best interest until Rogers was discharged as guardian, including, among other things, a duty of loyalty.

87. O'Connell, Crispin, Ciklin, Stein, Beys, and the Stein Law Firm ("Counsel for Rogers") represented Rogers, in his capacity as guardian for Oliver Sr., in connection with the New York Settlement and thereafter.

88. Counsel for Rogers, while he was acting as guardian for Oliver Sr., owed similar duties to Oliver Sr. and were fully aware that the work they were doing for Rogers, as guardian of Oliver Sr., was for the benefit of Oliver Sr.

89. Rogers, as guardian of Oliver Sr., and Counsel for Rogers were negligent and reckless in the exercise of their fiduciary duties to Oliver Sr., resulting in damages to him.

90. By failing to take actions for the benefit of the Ward, including, but not limited to, failing to, (a) properly manage 808 Lexington, (b) perform proper due diligence of the value of 808 Lexington and 67th Street to properly evaluate the fairness of the New York Settlement, (c) take action against Oliver Jr. to collect rents and taxes owed by the Estate of Lorna or Oliver Jr., (d) failing to ensure that rental income from 808 Lexington was used to pay down the Beachton mortgage, (e) seek substitute financing for the Beachton mortgage, and (f) failing to pursue action against Beachton to have its mortgage deemed satisfied or released, Rogers damaged the Estate of Oliver Sr. in contravention of Defendants' fiduciary duties.

91. At all material times, Counsel for Rogers, as guardian of Oliver Sr., owed duties to Oliver Sr. and were involved and participated in Rogers' actions or inactions, resulting in the above described damage.

92. Plaintiff was required to retain the Bleakley Bavol Law Firm to mitigate the damages to the Estate of Oliver Sr. and is required to pay it a reasonable fee for its services.

WHEREFORE, the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, requests the Court award damages against Defendants Rogers, O'Connell, Crispin, Ciklin, Stein, Beys, and the Stein Law Firm and such other relief as the Court deems just and proper, including an award of attorneys' fees and costs against Defendants.

**COUNT II**
**Breach of Fiduciary Duty Against Defendants Kelly, O'Connell, Crispin, Ciklin, Stein, Beys, and Stein Law Firm**

93. Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, hereby re-alleges and adopts by reference all allegations contained in paragraphs 1 through 84, supra, as if fully set forth herein.

94. Following his appointment as successor guardian of Oliver Sr. on April 23, 2014, Kelly had a fiduciary duty to Oliver Sr. to act in his best interest until Kelly was discharged as guardian, including, among other things, a duty of loyalty.

95. O'Connell, Crispin, Ciklin, Stein, Beys, and the Stein Law Firm represented Kelly ("Counsel for Kelly"), in his capacity as successor guardian for Oliver Sr.

96. Counsel for Kelly, while he was acting as guardian for Oliver Sr., owed similar duties to Oliver Sr. and were fully aware that the work they were doing for Kelly, as successor guardian of Oliver Sr., was for the benefit of Oliver Sr.

97. Kelly, as guardian of Oliver Sr., and Counsel for Kelly were negligent and reckless in the exercise of their fiduciary duties to Oliver Sr., resulting in damages to him.

98. By failing to take actions for the benefit of the Ward, including, but not limited to, failing to (a) properly manage 808 Lexington, (b) take action against Oliver Jr. to collect rents and taxes owed by the Estate of Lorna or Oliver Jr., (c) failing to ensure that rental income from 808 Lexington was used to pay down the Beachton mortgage, (d) seek substitute financing for the Beachton mortgage, and (e) failing to pursue action against Beachton to have its mortgage deemed satisfied or released, Kelly damaged the Estate of Oliver Sr. in contravention of Defendants' fiduciary duties.

99. At all material times, Counsel for Kelly, as successor guardian of Oliver Sr., owed duties to Oliver Sr. and were involved and participated in Kelly's actions or inactions, resulting in the above described damage.

100. Plaintiff was required to retain the Bleakley Bavol Law Firm to mitigate the damages to the Estate of Oliver Sr. and is required to pay it a reasonable fee for its services.

WHEREFORE, the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, requests the Court award damages against Defendants Kelly, O'Connell, Crispin, Ciklin, Stein, Beys, and the Stein Law Firm and such other relief as the Court deems just and proper, including an award of attorneys' fees and costs against Defendants.

**Jury Demand**

Plaintiff demands a trial by jury on all issues so triable.

Dated: September 17, 2015.

Respectfully Submitted,

THE BLEAKLEY BAVOL LAW FIRM

/s/ J. Ronald Denman
J. Ronald Denman
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*Attorneys for JULIAN BIVINS*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-81298-CIV-MARRA/MATTHEWMAN

JULIAN BIVINS, as personal representative of the ancillary estate of Oliver Wilson Bivins,

Plaintiff,

vs.

BRIAN M. O'CONNELL, ASHLEY N. CRISPIN, CIKLIN LUBITZ & O'CONNELL, KEITH B. STEIN, BEYS LISTON MOBARGHA & BERLAND, LLP and LAW OFFICES OF KEITH B. STEIN, PLLC, n/k/a STEIN LAW PLLC,

Defendants.
_____/

VERDICT

WE THE JURY RETURN THE FOLLOWING VERDICT:

1. Did any of the following Defendants breach a fiduciary duty owed to JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, Sr. which was a legal cause of loss or damage to him?

a. BRIAN O'CONNELL ✓ Yes _____ No

b. ASHLEY N. CRISPIN ✓ Yes _____ No

c. KEITH B. STEIN _____ Yes ✓ No

2. Was there professional negligence on the part of any of the following Defendants which was a legal cause of loss or damage to JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, Sr.?

a. BRIAN O'CONNELL ✓ Yes _____ No

b. ASHLEY N. CRISPIN ✓ Yes _____ No

c. KEITH B. STEIN _____ Yes ✓ No

If you answered "No" to all parts of Questions 1 and 2, your verdict is for the Defendants, and you need not proceed further, other than to sign the verdict form and return it to the court. If you answered "Yes" to any parts of Questions 1 or 2, please continue:

3. What is the amount of damages sustained by Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, Sr.?

$16,400,000.00

4. If you awarded Plaintiff damages, did Defendants prove that they are entitled to a set-off against the amount of damages you awarded Plaintiff?

_____ Yes _____X_____ No

If your answer to Question 4 is "Yes", what is the amount of the set-off?

$_____

If you determined an amount of a set-off, do not reduce the amount of damages you awarded in Question 3 by the amount of the set-off. The Court will make that adjustment when entering judgment in this case.

**SO SAY WE ALL.**

Signed and dated at the United States Courthouse, West Palm Beach, Florida, this _____ day of 28 JULY, 2017.

_____ _____

Foreperson's Signature Foreperson's Printed Name

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**Case No. 9:15-cv-81298-KAM/Matthewman**

JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins,

Plaintiff,

v.

BRIAN M. O'CONNELL, ASHLEY N. CRISPIN, CIKLIN LUBITZ & O'CONNELL, KEITH B. STEIN, BEYS LISTON MOBARGHA & BERLAND, LLP and LAW OFFICES OF KEITH B. STEIN, PLLC, n/k/a STEIN LAW, PLLC,

Defendants.
_____/

**NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE that L. Louis Mrachek, Esquire and Alan B. Rose, Esquire of the firm Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A., enter their appearance as counsel of record for Defendant, Ciklin Lubitz & O'Connell, in the above-styled cause and request that all notices, pleadings and other papers filed in this matter be served on the undersigned counsel at the address below.

Additionally, pursuant to Florida Rule of Judicial Administration 2.516, the undersigned designates the following email addresses for the purpose of receiving pleadings, orders, and other papers filed or served in this matter:

L. Louis Mrachek, Esquire

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Dated: August 24, 2017

Respectfully submitted,

s/ *Alan B. Rose*
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Attorneys for Ciklin Lubitz & O'Connell

**CERTIFICATE OF SERVICE**

I hereby certify that on August 24, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF.

s/ *Alan B. Rose*
Alan B. Rose (Florida Bar No. 961825)

**SERVICE LIST**
**Case No. 9:15-cv-81298-KAM/Matthewman**
**United States District Court, Southern District of Florida**

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