

"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 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**

insurance contract upon death and if the insurance policy has been made to either 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: 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/0Bzn2NurXrSkialISQ0U1RVpqqdVk/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:

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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
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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:

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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 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 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

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 by Crystal L. Cox at 8:30 PM No comments:

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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 by Crystal L. Cox at 8:24 PM No comments:

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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 Mrač & Rose LI...

Eliot Bernstein Iviewit Inve Dick Wo...

Alexandra aka Monica inter Bernstein

Alan B. Rose is MADD as a l he ain't goin...

Hey Lindsay, you may want of digital...

Alan B. Rose of Page Mrač & Rose Ge...

UNITED STATES DISTRICT CC SOUTHERN DISTRICT OF ...

You know that Mark Twain is stranger...

John Pankauski, Pankauski Alan B. Rose, ...

Who does Alan B. Rose of Fitzgerald ...

Don Sanders, Jackson Natik seems to have m...

Oh and you Spineless, Cow Lawless, Free Spee...

Burke, Warren, Mackay & S Taking a Look

Alan B. Rose of Page Mrač & Rose se...

Folks, Alan Rose is a MASSI Hypocrite. ...

Alan B. Rose, Esq. seems sr 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 Nation 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...

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Ted Bernstein



Life Insurance Concepts

Blog Posts

Is Google Really the Best W a Fraud, ...

Welcome Back, How is tha Investigation Goi...

Order for Discharge and W Counsel Tesco...

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 / 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 .. it 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 Appointm Successor Personal...
- Alan Rose Esq., John J. Pa Pankauski Law F...
- Chicago Insurance and Cor 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 & Sj Bernstein F...

Ted Bernstein, Tescher and Spallin

- Florida Estate Forgery, Fri DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher and Spallin

- Florida Estate Forgery, Fri 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.

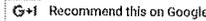
".. Please remove these sites from the Internet and instruct your partner, Crystal Cox, to do the same. If you do not immediately remove these sites and my name from them, you are leaving me with no other choice but to pursue all available legal remedies. "

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 by Crystal L. Cox at 8:40 PM No comments:



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:	768x 1024
Returning Visits:	0	Javascript:	Enabled
Visit Length:	Not Applicable	ISP:	Comcast Cable

Navigation Path

Date	Time	WebPage
5 Sep	08:16:42	tedbernsteinreport.blogspot.com/2014/07/john-poletto-and-mark-nestler-ted.html

Posted by Crystal L. Cox at 11:25 PM No comments:



- ▼ September(8)
 - oh and you do know th
a Constitution...
 - Hey Alan
 - POOR Baby Ted Bernste
Use his Legal ...
 - John Poletto, YOU are i
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, \n
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:	1920 x1080
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 by Crystal L. Cox at 11:19 PM No comments: 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:	1600 x1200
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
6 Sep	11:48:11	tedbernsteinreport.blogspot.com/2014/07/what-really-happened-in-sudden-death-of.html
		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

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Mcknight Dallas Real Estate - who is this, what's up?

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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 by Crystal L. Coxat 11:07 PM No comments:

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

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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, 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.
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:

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Diana Lewis, Guardian Ad Litem, 2765 Tecumseh Drive, West Palm Beach, FL 33409; dzlewis@aol.com

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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 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, 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, 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.
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, 2017².

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.

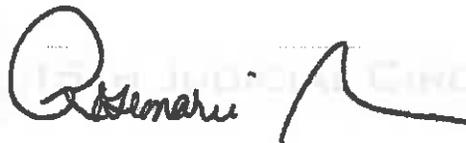
O'Connell's position that the Estate should continue its positions in the Insurance Litigation.

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.

A handwritten signature in black ink, appearing to read "Rosemarie Scher". The signature is written in a cursive style with a large initial "R".

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

SERVICE LIST

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<p>Eliot Bernstein 2753 N.W. 34th St. Boca Raton, FL 33434 iviewit@iviewit.tv</p>	<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com Lisa.friedstein@gmail.com</p>
<p>Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents & Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	<p>Brian M. O'Connell, Esq. Ashley Crispin Ackal, Esq. Ciklin Lubitz & O'Connell 515 N. Flagler Dr., 20th FL West Palm Beach, FL 33401 service@ciklinlubitz.com probateservice@ciklinlubitz.com</p>	<p>Robert Spallina, Esq. rspallina@comcast.net</p>

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

Page 2		Page 4	
1	APPEARANCES:	1	6
2	On behalf of William E. Stansbury:	2	Amended Petition for
3	PETER M. FEAMAN, P.A.	3	Authorization to Enter into
4	3695 West Boynton Beach Boulevard	4	Contingency Agreement, Docket
5	Suite 9	5	Entry 405
6	Boynton Beach, Florida 33436	6	Inventory 12-1-14
7	BY: PETER M. FEAMAN, ESQUIRE	7	Payment of Checks
8	(Mkoskey@feamanlaw.com)	8	
9	JEFFREY T. ROYER, ESQUIRE	9	
10	(Jroyer@feamanlaw.com)	10	
11	Also present: William Stansbury	11	
12		12	
13	On behalf of Ted Bernstein:	13	
14	MRACHEK FITZGERALD ROSE KONOPKA	14	
15	THOMAS & WEISS, P.A.	15	
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17	West Palm Beach, Florida 33401	17	
18	BY: ALAN B. ROSE, ESQUIRE	18	
19	(Arose@mrachek-law.com)	19	
20	On behalf of the Personal Representative of the	20	
21	Estate of Simon Bernstein:	21	
22	CIKLIN LUBITZ & O'CONNELL	22	
23	515 North Flagler Drive, 19th Floor	23	
24	West Palm Beach, Florida 33401	24	
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	On behalf of Eliot Bernstein's minor children:		
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	BY: THE HONORABLE DIANA LEWIS		
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	On behalf of himself:		
	ELIOT I. BERNSTEIN, pro se		
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Page 3		Page 5	
1	- - -	13:53:29-13:53:45	
2	I N D E X	1	PROCEEDINGS
3	- - -	2	- - -
4	EXAMINATIONS	3	BE IT REMEMBERED that the following
5	Page	4	proceedings were had in the above-styled and
6	Witness:	5	numbered cause in the North County Courthouse, City
7	WILLIAM STANSBURY	6	of Palm Beach Gardens, County of Palm Beach, in the
8	BY MR. FEAMAN	7	State of Florida, by Lisa Mudrick, RPR, FPR, before
9	61	8	the Honorable ROSEMARIE SCHER, Judge in the
10	BY MR. ELIOT BERNSTEIN	9	above-named Court, on June 2, 2017, to wit:
11	77	10	- - -
12	BY MS. CRISPIN	11	THE COURT: All right. Let's have a seat
13	85	12	everyone. And let's do general appearances for
14		13	the record if we can for the court reporter.
15	EXHIBITS MARKED	14	We'll start with Ms. Crispin on the far
16	No.	15	right.
17	Stansbury's	16	MS. CRISPIN: Yes, good afternoon, Your
18	1	17	Honor. Ashley Crispin on behalf of Brian
19	Order Appointing Administrator Ad	18	O'Connell, the personal representative of the
20	54	19	Estate of Simon Bernstein. And he is in the
21	Litem, 5/23/14	20	back.
22	2	21	THE COURT: Okay.
23	Amended Order Appointing	22	MR. ROSE: Alan Rose, Your Honor. I
24	54	23	represent Ted S. Bernstein as successor trustee
25	Administrator Ad Litem, 6/16/14	24	of the Simon Bernstein Trust, which is the sole
	3	25	residuary beneficiary of this estate.
	Motion to Intervene		
	56		
	4		
	Verified Copy of Order Granting		
	57		
	Motion to Intervene		
	5		
	Petition for Authorization to		
	57		
	Enter into Contingency Agreement,		
	Docket Entry 403		

<p>13:53:54-13:54:43 Page 6</p> <p>1 THE COURT: Okay. 2 MR. ELIOT BERNSTEIN: Eliot Bernstein, 3 pro se. 4 MR. FEAMAN: Peter Feaman on behalf of 5 Mr. Stansbury. With me in the court today is 6 Mr. Stansbury. 7 THE COURT: Thank you. 8 MR. FEAMAN: Also with me is one of my law 9 partners who may be participating today 10 depending on what happens, Jeff Royer. Thank 11 you. 12 THE COURT: Okay. All right. Mr. Feaman, 13 this is your client's motion -- 14 MR. FEAMAN: Thank you. 15 THE COURT: -- so you may begin. 16 MR. FEAMAN: Thank you. Brief opening 17 statement, Your Honor, if I may. 18 First, I am gratified that we had the 19 previous hearings concerning the conflict 20 allegations because Your Honor had a chance to 21 become familiar with what's going on in 22 Chicago. And so I would request first that 23 Your Honor try your best to harken back to some 24 of that knowledge and some of those documents 25 may be repetitive, but I am glad we have that</p>	<p>13:56:20-13:57:16 Page 8</p> <p>1 hourly or contingency fee basis which has been 2 offered by counsel up in Chicago. And that 3 they state that it's in the best interests of 4 the estate to continue with the litigation up 5 in Chicago. 6 When we first had the hearing in front of 7 Judge Colin back in May 2014, Your Honor, which 8 is now three years ago, there was some question 9 raised by the parties in that room at that time 10 as to whether this was going to be a wild goose 11 chase. And so Judge Colin -- and by the way, 12 we did a notice of filing the entire 13 transcript, Your Honor, which I will give to 14 you at today's hearing if there's not a ruling 15 for Your Honor to review. Because only parts 16 of it have been cited by opposing counsel. It 17 can be somewhat misleading to the Court. 18 But there the question was and the issue 19 was should the judge appoint Mr. Stansbury as 20 administrator ad litem to pursue this. The 21 Court said, well, I don't want it to be 22 Mr. Stansbury because he is a claimant, but I 23 can appoint somebody independent. But because 24 there were arguments made that this was not in 25 the best interests of the estate, Mr. Stansbury</p>
<p>13:54:56-13:56:05 Page 7</p> <p>1 basis to go forward. 2 The first part of this motion, Your Honor, 3 should be the easiest, and that's to discharge 4 Mr. Stansbury from any further responsibility 5 of funding the Illinois litigation on behalf of 6 the Estate of Simon Bernstein. There's no 7 authority that I am aware of nor have I been 8 cited to by anyone else that a claimant can be 9 forced to fund litigation that benefits the 10 estate. That's number one. 11 Number two, the previous orders that began 12 this train going down this track of 13 Mr. Stansbury funding the Chicago litigation, 14 both of whom -- both orders said "initially." 15 One said initially, the one that Judge Colin 16 entered the day of the hearing on May 23rd. 17 And then the second order that came out about 18 three weeks later Judge Colin actually wrote in 19 "initially" in his order. 20 And then thirdly, Your Honor, which we'll 21 bring to the Court's attention when we put in 22 our evidence, the personal representative has 23 filed two motions in this estate saying that 24 they would like to take over, they can take 25 over the funding of the litigation either on an</p>	<p>13:57:31-13:58:35 Page 9</p> <p>1 volunteered to front the costs. And so that's 2 how we went forward. And now here we are three 3 years later. It's clear that the evidence will 4 show that the estate does want to proceed with 5 this action and a benefit has been conferred, 6 which gets to the second part of the motion, 7 which is Mr. Stansbury should be reimbursed now 8 for his expenses that he has incurred. 9 The third part of the motion, Your Honor, 10 is the actual costs and expenses and fees that 11 Mr. Stansbury has paid. And Mr. O'Connell and 12 Mr. Rose and I have stipulated that if there's 13 a ruling that Mr. Stansbury has benefitted the 14 estate, then we would have a separate 15 evidentiary hearing if we can't otherwise agree 16 on the amount of the fees. Because we want to 17 at least get done today what we can get done 18 with regard to Mr. Stansbury's right to be 19 discharged from funding the estate and whether 20 Mr. Stansbury has conferred a benefit so that 21 he would -- at this time so that he would be 22 entitled to reimbursement of his costs. 23 MR. ROSE: Just for the record, that's not 24 the stipulation. The only thing we stipulated 25 was we don't have to do today the amount. I</p>

<p>13:58:48-13:59:33 Page 10</p> <p>1 certainly don't agree that if you discharge him 2 he gets anything until there's been a benefit 3 to the estate. I can argue that. I didn't 4 want the record to be unclear that I by silence 5 stipulated to something that's not true. 6 MR. FEAMAN: I didn't mean to imply that, 7 Your Honor. 8 THE COURT: I honestly did not think that 9 you agreed to -- I understood. 10 MR. ROSE: We'll do the amount at another 11 time if you are going to award something. 12 THE COURT: I understood. Let me let 13 Mr. Feaman when he has completed his opening I 14 am going to ask the parties questions. So 15 continue. 16 MR. FEAMAN: Okay. Now, in regard to the 17 benefit that Mr. Stansbury has conferred upon 18 the estate, the evidence will show that the 19 original personal representatives, 20 Messrs. Tescher and Spallina, the disgraced 21 attorneys, had no intention of trying to 22 recover this money on behalf of the estate, the 23 life insurance proceeds. They were friends 24 with Ted Bernstein. And their loyalty was not 25 first to the estate, it was to Ted Bernstein</p>	<p>14:01:05-14:01:50 Page 12</p> <p>1 in Chicago his own motion on his own behalf as 2 a claimant to the Bernstein estate to 3 intervene. That motion was denied. But then 4 we had the hearing in May -- first we had 5 Mr. Stansbury filed a motion to appoint an 6 administrator ad litem or a curator for the 7 estate -- 8 THE COURT: That was Mr. Brown; am I 9 correct? 10 MR. FEAMAN: And that was Mr. Brown. And 11 then once Mr. Brown was in place, then 12 Mr. Stansbury moved and said, okay, I would 13 like to intervene, because Mr. Brown said, I 14 don't know, I don't really know enough. So 15 Mr. Stansbury said, well, I will move. And 16 then we had the hearing on the 23rd. 17 The hearing on the 23rd then it was 18 interesting because it was opposed by Ted 19 Bernstein. It was opposed by some of the other 20 attorneys. And Mr. Brown really was kind of 21 neutral. It was before Mr. O'Connell got into 22 that -- became the successor personal 23 representative. 24 So Mr. Stansbury at that hearing through 25 me volunteered to front the fees and costs</p>
<p>13:59:46-14:00:50 Page 11</p> <p>1 who is the plaintiff in that action. In fact, 2 they actively tried to keep the money out of 3 the estate, in clear violation of their duties 4 as PR. 5 At first Mr. Spallina, who was the PR 6 representative, said to the insurance company 7 claims department that he was the trustee of 8 the life insurance trust that's the plaintiff 9 up there. And when he could not prove that 10 that was the case, because they've never come 11 up with a copy of the alleged trust, then they 12 went to plan B. 13 And then Mr. Bernstein is now the 14 plaintiff, Ted Bernstein, in that Chicago 15 action saying he is the trustee of the trust 16 that's the plaintiff. So the insurance company 17 just interplead the funds. 18 Now, it wasn't until the PRs had to resign 19 from the estate in January of 2014 that then it 20 became obvious that there's going to be 21 administrator ad litem, a curator, and that's 22 when Mr. Stansbury said, okay, now that we need 23 a new PR, let's appoint somebody to go and get 24 that money, if possible. 25 And so before that Mr. Stansbury had filed</p>	<p>14:02:04-14:03:02 Page 13</p> <p>1 because we wanted to make sure the estate would 2 get in there. And so Judge Colin was gratified 3 that that was happening. So he signed both 4 those orders. 5 He signed the one order that said in 6 paragraph three that Mr. -- I have that here. 7 This was the order signed on the day of the 8 hearing by the judge. It is attached to our 9 submission. 10 And in paragraph three it says that 11 Mr. Stansbury will, quote, initially the costs 12 will initially be borne by William Stansbury, 13 close quote. Then in paragraph three, the 14 Court will consider any subsequent petition for 15 fees and costs by William Stansbury as 16 appropriate under Florida law. 17 It's the second order that was cited by 18 counsel for the trustee which then says that, 19 well, you are not entitled to, A, get out. And 20 I would disagree with that interpretation of 21 the second order. And that certainly you are 22 not entitled to any fees until such time as 23 there's an actual money judgment, or recovery 24 of money, I should say, under paragraph three. 25 Now, we take issue with that. That's not</p>

<p>14:03:21-14:04:11 Page 14</p> <p>1 Florida law. And, most importantly, when it 2 comes time the hearing itself was not about the 3 circumstances under which Mr. Stansbury would 4 eventually be reimbursed. And that was sort of 5 an add-on after the fact, which we'll get into 6 more later, but in the interests of time 7 because we do want to try to finish today. 8 So I have created a timeline, Your Honor, 9 so that you can get familiar. And if I may 10 approach? 11 THE COURT: You may. 12 MR. FEAMAN: Thank you. 13 THE COURT: Thank you. 14 MR. FEAMAN: You are welcome. 15 THE COURT: Does everybody have a copy of 16 the timeline? Thank you. This is just for 17 demonstrative purposes for the Court? 18 MR. FEAMAN: Yes, Your Honor. I am not 19 offering this. 20 THE COURT: Thank you. 21 MR. FEAMAN: And the timeline shows that 22 in February of 2014, now that the personal 23 representatives Spallina and Tescher are out, 24 Mr. Ted Bernstein had moved to be appointed as 25 independent curator or successor PR.</p>	<p>14:05:46-14:06:44 Page 16</p> <p>1 his motion to be discharged arguing in that 2 motion that we did what we were required to do, 3 the estate's in, and it's time to let the 4 estate bear the burden going forward. 5 That was then, as Your Honor can see in 6 those docket entries there, set for hearing 7 seven times. I think Your Honor having 8 observed this case for the short time that you 9 have can understand why we never got to 10 actually hear that, as there's always so much 11 going on in this case for better or for worse. 12 And so then Judge Phillips came on the 13 case, and so in May we re-filed our motion of 14 2016, we re-filed our motion to have 15 Mr. Stansbury discharged and for reimbursement. 16 And as Your Honor is aware, that's been noticed 17 three or four times. And here we are, thank 18 you, Your Honor. 19 THE COURT: Thank you. Can I ask a 20 question before we proceed further? 21 MR. FEAMAN: Yes. 22 THE COURT: I just want to know. I don't 23 want argument on it. I just want yes or no. I 24 will start with Ms. Crispin. Do you oppose the 25 discharge of Mr. Stansbury at this point from</p>
<p>14:04:27-14:05:29 Page 15</p> <p>1 Mr. Stansbury opposed that for the same 2 reasons that we opposed Mr. Ted Bernstein in 3 connection with being administrator ad litem in 4 connection with his action which we were here 5 last month on. And instead, the Court on the 6 25th appointed independent curator Ben Brown. 7 That's item number two. 8 Entry number three -- and the docket 9 entries are there as well, Your Honor, so you 10 can look those up. 11 THE COURT: Thank you. 12 MR. FEAMAN: In March Mr. Stansbury then 13 filed his petition as administrator ad litem to 14 protect the interests of the estate in the 15 Illinois litigation. And then, as I just 16 mentioned, in May the order granting that 17 petition was entered. And then on June 5th in 18 fact the motion to intervene was filed by 19 Mr. Stamos in Chicago. And in about seven 20 weeks, six weeks later, the Court on July 28th, 21 2014, granted the estate's motion to intervene. 22 Having perceived that we had performed 23 what we intended to perform, I then filed on 24 behalf of Mr. Stansbury, Your Honor, as you can 25 see on the timeline, in October of that year</p>	<p>14:06:58-14:07:46 Page 17</p> <p>1 paying fees? 2 MS. CRISPIN: Your Honor, it's complicated 3 for me to answer yes or no because 4 Mr. O'Connell was not present at the hearing. 5 He does read the transcript to interpret that 6 there was an agreement reached where 7 Mr. Stansbury would pay for the costs of this 8 litigation. He has taken that position. He is 9 more primarily worried about if he is 10 discharged then what happens then. So really I 11 think we are not really taking a position per 12 se about whether or not he should or shouldn't 13 be discharged. 14 But if he is called to testify, I want 15 Your Honor to understand what his position 16 would be on the stand. 17 THE COURT: I think I understand. 18 Mr. Rose? 19 MR. ROSE: We oppose the relief they are 20 seeking. 21 THE COURT: So you oppose allowing him not 22 to fund the litigation anymore? 23 MR. ROSE: The short 30 second legal 24 position is we have a valid court order. It 25 was not appealed. There's now an amended order</p>

14:08:00-14:08:34 Page 18

1 which superseded the original order. So we
2 have an amended order we are traveling under
3 that's crystal clear, a transcript which backs
4 it up, and we -- and that order has not been
5 complied with.
6 So our first position in our paper was he
7 is seeking relief from an order that he has not
8 complied with, so he should be held in contempt
9 of that order. And if he were not in contempt
10 of it, the order should be enforced as written.
11 It was a deal, a complicated deal worked out
12 over hundreds of pages.
13 And we did put in our motion the entire
14 transcript was already in the record at docket
15 entry 148. I did reference it in my memo I
16 submitted.
17 **THE COURT:** I know.
18 **MR. ROSE:** So I wasn't hiding anything. I
19 just gave you the short --
20 **THE COURT:** You need not worry about it.
21 Give the Court a little credit that I read
22 everything, okay?
23 **MR. ROSE:** I was giving you the excerpted
24 pages that were relevant to my argument.
25 **THE COURT:** Thank you.

14:08:41-14:09:20 Page 19

1 **MR. ROSE:** Our position is that the motion
2 should be denied.
3 **THE COURT:** Okay. Mr. Eliot?
4 **MR. ELIOT BERNSTEIN:** I am opposing
5 certain acts here.
6 **THE COURT:** Okay. Thank you.
7 **MR. ELIOT BERNSTEIN:** And I will get to
8 those, I guess, when I get to speak. Okay.
9 **THE COURT:** All right. Thank you.
10 Mr. Feaman?
11 **MR. FEAMAN:** So my next paragraph is why
12 should Mr. Stansbury be discharged at this
13 time?
14 **THE COURT:** Okay. I am going to need you
15 to shorten up your opening because we don't
16 have a tremendous amount of time.
17 **MR. FEAMAN:** Thank you. Okay. First, he
18 did his job. He fronted the fees and costs.
19 The estate has been allowed to intervene. And
20 it now stands to reap a financial windfall as a
21 result of Mr. Stansbury's efforts. But for
22 Mr. Stansbury's efforts and Mr. Stansbury's
23 efforts alone, the estate would not be a party
24 and the estate would not be in a position now
25 to reap hundreds of thousands of dollars as a

14:09:34-14:10:30 Page 20

1 benefit.
2 Plus, there is no authority to force a
3 claimant to fund attempts to pursue assets of
4 the estate in accordance with Bookman V
5 Davidson, which we cited. And in the interests
6 of time I won't go through it except to say
7 that that case says a personal representative
8 of an estate is required to pursue, is required
9 by law to pursue assets and claims of the
10 estate.
11 Now, why is Stansbury -- so we think
12 that's pretty clear, that part of the motion,
13 respectfully.
14 The second part of the motion is why is
15 Mr. Stansbury entitled to get reimbursed now as
16 opposed to sometime in the future? And our
17 argument there, Your Honor, is that a benefit
18 has been conferred on the estate and therefore
19 his duty should end and he should be paid.
20 Now, why has he conferred benefit?
21 Because as we cite in our papers in the Estate
22 of Wejanowski, the court held that the trial
23 court could not require an executor to
24 demonstrate a monetary benefit before allowing
25 the expenditure of estate funds. And that the

14:10:44-14:11:42 Page 21

1 true benefit to an estate provided by an
2 appellate attorney for purposes of entitlement
3 to payment of appellate fees and costs out of
4 estate assets is the presentation of a good
5 faith appeal and its ultimate resolution.
6 Here, Your Honor, we presented a good
7 faith motion to intervene. The estate is now
8 well positioned. He should get out and he
9 should get paid.
10 Finally, Your Honor, with regard to the
11 trustee's arguments that have been presented to
12 you briefly, and then I will be done, the
13 trustee, first of all, as Your Honor has
14 already found, he is adverse to the estate. So
15 I think Your Honor needs to take into account
16 what weight it will assign to the argument and
17 evidence that the trustee puts in.
18 Secondly, they are arguing that no benefit
19 has arisen to the estate until money is
20 actually recovered.
21 First of all, with regard to that
22 paragraph in Judge Colin's order, that's not --
23 **THE COURT:** I don't think I found that he
24 -- I don't think I made a finding that he was
25 adverse to the estate.

<p>14:11:49-14:12:33 Page 22</p> <p>1 MR. FEAMAN: Okay. I am not going to 2 argue with Your Honor. 3 THE COURT: No, no, no. 4 MR. FEAMAN: It's a side argument at this 5 point. 6 THE COURT: Okay. I just wanted -- like 7 if I had put that wording in the order I wanted 8 to go back and look. Okay. Thank you for 9 saying. All right. Move on. 10 MR. FEAMAN: It was a finding in 11 connection with his appointment to be 12 administrator ad litem. 13 THE COURT: Yes, I didn't think it was 14 appropriate. 15 MR. FEAMAN: We have moved past Mr. Rose's 16 argument. That's been argued and done. 17 THE COURT: Okay. 18 MR. FEAMAN: Now, has Mr. Stansbury 19 conferred benefit to the estate? We say at 20 this point absolutely, the Court need go no 21 further and can say, yes, you are entitled to 22 be reimbursed. And we cite two cases which if 23 I have time I will argue at the end. 24 And I mention first the Wejanowski case 25 which I have just mentioned. And then we</p>	<p>14:14:00-14:15:01 Page 24</p> <p>1 because under the Mills V Martinez case, 909 2 So.2d 340, that court held that an order that 3 merely grants or denies a motion does not 4 resolve -- and does not resolve the issue 5 conclusively, a trial court has the authority 6 to modify that order before entering a final 7 judgment. 8 Why is this important? Because in that 9 transcript -- and then I am done, Your Honor, 10 in the interests of time. In that hearing at 11 page 22, line six, the court stated the issue. 12 The court said, quote, So the question is 13 should the claimant be declared here as 14 administrator ad litem for the purposes of 15 being permitted to ask the court to be able to 16 intervene which the court may or may not do? 17 And after he stated the issue thusly, he 18 then repeated it, Judge Colin at page 23, 19 because he started to move away from 20 Mr. Stansbury and moved into appointing Ben 21 Brown to be the one to intervene on behalf of 22 the estate. And the court said at page 23, 23 line 15, quote, I will allow someone else to 24 intervene to appropriately determine whether 25 the estate has an interest in this money or</p>
<p>14:12:47-14:13:43 Page 23</p> <p>1 actually found, Your Honor, and I have to give 2 kudos to one of my law partners, an 1882 case 3 by the Supreme Court. But the language was 4 appropriate, and it says, if under the 5 circumstances the litigation was just and 6 proper and apparently for the benefit of the 7 estate, and brought bona fide, he is entitled 8 to credits for costs and charges and for 9 services rendered in connection with the 10 litigation. 11 And that's the Sherrell versus Shepard 12 case, 19 Florida 300. And that's the first 13 time in my career I have been able to cite a 14 case from the 1800s, so I am kind of actually 15 excited about that, Your Honor, because it 16 seems to be right on point. 17 In a more serious vein, Your Honor, for 18 Judge Colin to have ordered what he did in that 19 last paragraph of what I call the rogue order, 20 the second line, first, he did not revoke his 21 first order, but, secondly, that was not part 22 of the hearing. 23 And we say that Your Honor is free to 24 modify that order and vacate those orders, but 25 especially with regard to reimbursement now,</p>	<p>14:15:16-14:16:12 Page 25</p> <p>1 not. That's the issue, correct? At which 2 point I said yes. 3 And so when we are dealing with that issue 4 the Court, this Court now subsequently is not 5 bound by that last paragraph in that what I 6 call rogue order when we never had a chance to 7 argue when Mr. Stansbury would be entitled to 8 reimbursement. 9 Now, they latched on to that gratuitous 10 language at the end, but that wasn't before the 11 Court. It is before the Court now and we are 12 making that argument. 13 So we respectfully suggest that the Court 14 is not bound by that language if it were to 15 decide that not only can Mr. Stansbury get 16 discharged but that he should be compensated. 17 At the very least he should be discharged, Your 18 Honor. And then to end the litigation 19 concerning his compensation we are respectfully 20 requesting that you also order that he is 21 entitled to compensation and reserve on an 22 amount pending discussions with the parties 23 which we have stipulated to. Thank you. 24 THE COURT: Thank you. I am going to let 25 Mr. Eliot go next, please.</p>

<p>14:16:24-14:17:29 Page 26</p> <p>1 MR. ELIOT BERNSTEIN: Don't want Mr. Rose 2 to go? 3 THE COURT: No, I am letting you go next. 4 MR. ELIOT BERNSTEIN: Okay. Well, just to 5 make clear, Mr. Rose admitted himself today to 6 the Court as representing Ted Bernstein as 7 successor trustee to the Simon trust, correct? 8 THE COURT: The record stands for itself. 9 MR. ELIOT BERNSTEIN: Okay. And I believe 10 that's what's in there. And I believe we just 11 went through two hearings for Mr. Rose to 12 represent the Stansbury litigation whereby he 13 stated to this Court repeatedly on the record 14 as a witness, et cetera, that he had nothing to 15 do with the Illinois litigation at all, him and 16 his client. They had no involvement in this 17 litigation whatsoever. But yet Mr. Feaman just 18 explained to you three years of this Illinois 19 litigation where Mr. Rose is making opposition 20 in all kinds of things to interfere with the 21 estate's hiring of counsel, et cetera, which is 22 exactly opposite of what he told the Court on 23 the record just in those last hearings, which 24 is further, like Mr. Feaman put in his closing 25 statement for those hearings, that Mr. Rose</p>	<p>14:18:27-14:19:23 Page 28</p> <p>1 MR. ELIOT BERNSTEIN: Okay. And as I 2 understand it from the documents filed by 3 Mr. Rose on behalf of Ted Bernstein and from 4 the appearance made on the record today, Alan 5 Rose is appearing for Ted who Your Honor found 6 in conflict of interest with the estate in 7 relation to the Illinois litigation as 8 indicated in your April 27th order. And Rose 9 gave oral testimony and in statements in 10 relation to trying to represent the estate 11 against William Stansbury that he has no 12 involvement with the Illinois insurance 13 litigation. But his precise filing as an 14 attorney for a Ted, filing number 56988413, 15 e-filed 5/26 in this court, is directly about 16 the Illinois insurance litigation. And again, 17 all three years he's been representing the 18 Illinois insurance litigation issues that he 19 told you he had nothing to do with. Clearly 20 repeated, and that's why you allowed him to 21 represent in that other case. 22 So this all contradicts his testimony and 23 your findings, which is the basis to reopen and 24 amend the April 27th order in itself. And I 25 also know that I filed for an extension for</p>
<p>14:17:45-14:18:10 Page 27</p> <p>1 misrepresented the record and was 2 misrepresenting things to the Court. Well, 3 here he just filed a pleading in this case 4 representing Ted Bernstein in the Illinois 5 insurance litigation. And I believe your order 6 says they are conflicted there. 7 MR. ROSE: I object. 8 MR. ELIOT BERNSTEIN: And this would be -- 9 THE COURT: Hold on. 10 MR. ELIOT BERNSTEIN: And this would be -- 11 I thought this was my opening. 12 THE COURT: Yes. 13 MR. ELIOT BERNSTEIN: Okay. 14 THE COURT: But I get to hear a legal 15 objection. 16 MR. ELIOT BERNSTEIN: Okay. 17 MR. ROSE: I think that, first of all, 18 it's improper argument. It's not really an 19 opening statement. And it's getting to be 20 borderline offensive. 21 THE COURT: Overruled. You won't insult 22 Mr. Rose. But other than that, overruled. 23 MR. ELIOT BERNSTEIN: Okay. But I will 24 call a fraud a fraud. 25 THE COURT: Go ahead.</p>	<p>14:19:29-14:20:12 Page 29</p> <p>1 rehearing of this order. 2 THE COURT: No, we are here on today's 3 motion. 4 MR. ELIOT BERNSTEIN: What? 5 THE COURT: I want you to know, Mr. Eliot, 6 I will allow you to have opening on today's 7 motion which is whether in your position on 8 Mr. Stansbury's motion. That is what we are 9 going to limit this argument to. 10 MR. ELIOT BERNSTEIN: That's all I am 11 arguing, meaning -- 12 THE COURT: Okay. I must have 13 misunderstood. 14 MR. ELIOT BERNSTEIN: Okay. 15 THE COURT: So please continue, limiting 16 it to that issue. 17 MR. ELIOT BERNSTEIN: Okay. What's really 18 going on here is more direct frauds upon the 19 Court, and Ted Bernstein and Alan Rose trying 20 to control the Illinois litigation by 21 controlling the counsel for the estate in 22 efforts to cover up frauds. Not to mention the 23 fact that Alan Rose's papers show further 24 collusion with the former PRs Tescher and 25 Spallina who were central to all the original</p>

14:20:27-14:20:56 Page 30

1 frauds in this court and in the Illinois court.
2 And I can say that to my knowledge there's
3 been no filing or docket entry in the Illinois
4 case since the fraud of Rose and O'Connell in
5 denying me for over a year as a beneficiary in
6 Simon's estate, has now been admitted.
7 **MR. ROSE:** Objection.
8 **MR. ELIOT BERNSTEIN:** And I have already
9 called upon the court --
10 **MR. ROSE:** This is beyond the scope of the
11 motion we are here for.
12 **THE COURT:** Sustained.
13 **MR. ELIOT BERNSTEIN:** All related --
14 **THE COURT:** Sustained.
15 **MR. ELIOT BERNSTEIN:** -- to the Illinois
16 insurance.
17 **THE COURT:** Sustained. Let's stay on
18 point.
19 **MR. ELIOT BERNSTEIN:** Okay. Called upon
20 this court to confirm --
21 **THE COURT:** No, that doesn't mean you keep
22 the sentence going. Sustained. Move on to
23 your point. Stay focused.
24 **MR. ELIOT BERNSTEIN:** Okay. So nothing
25 should be in my view on this motion should be

14:21:06-14:21:50 Page 31

1 happening here today other than scheduling
2 hearings to unravel the fraud that are going
3 on.
4 **THE COURT:** Okay.
5 **MR. ELIOT BERNSTEIN:** Meaning you just saw
6 an attorney tell you he had nothing to do with
7 this thing, and now we have heard he has been
8 objecting to this litigation, filing opposition
9 papers two or three years. And let me explain
10 why.
11 This whole issue starts really, and you
12 weren't here for it, and why Mr. Stansbury is
13 paying, Mr. Feaman kind of touched on, but I
14 want to explain.
15 **THE COURT:** I just want your position on
16 whether he should continue to pay or not
17 continue to pay, because that is what the
18 opening is about, and you have got two more
19 minutes.
20 **MR. ELIOT BERNSTEIN:** Well, it's also
21 about this hearing has been improperly --
22 **THE COURT:** No.
23 **MR. ELIOT BERNSTEIN:** -- conducted.
24 **THE COURT:** It is --
25 **MR. ELIOT BERNSTEIN:** Is he in conflict --

14:22:01-14:22:48 Page 32

1 **THE COURT:** No. What you are raising are
2 not issues before the Court today, so please
3 stay focused.
4 **MR. ELIOT BERNSTEIN:** Okay. Well,
5 everybody else has been able to give a little
6 history, and Mr. Feaman was allowed that
7 latitude.
8 **THE COURT:** Mr. --
9 **MR. ELIOT BERNSTEIN:** So I would like to
10 explain the opening in my view, meaning give
11 the background a little bit of why we are here
12 today and why I believe that Mr. Stansbury
13 should be recuperating his costs for the fraud
14 that's cost him all this money and all of us.
15 Meaning the real victims here are
16 Mr. Stansbury and me who were victims of the
17 original fraud that started this case.
18 The Illinois insurance litigation was
19 started by Robert Spallina filing a fraudulent
20 claim for life insurance benefits, as
21 Mr. Feaman noted. He did that at a time that
22 my brother, who he was representing, had
23 notified the police, the sheriff, and the
24 coroner that my father might have been murdered
25 by poisoning. And they tried to collect that

14:23:04-14:23:56 Page 33

1 death benefit without telling anybody. And
2 they got denied because they couldn't prove
3 that they had -- that Spallina was trustee of
4 the trust he never had. And that's all in the
5 records here. And I'm sure you've been reading
6 about it.
7 And what we have is then Ted Bernstein
8 suing the life insurance company for failure to
9 pay a claim to Robert Spallina as trustee.
10 What he did was he sued though as trustee of
11 the trust Spallina said he was trustee of.
12 And then he wouldn't represent -- have the
13 estate represented in these matters, because if
14 the estate was represented by competent
15 counsel, they immediately would have identified
16 the fraud going on in the filing of claims by
17 Mr. Spallina.
18 **THE COURT:** I did make the finding,
19 Mr. Feaman, you are absolutely correct.
20 **MR. FEAMAN:** Okay.
21 **THE COURT:** You may continue, Mr. Eliot.
22 **MR. ELIOT BERNSTEIN:** And I think that
23 goes to why Mr. Rose shouldn't be representing
24 in conflict and that might be some sanctionable
25 actions to take, you know, for him even

14:24:12-14:25:03 Page 34

1 appearing here after telling the Court he has
2 nothing to do with this stuff.
3 But Mr. Spallina then failed to represent
4 the estate's interest in the Illinois insurance
5 litigation because it would have proven out
6 that he committed fraud. So when we got rid of
7 him after he admitted and his law firm admitted
8 submitting fraudulent forged documents here, he
9 abdicated from the Illinois litigation
10 representing my brother in any way. And then
11 we had to find new counsel. So Mr. Feaman
12 brought in Mr. Stamos. And the Court was kind
13 of forced to make a decision here of why isn't
14 the estate representing --
15 **MR. ROSE:** Your Honor?
16 **MR. ELIOT BERNSTEIN:** -- on the interests
17 in a policy that has different beneficiaries.
18 **THE COURT:** No, he has got two more
19 minutes. Hold on one second, please. He has
20 got two more minutes. I am going to let him
21 complete his opening, at which point you will
22 be entitled to your opening.
23 **MR. ELIOT BERNSTEIN:** Okay.
24 **THE COURT:** You've got until exactly 20.
25 **MR. ELIOT BERNSTEIN:** Well, he got like

14:25:07-14:26:02 Page 35

1 25.
2 **THE COURT:** He has the burden.
3 **MR. ELIOT BERNSTEIN:** Oh, okay.
4 **THE COURT:** You do not.
5 **MR. ELIOT BERNSTEIN:** So I get half the
6 time? Okay.
7 **THE COURT:** So you get two more minutes.
8 **MR. ELIOT BERNSTEIN:** I will let it go.
9 I was thrown out of the Illinois
10 litigation, and I have advised the Court. And
11 I would like to enter into the evidence today a
12 letter --
13 **THE COURT:** This is not the appropriate
14 time. This is opening.
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

14:26:15-14:27:07 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.
10 Mr. Rose, you may proceed.
11 **MR. ROSE:** Thank you. Good afternoon,
12 Your Honor.
13 **THE COURT:** Good afternoon.
14 **MR. ROSE:** I just need to go back on a
15 couple of points that were raised. Number one,
16 the trust that exists under which my client is
17 appointed has a specific provision that says if
18 you are the trustee of one trust it does not
19 preclude you from being the trustee of separate
20 trust.
21 I do not represent Ted Bernstein in
22 connection with the Illinois litigation. We
23 have been down that road. Your Honor ruled
24 what you ruled and that was that
25 Mr. Bernstein --

14:27:18-14:28:09 Page 37

1 **MR. ELIOT BERNSTEIN:** Sorry.
2 **THE COURT:** I will not tolerate that. You
3 know that. Thank you.
4 **MR. ROSE:** While the Illinois litigation
5 is pending you declined to appoint Ted
6 Bernstein as administrator ad litem. We have
7 all moved past that.
8 Eliot Bernstein is, for the umpteenth
9 time, a beneficiary of tangible personal
10 property whose value after it's sold by
11 Mr. O'Connell will probably be worth ten or 15
12 thousand dollars, his one-fifth share. And for
13 that \$15,000 we are spending hundreds of
14 thousands or perhaps eventually a million
15 dollars giving him his due process.
16 But let me talk about why we are here
17 today, and I am going to go a little bit in
18 reverse order.
19 And I think you were told, and someone can
20 correct me if I am wrong, but you were told
21 that there's a rogue order that has a provision
22 in it that was never discussed at a hearing and
23 was never part of an argument such that
24 Mr. Feaman's clients were -- client was denied
25 due process.

14:28:21-14:29:16 Page 38

1 Well, if you look at the whole transcript
2 which again is docket entry 148, which also was
3 recently re-filed by Mr. Stansbury,
4 Mr. Stansbury's counsel, on page 35 summarizes
5 an entire discussion between Mr. Morrissey, who
6 represents four of the ten grandchildren -- I
7 am on page 35 of the transcript. Mr. Morrissey
8 at that time represented four of the
9 grandchildren. The other six were
10 unrepresented, although in my view the trustee
11 was advocating their interests very well and
12 got us to this point.
13 At the top of 35 the Court says that --
14 after a lengthy discussion -- I didn't put that
15 in because I didn't think someone would get up
16 and tell you that the issue was never raised
17 during the hearing.
18 But the Court said, it would only be the
19 case if there was a recovery for the estate to
20 which then Mr. Stansbury would say under the
21 statute I performed a benefit for the estate.
22 So we had a lengthy discussion at that
23 hearing, pages and pages of transcript where
24 the issue was raised, when do I get paid back.
25 And to suggest otherwise is being untrue to the

14:29:25-14:30:06 Page 39

1 documents that are before you. And you can
2 read the transcript yourself and make your own
3 decision.
4 **MR. ELIOT BERNSTEIN:** Your Honor, can I
5 object?
6 **THE COURT:** What's the legal objection,
7 Mr. Eliot?
8 **MR. ELIOT BERNSTEIN:** That he is
9 conflicted and shouldn't be making arguments on
10 the Illinois insurance litigation.
11 **THE COURT:** Overruled. You may proceed,
12 Mr. Rose.
13 **MR. ROSE:** The estate in this case is
14 represented by counsel. No one disputes they
15 are represented by counsel and that counsel is
16 a fine lawyer, Mr. Stamos. The only thing we
17 are here to decide is who should pay that
18 expense.
19 Now, you've heard, and I wrote it down,
20 there's a windfall to the estate been created
21 by Mr. Stansbury. In fact, the evidence will
22 demonstrate there's a liability created by
23 Mr. Stansbury's actions. There's a lawyer in
24 Chicago that's currently owed over \$41,000 and
25 counting that's not been paid pursuant to a

14:30:21-14:31:12 Page 40

1 valid unappealed order of this Court. And
2 that's a liability.
3 So not only does Mr. Feaman want to be
4 ordered repaid the 70,000 that he paid, he
5 wants the estate to start paying the 40,000 and
6 all the way through the trial. And guess what?
7 If they lose -- someone is right and wrong in
8 Illinois, and we are not here to decide that.
9 But it's gambling. If the estate is wrong and
10 Mr. O'Connell has spent a couple hundred
11 thousand dollars in litigation and he loses,
12 guess what? It's not a windfall. It's a
13 liability. It's a detriment.
14 And the whole point of the grand bargain
15 that was discussed and reached in court that
16 day was Mr. Stansbury is the only person
17 outside the, quote, family that can take some
18 of this money. It's in his best interests to
19 get that money into the estate because he is
20 suing us for two and a half million dollars.
21 And so he is the guy who benefits. If other
22 than him all the money stays in the family
23 either through the Illinois trust or through
24 the estate it would flow into this trust to
25 benefit the children or the grandchildren.

14:31:23-14:32:16 Page 41

1 So we had this lengthy thing. And what I
2 think we are here today is decide how important
3 are orders of this Court?
4 First of all, we know that an amended
5 order supercedes the original order. So you
6 can't tell me that the second order is a rogue
7 order and I am going to ignore it.
8 But they didn't appeal either of those
9 orders. And, you know, I understand batting 70
10 percent and he has paid about 70 percent of the
11 expenses, that might be good enough to get you
12 into the Hall of Fame in baseball or get you a
13 lot of things. But 70 percent compliance with
14 a court order is not acceptable to me, and I
15 don't think it should be acceptable to this
16 Court.
17 We have a valid order. And the order was
18 not willy-nilly. If you read the transcript,
19 and I gave you pages -- I am sorry, did you
20 have a question?
21 **THE COURT:** I did. I am just thinking
22 about whether it does the Court any good to ask
23 it, so give me a second. Let's set aside at
24 this moment let's set aside whether
25 Mr. Stansbury may or may not be entitled to any

14:32:31-14:33:08 Page 42

1 reimbursement if money comes in. Let's just
2 set that aside.
3 Why am I not allowed to let him out and
4 let Mr. O'Connell hire a contingency, put it on
5 contingency basis? Wouldn't that be the PR's
6 decision as to whether or not to go forward
7 with the claim?
8 **MR. ROSE:** Well --
9 **THE COURT:** That is the PR's right.
10 Please address just my question.
11 **MR. ROSE:** I will.
12 **THE COURT:** That's my question.
13 **MR. ROSE:** Okay. Well, the answer to your
14 question is we are here because you have power
15 to make a ruling. No one is denying that you
16 have the power to make a ruling.
17 **THE COURT:** Okay.
18 **MR. ROSE:** You are talking about the
19 propriety of your ruling, the beneficiaries are
20 very much against hiring someone on a
21 contingency fee basis for this reason. The
22 cost to finish the case --
23 **THE COURT:** Wouldn't that be -- okay. Let
24 me listen to you. I am sorry.
25 **MR. ROSE:** Yeah. I understand. We put a

14:33:19-14:34:01 Page 43

1 lot of thought into this that goes on outside
2 of the courtroom. We have spoken to
3 Mr. O'Connell at length.
4 The agreement that you have not approved
5 -- the agreement that you approved from the
6 Shirley trust beneficiaries, that you have not
7 yet considered from the Simon trust
8 beneficiaries, which includes the four
9 grandchildren who are represented by
10 Mr. Morrissey, the three grandchildren who are
11 not represented but whose parents are actively
12 involved, and the three grandchildren who are
13 -- whose interests are being protected by the
14 guardian ad litem, those ten people agreed they
15 wanted Mr. O'Connell to oppose this motion, and
16 that those ten people agreed that if you are
17 going to excuse Mr. Stansbury from the promise
18 that he has made --
19 **MR. ELIOT BERNSTEIN:** I object, Your
20 Honor.
21 **THE COURT:** Legal objection?
22 **MR. ELIOT BERNSTEIN:** He is
23 misrepresenting that he has consent of all of
24 the beneficiaries.
25 **THE COURT:** So noted. Go ahead.

14:34:04-14:34:47 Page 44

1 **MR. ELIOT BERNSTEIN:** And he was supposed
2 to, by the way --
3 **THE COURT:** So noted. Move on. No, no.
4 **MR. ELIOT BERNSTEIN:** (Overspeaking) --
5 court hearing.
6 **THE COURT:** No, no.
7 **MR. ELIOT BERNSTEIN:** Oh, okay.
8 **THE COURT:** So noted.
9 **MR. ELIOT BERNSTEIN:** Okay.
10 **THE COURT:** You may proceed.
11 **MR. ROSE:** So I am not directly in the
12 Illinois litigation, but I know specific facts
13 about the Illinois litigation. One of the
14 facts I asked was if there's a budget to go to
15 trial. So I think the budget for trial is
16 \$50,000. It's going to be a one-day bench
17 trial in Chicago. I think there's -- it's a
18 fairly simple narrow case.
19 The proposed contingency fee would be
20 \$700,000 if they win. It's a light switch
21 case, I call it a light switch case; you flick
22 it up or you flick it down. There's no carving
23 in the middle. You can't say, well, we are
24 going to --
25 **THE COURT:** I understand. Either they get

14:34:54-14:35:30 Page 45

1 the money --
2 **MR. ROSE:** Right.
3 **THE COURT:** The insurance trust gets the
4 money or the estate gets the money. It's A or
5 B.
6 **MR. ROSE:** Right.
7 **THE COURT:** I got it.
8 **MR. ROSE:** At a loss, it's a loss. At a
9 win, it's \$700,000 to the lawyer on a
10 contingency fee when he has told us his hourly
11 rates are going to be 50. And in addition,
12 paying back Mr. Stansbury the 70 he has already
13 put out would mean that the total fee for this
14 litigation would be \$770,000. Everyone has
15 agreed if Your Honor is going to excuse
16 Mr. Stansbury, which we would request you not
17 do, that the estate is going to handle the
18 matter on an hourly rate basis, or that's the
19 preference of the people that will have to make
20 the decision afterwards.
21 One of the decisions -- some of the
22 decisions are going to be, do I pursue the case
23 or not. Another decision is do I settle the
24 case or not. But that's for Mr. O'Connell.
25 **THE COURT:** Okay.

14:35:37-14:36:25 Page 46

1 **MR. ROSE:** The specific answer to your
2 question --
3 **THE COURT:** You did.
4 **MR. ROSE:** -- you clearly have the power
5 to do something. We are here asking you not to
6 change the order. Because if you read what
7 Judge Colin did, it was very, very specific.
8 And it was not a five-minute hearing. It was a
9 lengthy hearing.
10 And, you know, the specific thing he says
11 on paragraph two, for the reasons subject to
12 the conditions stated on the record, all
13 attorney's fees and costs incurred shall be
14 initially borne by Mr. Stansbury. He has not
15 borne the expenses. He is in violation of the
16 order.
17 Florida law is very clear that if you are
18 in violation of an order you should not be
19 heard on that order. I don't know if he should
20 be heard on any matter, but he should at a
21 minimum he should have brought this into
22 compliance and shown up and said I have
23 complied with the order and would like relief
24 from it. So we have cited the case I won't
25 argue. It's in our brief. It's very clear to

14:36:38-14:37:39 Page 47

1 me under the law.
2 The second point, the order could not be
3 any clearer. Mr. Stansbury shall not be
4 reimbursed for any fees or costs incurred from
5 either the decedent's estate or the trust which
6 my client is the trustee of.
7 And as Your Honor knows, under certain
8 circumstances if Mr. O'Connell runs out of
9 money he can certify a need for money to the
10 trust, and a revocable trust can be required
11 under statute to occasionally pay money back.
12 So some day they may come and ask my client to
13 take money out of the trust that's designated
14 for these ten grandchildren to fund this
15 litigation that we -- you know, that right now
16 is being funded perfectly fine.
17 But he is not to be reimbursed unless
18 there is a recovery on behalf of the estate
19 that results in a net benefit to the estate.
20 That's not a rogue -- for someone to come
21 here and -- I am not criticizing the lawyer.
22 But the argument that is being made to you that
23 that's a rogue order when it's an order that
24 was never appealed, I think it is just flat out
25 wrong.

14:37:49-14:38:34 Page 48

1 The other thing is Mr. Stansbury has
2 gotten the benefit of all kinds of wonderful
3 things in the transcript. He has got the right
4 to talk to the lawyer in Chicago. He picks the
5 lawyer. He consults with him. I was standing
6 with Mr. Feaman outside --
7 **THE COURT:** Wrap up.
8 **MR. ROSE:** He gets called by the lawyer.
9 He is in communication. That was the bargain.
10 So in my view it's very important that we
11 follow court orders. It was not appealed.
12 Everybody relied upon it. He has gotten the
13 benefit of it.
14 This delay of years and years, I mean,
15 there was nothing in the order -- at the time
16 of this hearing we were waiting to get a
17 permanent PR. That was on the horizon. I
18 think the PR hearing was a few weeks after. I
19 think, if I recall, and I don't know for sure,
20 it was early July, like the 10th or something
21 of July, when we had a hearing to determine the
22 PR when Mr. O'Connell was going. That was like
23 a week after this order.
24 This isn't like it was a vacuum. We knew
25 that there was going to be a PR. And it still

14:38:49-14:39:37 Page 49

1 is this, that he is going to fund it. And so
2 to suggest that this was a temporary
3 arrangement is not correct.
4 Now, they had time to ask Judge Colin to
5 reconsider the order. They had a year and a
6 half to ask Judge Phillips. And on multiple
7 occasions they just withdrew their motion, they
8 would cancel their hearing. The record will
9 speak for itself. But we are now three years
10 down the line on an order that was never
11 appealed. And I don't think it's appropriate
12 to treat it like it's a worthless piece of
13 paper. It's an order of this Court.
14 Mr. Feaman said he never relied on a case from
15 the 1800s. Well, I am relying on a case from
16 this Court entered by this Court in 2014. And
17 we would ask that you deny the motion.
18 Now, this is what happens if you deny the
19 motion. Mr. Stansbury funds the litigation.
20 Presumably everyone on that side of the table
21 thinks it's a winning case. So he is going to
22 fund the litigation. It's going to get tried.
23 The estate is going to win.
24 There's no question that Mr. Stansbury
25 gets paid back immediately and first from a net

14:39:49-14:40:35 Page 50

1 recovery. We are not going to come in here and
2 say, well, we didn't really benefit us. And
3 that was very clear from the beginning. That's
4 why Judge Colin said what he said.
5 But if he is right about the case, he is
6 going to finish funding it, they are going to
7 try it and they are going to win it, and money
8 is going to come in. He is going to get paid
9 back every penny he is entitled to. If they
10 are wrong and it's a loser, the estate has no
11 harm whatsoever, no liability to a lawyer in
12 Chicago, no outlay of funds.
13 And you and I and Mr. O'Connell and
14 Mr. Feaman we are not capable of deciding who's
15 going to get that money. That's the judge in
16 Illinois. But we arranged -- and I realize
17 that Mr. O'Connell wasn't here yet, Judge Lewis
18 wasn't in the case yet. But what the people
19 that were in that courtroom in May arranged
20 with the judge, and I could read you the whole
21 transcript, I have highlighted it, so I think
22 you've got a flavor. It was hotly contested.
23 It was compromise. And Mr. Feaman made
24 representations on the court. And the specific
25 thing that Judge Colin said at the end, part of

14:40:46-14:41:12 Page 51

1 this is the sincerity of Mr. Feaman's side,
2 it's a good thing and they made a pledge to do
3 it, they are not going to go back on their
4 word.
5 I would ask you not to let them go back on
6 their word.
7 **THE COURT:** Thank you. All right,
8 Mr. Feaman, call your first witness.
9 **MR. FEAMAN:** I will move as quickly as
10 possible.
11 **MR. ELIOT BERNSTEIN:** Your Honor?
12 **MR. FEAMAN:** I want to put some documents
13 in before Your Honor even though they are
14 already in the record so that you can have with
15 you --
16 **THE COURT:** Thank you.
17 **MR. FEAMAN:** -- documents to refer to.
18 **THE COURT:** Do you want me to mark?
19 **MR. FEAMAN:** I have them marked on the
20 back.
21 **THE COURT:** No. But tell me if you want
22 them -- how you want me to handle them,
23 evidence, they are for me?
24 **MR. FEAMAN:** I think evidence is the
25 easiest way to create a record.

14:41:19-14:41:51 Page 52

1 **THE COURT:** So this will be Stansbury's.
2 Okay.
3 **MR. FEAMAN:** And I have the -- and
4 everybody will get copies.
5 **THE COURT:** Mr. Eliot, do you have an
6 objection?
7 **MR. ELIOT BERNSTEIN:** No. Just
8 clarification. Your order said this was
9 confined, limited to one hour. Mr. Feaman sent
10 out a letter saying that you and him had
11 arranged that it couldn't go past 2:30. I just
12 said to whom -- no, that's not correct?
13 **THE COURT:** A couple of different things.
14 **MR. ELIOT BERNSTEIN:** Okay.
15 **THE COURT:** I am proceeding right now on
16 my hearing.
17 **MR. ELIOT BERNSTEIN:** Right.
18 **THE COURT:** Secondly, I have never had a
19 conversation with Mr. Feaman ever outside of
20 this courtroom.
21 **MR. ELIOT BERNSTEIN:** I meant with your
22 clerk, with your J.A.
23 **THE COURT:** My J.A.
24 **MR. ELIOT BERNSTEIN:** Correct, in
25 scheduling this.

14:41:56-14:42:19 Page 53

1 **THE COURT:** So I am going to proceed right
2 now.
3 **MR. FEAMAN:** I have never had a
4 conversation with your J.A., Your Honor.
5 **THE COURT:** Thank you.
6 **MR. ELIOT BERNSTEIN:** Or somebody did.
7 **MR. FEAMAN:** Exhibit 1 --
8 **THE COURT:** Thank you.
9 **MR. FEAMAN:** -- is the first order of
10 May 23rd.
11 **THE COURT:** Okay. You are asking that
12 this be placed in evidence or Court take
13 judicial notice?
14 **MR. FEAMAN:** Exhibit 1 it's stamped on the
15 back, Your Honor.
16 **THE COURT:** Any objection?
17 **MR. ROSE:** I don't think it needs to be in
18 evidence, but I don't have any objection.
19 **THE COURT:** Okay.
20 **MR. FEAMAN:** Your Honor, it doesn't need
21 to be in evidence.
22 **THE COURT:** I will just place it in
23 evidence.
24 **MR. FEAMAN:** It's just more orderly.
25 **THE COURT:** Sure. Sure. Stansbury

14:42:23-14:42:52 Page 54

1 Petitioner's Number 1 admitted into evidence.
2 Okay.
3 (Stansbury's Exb. No. 1, Order Appointing
4 Administrator Ad Litem, 5/23/14.)
5 **MR. FEAMAN:** Then Number 2, Your Honor, is
6 the second order --
7 **MR. ROSE:** No objection.
8 **MR. FEAMAN:** -- referred to.
9 **THE COURT:** Thank you.
10 **MR. FEAMAN:** I have an exhibit list.
11 **MR. ROSE:** No objection to 2.
12 **MR. FEAMAN:** Thank you.
13 **THE COURT:** Thank you.
14 (Stansbury's Exb. No. 2, Amended Order
15 Appointing Administrator Ad Litem, 6/16/14.)
16 **MR. FEAMAN:** Do you need a copy or are you
17 okay?
18 **MR. ROSE:** Why don't I have a copy?
19 **MR. FEAMAN:** I am trying to move quickly,
20 Your Honor.
21 **THE COURT:** That's okay.
22 **MR. ELIOT BERNSTEIN:** Do we know how long
23 this hearing will go so we can --
24 **THE COURT:** You know, that's very rude.
25 **MR. ELIOT BERNSTEIN:** Well, excuse me.

14:42:56-14:43:29 Page 55

1 **THE COURT:** I am just saying you don't
2 just --
3 **MR. ELIOT BERNSTEIN:** I've got kids. And
4 in the order --
5 **THE COURT:** You need to stop.
6 **MR. ELIOT BERNSTEIN:** The order said --
7 **THE COURT:** No, no, no. When I say you
8 need to stop, you need to stop talking.
9 **MR. ELIOT BERNSTEIN:** Okay.
10 **THE COURT:** Whose phone is going off?
11 **MR. FEAMAN:** Your Honor, I apologize to
12 the Court.
13 **THE COURT:** That's okay. That's all
14 right. Thank you.
15 I have entered an order in these cases
16 indicating, while I indicated it would be an
17 hour, that is no promise that the hearings will
18 end exactly in an hour.
19 **MR. ELIOT BERNSTEIN:** In this order you
20 said limited to one hour.
21 **THE COURT:** And there was an order entered
22 after indicating --
23 **MR. ELIOT BERNSTEIN:** That's what I said
24 to Mr. Feaman.
25 **THE COURT:** There was a subsequent order

14:43:36-14:44:12 Page 56

1 that was entered.
2 **MR. ELIOT BERNSTEIN:** That that would
3 override this. Okay. I should have brought a
4 pillow.
5 **THE COURT:** My court reporter is really
6 having a hard time. I apologize. I will try
7 to be more aware. I apologize very much to
8 you.
9 Okay. You may proceed.
10 **MR. FEAMAN:** Exhibit 3 is the motion to
11 intervene filed by the estate in the United
12 States District Court for the Northern District
13 of Illinois.
14 **MR. ROSE:** No objection.
15 **THE COURT:** So entered.
16 (Stansbury's Exb. No. 3, Motion to
17 Intervene.)
18 **MR. FEAMAN:** Exhibit 4 is the verified
19 copy of the order granting the motion to
20 intervene by the United States District Court
21 Northern District of Illinois.
22 **THE COURT:** Thank you.
23 **MR. ROSE:** No objection to 4.
24 **THE COURT:** Thank you.
25 ///

14:44:58-14:45:40 Page 57

1 (Stansbury's Exb. No. 4, Verified Copy of
2 Order Granting Motion to Intervene.)
3 **MR. FEAMAN:** Exhibit 5 is the first motion
4 by successor personal representative Brian
5 O'Connell, docket entry 403, for authorization
6 to enter into a contingency agreement with
7 Illinois counsel in the pending life insurance
8 litigation.
9 **THE COURT:** I am happy to take that in
10 since that's the way we are doing it. I did
11 notice that you filed a notice for judicial --
12 **MR. FEAMAN:** Yes.
13 **THE COURT:** But I will just go ahead and
14 continue the flow.
15 (Stansbury's Exb. No. 5, Petition for
16 Authorization to Enter into Contingency Agreement,
17 Docket Entry 403.)
18 **MR. FEAMAN:** And the purpose of the --
19 don't mean to address the Court with my back to
20 it.
21 **THE COURT:** That's okay.
22 **MR. FEAMAN:** The purpose of this, Your
23 Honor, is for the Court to note in paragraph
24 five where it says as of the date of the filing
25 of this motion, which is December 2015,

14:46:02-14:46:53 Page 58

1 approximately a year and a half after the entry
2 of the order ordering Mr. Stansbury to pay, it
3 says, quote, The legal fees to date in the life
4 insurance litigation have been paid by William
5 Stansbury.
6 And then paragraph seven, the successor
7 personal representative believes that it is in
8 the best interests of the estate to continue
9 with the life insurance litigation.
10 And then paragraph eight, Illinois counsel
11 has agreed to waive the outstanding balance
12 currently due and enter into a contingency
13 agreement.
14 **MR. ROSE:** Are we here to --
15 **MR. FEAMAN:** Exhibit 6, Your Honor --
16 **THE COURT:** Now why are you interrupting?
17 **MR. ROSE:** No, no. Are we doing argument
18 on each of these exhibits or just going to have
19 them come in?
20 **MR. FEAMAN:** I wasn't arguing.
21 **THE COURT:** Please have a seat. He is
22 just handing me the exhibits.
23 **MR. FEAMAN:** Just reading. Exhibit 6 is
24 docket entry 405 which is Mr. O'Connell's
25 amended petition for authorization. And the

14:47:08-14:48:21 Page 59

1 amended petition contains the same language as
2 Exhibit 5.
3 (Stansbury's Exb. No. 6, Amended Petition
4 for Authorization to Enter into Contingency
5 Agreement, Docket Entry 405.)
6 **THE COURT:** All right. I don't want you
7 to annotate the exhibits.
8 **MR. FEAMAN:** Okay.
9 **THE COURT:** Just if you want to bring
10 something to the Court's attention on it, then
11 I will entertain anything else anyone else
12 wants to bring to my attention.
13 **MR. FEAMAN:** Okay. Just the only thing
14 different is there's a new paragraph nine
15 saying that there's also an hourly fee
16 arrangement offered to the personal
17 representative by Chicago counsel.
18 And then, finally, Exhibit 7 is the
19 inventory filed by Mr. O'Connell as successor
20 personal representative dated December 1st,
21 2014, showing the claim for the insurance
22 proceeds in Chicago as an asset of the estate
23 value unknown.
24 (Stansbury's Exb. No. 7, Inventory
25 12-1-14.)

14:48:29-14:48:51 Page 60

1 **MR. FEAMAN:** Now I would call
2 Mr. Stansbury to the stand.
3 **THE COURT:** All right.
4 **MS. CRISPIN:** I just want to interject
5 quickly. I know you asked the estate's
6 position on whether or not Mr. Stansbury should
7 be discharged.
8 **THE COURT:** Yes.
9 **MS. CRISPIN:** There was a second component
10 to that, which was should he be reimbursed for
11 what he has already paid. And I did want the
12 Court to know that Mr. O'Connell's position is
13 similar to that of Mr. Rose's, which is notated
14 on page 35 of the transcript, is that until
15 there is a net recovery to the estate it should
16 not be repaid.
17 **THE COURT:** Okay. Thank you.
18 **MS. CRISPIN:** Thank you.
19 **THE COURT:** Thank you, Ms. Crispin.
20 All right, go ahead.
21 As I do in all the hearings, I will keep
22 the evidence up here for anybody to reference,
23 my very complicated evidence label.
24 - - -
25 Thereupon,

14:49:11-14:49:48 Page 61

1 WILLIAM STANSBURY,
2 a witness called on behalf of himself, being by the
3 Court duly sworn, was examined and testified as
4 follows:
5 **THE WITNESS:** I do.
6 **THE COURT:** Thank you. Please have a
7 seat.
8 **MR. FEAMAN:** Permission to lead the
9 witness to go through some background
10 information, Your Honor?
11 **THE COURT:** I think that in this case we
12 better just go with the standard.
13 **MR. FEAMAN:** Thank you.
14 **DIRECT (WILLIAM STANSBURY)**
15 **BY MR. FEAMAN:**
16 **Q. Please state your name and address.**
17 A. William Stansbury. 6920 Caviro Lane,
18 Boynton Beach, Florida.
19 **Q. And you are presently a claimant against**
20 **this Estate of Simon Bernstein, and you have**
21 **brought an action against the estate seeking the**
22 **recovery of money; is that correct?**
23 A. It is, yes.
24 **Q. What's the approximate value of your**
25 **claim?**

14:50:06-14:51:05 Page 62

1 A. Approximately 2.5 million.
2 **Q. And when did you first obtain knowledge**
3 **that there was a life insurance policy that was in**
4 **effect at the time of Simon Bernstein's death where**
5 **death benefits of which might rightfully belong to**
6 **the Estate of Simon Bernstein?**
7 A. I first became aware of the life insurance
8 policy in the fall of 2011.
9 **Q. How was that?**
10 A. Inadvertently, I suspect, that the life
11 insurance policy on Mr. Bernstein lapsed. And
12 there was a great deal of panic in the office.
13 There were concerns about his health and the fact
14 that there may not be an opportunity to get the
15 policy benefit back alive. And because of my 40
16 years of experience in the insurance industry, I
17 was consulted with to see if there was anything
18 that I could suggest or recommend that might help
19 to re-establish the benefit for Mr. Bernstein who
20 was the owner of the policy at that time.
21 **Q. Is that the same policy that's at issue in**
22 **the Chicago litigation?**
23 A. It is.
24 **Q. And were you successful in getting the**
25 **policy reinstated?**

14:51:14-14:52:25 Page 63

1 A. I was.
2 **Q. And you were working with Mr. Simon**
3 **Bernstein at that time?**
4 A. I was.
5 **Q. And now Mr. Bernstein passed away in, I**
6 **believe, the fall of 2012; is that correct?**
7 A. September of 2012, yes.
8 **Q. Okay. How did you learn that there had**
9 **become an issue as to who or what the beneficiary**
10 **of that life insurance policy was?**
11 A. There was a lot of e-mailing and things
12 going back and forth that I became aware of. And
13 the fact that the life insurance policy was being
14 submitted to the insurance company with a claim
15 being made by a trustee who wasn't the trustee of
16 the life insurance policy that was described in the
17 benefit as being a beneficiary.
18 **Q. Was that Mr. Spallina?**
19 A. It was.
20 **Q. Did you become aware subsequently that**
21 **then a lawsuit had been filed in Illinois involving**
22 **the death benefits of that policy?**
23 A. Yes.
24 **Q. And how much are those death benefits as**
25 **far as you know?**

14:52:36-14:53:37 Page 64

1 A. It's in the 1.6, 1.7 million dollar range,
2 something in that vicinity.
3 **Q. And did there come a time when you learned**
4 **that there was a disagreement over who the**
5 **beneficiary of that policy is?**
6 A. Yes.
7 **Q. Did you make inquiries as to whether the**
8 **estate was involved at that time in the litigation**
9 **that was pending in Chicago?**
10 A. Yes.
11 **Q. And what did you find out?**
12 A. I found out that they were not being
13 represented at all in that litigation.
14 **Q. Did that concern you?**
15 A. It did.
16 **Q. Why?**
17 A. Well, on a number of levels. First of
18 all, you know, obviously, if I can bring additional
19 liquidity into the estate that tends to help not
20 just the estate but potentially any claim that I
21 might be awarded, so there was an interest there.
22 I am -- I was at that time 40 years in the
23 life insurance profession, and I ran large offices
24 and regions for major life insurance companies.
25 And I understood from time to time that people do

14:53:53-14:54:57 Page 65

1 pass away and the beneficiaries are not always
2 being -- they are not always able to be found.
3 Businesses have been listed as beneficiaries or
4 trusts that are no longer there and can't be proven
5 up.
6 And so I know that there were
7 opportunities for estates of others to make claims,
8 and those estates were subsequently awarded
9 benefits that either were paid based on the will or
10 the intestacy laws of the state that the person
11 resided in.
12 And I took it as a professional
13 responsibility. You know, this was not just
14 something that I was trying out. As I said, I was
15 40 years in the business at that point. And I had
16 leadership positions in the community and county
17 and nationally in the insurance business.
18 And so for me to observe an application
19 for insurance to be submitted by, not the
20 application, but the claim to be submitted by
21 someone who really had no interest in that, and
22 they represent to the insurance company claim
23 department that they are the beneficiary, to me
24 that was offensive, you know, that is somewhat in
25 violation of I am aware of a statute in Florida

14:55:17-14:56:15 Page 66

1 817.234. It seems to violate that statute.
2 So I felt there was a responsibility to at
3 least bring to the attention of the court for the
4 reasons that I stated that there should be given an
5 opportunity for the estate to have a seat at the
6 table to at least argue a case.
7 **Q. So in November of 2013 did you personally**
8 **hire an attorney to attempt to intervene on your**
9 **behalf in that action as a claimant of the**
10 **Bernstein estate?**
11 A. I did.
12 **Q. And what was the result of that?**
13 A. We were denied.
14 **Q. Now, you recall that in January of 2014**
15 **then the personal representatives, Messrs. Tescher**
16 **and Spallina, resigned; is that correct?**
17 A. Yes.
18 **Q. And did you then ask the probate court**
19 **here in Florida to appoint an independent curator**
20 **or administrator ad litem to intervene?**
21 A. I did.
22 **Q. And the court, as you heard in opening**
23 **statement, granted your motion for the appointment**
24 **first of an independent curator; is that correct?**
25 A. Correct, yes.

14:56:26-14:57:15 Page 67

1 **Q. That was Mr. Brown?**
2 A. Correct.
3 **Q. Did you file then a subsequent motion to**
4 **have the estate intervene in the Chicago**
5 **litigation?**
6 A. Yes.
7 **Q. And your motion recited that you would be**
8 **the intervenor; is that correct?**
9 A. Yes.
10 **Q. And then do you recall the hearing on**
11 **May 23rd, were you there in the courtroom at that**
12 **time in 2014 concerning the appointment that**
13 **resulted in the orders that we have discussed this**
14 **morning?**
15 A. Yes.
16 **Q. And the court obviously then granted the**
17 **petition and ordered that you would initially bear**
18 **the costs of the litigation, correct?**
19 **MR. ROSE:** Objection, the order speaks for
20 itself.
21 **THE COURT:** Sustained.
22 **BY MR. FEAMAN:**
23 **Q. Now, do you know how much money at this**
24 **point you have actually paid just to Mr. Stamos's**
25 **law firm?**

14:57:27-14:58:47 Page 68

1 A. It's in the range of \$70,000.
2 **Q. And do you recall over what period of time**
3 **that is?**
4 A. It's from when I received his first
5 invoice through January of this year, 2017.
6 **Q. Let me hand you what's been marked as**
7 **Composite Exhibit 8. Can you first identify what**
8 **Composite Exhibit 8 represents?**
9 A. They represent payments that were made to
10 Ben Brown's firm and Mr. Stamos's firm for fees
11 that were generated as a result of what we'll call
12 the Chicago litigation.
13 **Q. Okay. And so the first check is payable**
14 **to Matwiczuk and Brown. Was that Ben Brown's firm,**
15 **as you mentioned?**
16 A. Yes.
17 **Q. And then there's a check -- and then**
18 **there's, just in the interest of time --**
19 **THE COURT:** Legal objection?
20 **MR. ROSE:** The document is not in evidence
21 yet. I don't have an objection to it coming
22 into evidence, but he shouldn't be reading from
23 a document that's not in evidence.
24 **THE COURT:** Are you moving it in?
25 ///

14:58:59-14:59:40 Page 69

1 **BY MR. FEAMAN:**
2 **Q. Are those checks generated by you --**
3 **THE COURT:** Wait. Did you want to put it
4 in evidence?
5 **MR. FEAMAN:** Yeah, I am going to lay a
6 predicate.
7 **THE COURT:** He just said he didn't object.
8 **MR. FEAMAN:** I would move those in
9 evidence at this time, Your Honor.
10 **THE COURT:** Okay. Let me just mark it.
11 **MR. FEAMAN:** He has the marked one, if I
12 could, I will switch.
13 **THE COURT:** Thank you. I appreciate that.
14 **MR. ROSE:** Is that 8?
15 **THE COURT:** This is 8. This is
16 Stansbury's 8.
17 (Stansbury's Exb. No. 8, Payment of
18 Checks.)
19 **BY MR. FEAMAN:**
20 **Q. And in the interests of time could you**
21 **just briefly list the check number and the amount**
22 **and the date and the payee?**
23 A. Starting with Mr. Brown or going to the
24 first?
25 **Q. Yes, starting with the first page and**

14:59:54-15:00:48 Page 70

1 going through?
 2 A. I am having a difficult time seeing a
 3 check number on a cashier's check. Do you see it?
 4 Q. 1167815311?
 5 A. Oh, okay.
 6 Q. That's \$3,401, correct?
 7 A. Correct.
 8 Q. Okay.
 9 A. The next check number is 1166312927.
 10 Q. Date?
 11 A. December the 18th, 2014.
 12 Q. Amount?
 13 A. \$5,290.49.
 14 Q. Next?
 15 A. It's my check number 129.
 16 Q. Date?
 17 A. February 27th, 2015.
 18 Q. Amount?
 19 A. \$9,551.66.
 20 Q. Next?
 21 A. Check number 134, amount --
 22 Q. Payee?
 23 A. Payee is Stamos and Trucco.
 24 Q. Date?
 25 A. The date of the check is April 24th, 2015.

15:02:42-15:03:28 Page 72

1 Trucco. The date is February the 13th, 2017. The
 2 amount is \$10,000 even.
 3 Q. Okay. At the hearing back in May of 2014
 4 why did you volunteer to pay the -- well, first,
 5 did you volunteer to pay initially the fees and
 6 costs that would be incurred by the estate in
 7 connection with the intervention?
 8 A. Yes.
 9 MS. CRISPIN: Your Honor, objection.
 10 Transcript speaks for itself what the position
 11 was at the time of the hearing.
 12 THE COURT: Overruled.
 13 BY MR. FEAMAN:
 14 Q. Had a personal representative been
 15 appointed by the court yet at that time?
 16 A. No.
 17 Q. And after the motion to intervene was
 18 granted did you then move to be discharged from
 19 further responsibility for funding the estate?
 20 A. I did.
 21 Q. And how long after the court's granting of
 22 the estate's motion to intervene up in Chicago did
 23 you move to be discharged from further
 24 responsibility that you can recall?
 25 A. Seems like it was two or three months,

15:01:05-15:02:04 Page 71

1 Q. Amount?
 2 A. \$4,107.28.
 3 Q. 136?
 4 A. Yeah, check number 136, it's dated June
 5 the 1st of 2015, anniversary date, or yesterday.
 6 Q. The payee?
 7 A. Payee is Stamos and Trucco.
 8 Q. Amount?
 9 A. \$7,805.60.
 10 Q. The next check?
 11 A. Check number 139.
 12 Q. Payable to?
 13 A. Stamos and Trucco.
 14 Q. Date?
 15 A. July the 13th, 2015.
 16 Q. Amount?
 17 A. \$16,936.38.
 18 Q. Next check?
 19 A. Number 154, payable to Stamos and Trucco.
 20 Q. Date?
 21 A. Date is August the 12th, 2016.
 22 Q. Amount?
 23 A. \$16,585.
 24 Q. Next check?
 25 A. Check number 159, payable to Stamos and

15:03:38-15:04:53 Page 73

1 somewhere in that neck of the woods.
 2 Q. Okay.
 3 A. Two, two and a half months.
 4 Q. Why did you believe it appropriate to move
 5 to be discharged at that time?
 6 A. Well, because I did what I promised that I
 7 would do. I generated a benefit for the estate.
 8 And but for that intervention the estate may not
 9 have had a seat at the table and had any claim at
 10 all to the insurance proceeds. We were able to --
 11 not we. The attorney was able to get, I don't know
 12 what the legal words are, but get standing to
 13 represent the estate. Summary judgments that were
 14 presented by the plaintiff were defeated. And so
 15 the estate was represented and that was a benefit.
 16 Q. Why do you think you should be discharged
 17 at this time from any further responsibility from
 18 funding this estate's participation in that
 19 litigation in Chicago?
 20 A. Well, at this time, you know, again, I did
 21 what I said I was going to do. I funded the
 22 litigation. A benefit was provided, in addition to
 23 what I just described, by Mr. Stamos who offered
 24 Mr. O'Connell the opportunity to take either a
 25 contingent or an hourly fee basis.

15:05:12-15:06:18 Page 74

1 So from my perspective if you have any
2 concerns about litigation expense, a contingency
3 fee arrangement sort of takes all of those expenses
4 that you might incur off the table. The only thing
5 that would result would be a benefit or no cost,
6 which to me is benefit.
7 So from my perspective that is a large
8 benefit and one that Mr. Stamos in the pleading or
9 filing or motion, whatever you call it that you
10 read before, has agreed is a benefit. Whether he
11 chooses to pay hourly or not, that's up to him.
12 But I have certainly provided the opportunity for
13 him to reap a benefit where the estate would lose
14 nothing and only gain. To me that's a huge
15 benefit.
16 **Q. Did Ted Bernstein, the successor trustee**
17 **to the trust that's the sole residual beneficiary**
18 **of the Simon Bernstein estate, did he through his**
19 **counsel oppose your attempts to get the estate**
20 **intervened?**
21 A. Yes.
22 **Q. Why is that, do you believe?**
23 A. I can't figure it out because essentially
24 it's the parents or the plaintiffs and their
25 children are the defendants. So it's, you know,

15:06:31-15:07:15 Page 75

1 parents and children trying to figure out who gets
2 the money.
3 But, you know, I can't speak for why they
4 do what they do. But, you know, my understanding
5 from the documents that have been presented in
6 court is that if the money goes to the estate --
7 **MS. CRISPIN:** Your Honor, move to strike,
8 hearsay and speculation.
9 **THE COURT:** Sustained. Give me one
10 second, please. All right. Let me just
11 interrupt.
12 **MR. FEAMAN:** No further questions, Your
13 Honor.
14 **THE COURT:** Oh, I am sorry, I didn't mean
15 to interrupt. But this goes to what question
16 Mr. Eliot was asking earlier. I did not
17 respond because I didn't have an answer.
18 We will need to -- I had this set for an
19 hour. I left it open. But I am signing judge,
20 and I have two emergencies already going. So
21 we can either end here -- or I'd like to
22 complete his testimony, if possible. But I
23 need it to be done by 3:30. So I don't know if
24 that's possible.
25 **MR. FEAMAN:** I am done.

15:07:27-15:08:01 Page 76

1 **THE COURT:** Thank you.
2 Mr. Eliot, why don't you proceed?
3 **MR. ELIOT BERNSTEIN:** Well, first, I
4 wasn't trying to stop the proceeding.
5 **THE COURT:** I know.
6 **MR. ELIOT BERNSTEIN:** I brought a pillow
7 and a tent, because your order says I could be
8 here forever, which I think prejudiced me and
9 everybody else. But because I have kids and I
10 got to take care of them and all those things.
11 And I was just trying --
12 **THE COURT:** You can proceed with the
13 cross-examination.
14 **MR. ELIOT BERNSTEIN:** I know, but --
15 **THE COURT:** Thank you. Now. Now. No,
16 no, no. Thank you. Appreciate it.
17 **MR. ELIOT BERNSTEIN:** Don't think I have
18 enough time in a half hour to again do what I
19 need to do.
20 **THE COURT:** You don't think you have
21 enough time in a half hour?
22 **MR. ELIOT BERNSTEIN:** No. I was going to
23 call some witnesses on my own.
24 **THE COURT:** No. You are just -- we are
25 going to continue the hearing, sir. This is

15:08:08-15:08:39 Page 77

1 just your questions for Mr. Stansbury.
2 **MR. ELIOT BERNSTEIN:** Oh. Will we have
3 enough time for me to call witnesses and
4 everything?
5 **THE COURT:** Today?
6 **MR. ELIOT BERNSTEIN:** Yes.
7 **THE COURT:** Please do your questioning of
8 Mr. Stansbury. And after we are done with
9 Mr. Stansbury we are going to recess for the
10 day.
11 **MR. ELIOT BERNSTEIN:** Okay.
12 **THE COURT:** Okay?
13 **MR. ELIOT BERNSTEIN:** Yeah.
14 **CROSS (WILLIAM STANSBURY)**
15 **BY MR. ELIOT BERNSTEIN:**
16 **Q. You said you worked on the policy**
17 **reinstatement in 2011; is that correct?**
18 A. Correct.
19 **Q. And that's the life insurance policy**
20 **that's the subject of this hearing, correct?**
21 A. Yes, it is.
22 **Q. Okay. Did you see the policy at that**
23 **time?**
24 A. No, I did not.
25 **Q. Did you see the new policy that was**

15:08:46-15:09:51 Page 78

1 issued?
2 A. No, I did not.
3 **Q. Did you get any paperwork on that?**
4 A. No, I didn't.
5 **Q. Okay. Have you notified state authorities**
6 **that there was possible fraud in this insurance**
7 **matter before this Court?**
8 A. As I mentioned earlier, I am a
9 professional in the insurance industry. And I have
10 a responsibility with my license to advise the
11 Department of Insurance if I see anything that
12 appears to be an irregularity for them to
13 investigate. And it was my professional opinion
14 that there was an irregularity, and I notified the
15 Department of Insurance.
16 **Q. What was the irregularity?**
17 A. Well, the irregularity that I saw was that
18 -- I guess there were a couple. But number one was
19 the fact that a claim was made on a policy by an
20 individual representing himself as the trustee of a
21 trust where he wasn't the trustee of the trust.
22 **Q. Who was that individual?**
23 A. Robert Spallina.
24 **Q. And he was who?**
25 A. He was -- well, he was a number of things.

15:10:08-15:11:02 Page 79

1 He was a friend of Ted Bernstein's. He was a
2 lawyer. And he was the PR. And I think he also
3 wore the hat of trustee of the trust. So he was
4 wearing a lot of hats.
5 **Q. Okay. And did you contact or have your**
6 **attorney contacted the FBI regarding matters**
7 **involving this insurance?**
8 **MS. CRISPIN:** Objection, relevance.
9 **MR. FEAMAN:** Objection, calls for
10 attorney/client privileged information.
11 **THE COURT:** Sustained.
12 **MR. ELIOT BERNSTEIN:** So don't ask him
13 again? Okay. Okay.
14 **THE COURT:** Sustained on the
15 attorney/client privilege.
16 **MR. ELIOT BERNSTEIN:** Okay.
17 **BY MR. ELIOT BERNSTEIN:**
18 **Q. Are you aware that in the Illinois**
19 **litigation that there was a summary judgment**
20 **against my rights stating that I wasn't a**
21 **beneficiary and have standing in Simon Bernstein's**
22 **estate?**
23 **MR. ROSE:** Objection, relevance,
24 materiality.
25 **THE COURT:** Sustained.

15:11:16-15:12:16 Page 80

1 **BY MR. ELIOT BERNSTEIN:**
2 **Q. Are you aware that Simon Bernstein has you**
3 **as the successor trustee of his trust at one point,**
4 **and you would have been in charge of this insurance**
5 **litigation?**
6 **MR. ROSE:** Objection.
7 **THE WITNESS:** Yes, I am aware of that.
8 **BY MR. ELIOT BERNSTEIN:**
9 **Q. Okay. Are you aware that when Robert**
10 **Spallina filed that fraudulent insurance claim that**
11 **there was an investigation started at that time**
12 **into my father's death being from poisoning?**
13 **MR. ROSE:** Objection, relevance.
14 **MS. CRISPIN:** Join.
15 **THE COURT:** Sustained.
16 **BY MR. ELIOT BERNSTEIN:**
17 **Q. Well, I know -- well, let me ask you this.**
18 **Mr. Spallina failed to represent the estate's**
19 **interest in the Illinois insurance litigation; is**
20 **that correct?**
21 A. Not only failed to represent it; it
22 appeared to me that he was actually working adverse
23 to the estate.
24 **Q. Okay. And --**
25 **MR. ROSE:** Objection, move to strike,

15:13:09-15:14:20 Page 81

1 nonresponsive.
2 **THE COURT:** Can I please have the response
3 read back to me and the question?
4 (The following portion of the record was
5 read back.)
6 "Q. Well, let me ask you this.
7 Mr. Spallina failed to represent the estate's
8 interest in the Illinois insurance litigation;
9 is that correct?
10 "A. Not only failed to represent it; it
11 appeared to me that he was actually working
12 adverse to the estate."
13 **THE COURT:** Sustained. Next question.
14 **BY MR. ELIOT BERNSTEIN:**
15 **Q. Did you have to pay for this counsel,**
16 **Mr. Stamos, due to the fact that the estate had not**
17 **paid -- would not enter the case without your**
18 **payment? Is that why you are paying this?**
19 A. Yes.
20 **Q. You said you have some other**
21 **irregularities in the insurance policy in this**
22 **litigation that you brought to the attention of the**
23 **state. What were some of the other irregularities**
24 **you found in the insurance?**
25 A. Well, I am not sure that I would call them

15:14:42-15:15:45 Page 82

1 irregularities with the insurance, Eliot, but
2 things that I thought needed to be explored. I
3 mentioned one. The other is that as the claim was
4 denied from Heritage Life Insurance Company that
5 Robert Spallina submitted as the trustee of the
6 trust, that after that time Ted Bernstein submitted
7 or filed a lawsuit as a plaintiff claiming that he
8 was the trustee of the trust, all the while knowing
9 that Robert Spallina had filed a claim saying he
10 was the trustee of the trust.
11 And so the irregularity, again from my
12 perspective understanding insurance, is that a
13 licensed insurance agent, that being Ted Bernstein,
14 was aware that another person was making a claim to
15 be a trustee of a trust on a claim form when he
16 knew that that couldn't be if he was then
17 subsequently filing a lawsuit saying that he was
18 the plaintiff.
19 **MR. ROSE:** Objection, move -- sorry, I
20 thought he was finished.
21 **THE WITNESS:** I am saying that he was a
22 plaintiff in a lawsuit claiming that he was the
23 trustee of the trust that Spallina said that he
24 was the trustee of the trust on.
25 So again, it was just something that I

15:15:58-15:17:12 Page 83

1 thought as a licensed insurance person should
2 know that you don't participate in things that
3 may not be true when you are dealing with
4 claims to insurance companies.
5 **MR. ROSE:** Objection, move to strike,
6 nonresponsive, speculation, conjecture, not
7 based on any fact in the record or outside of
8 the record.
9 **THE COURT:** Can I have the question again,
10 madam court reporter, please.
11 (The following portion of the record was
12 read back.)
13 "Q. You said you have some other
14 irregularities in the insurance policy in this
15 litigation that you brought to the attention of
16 the state. What were some of the other
17 irregularities you found in the insurance?"
18 **THE COURT:** Overruled. Next question.
19 **BY MR. ELIOT BERNSTEIN:**
20 **Q. In the Illinois insurance litigation I was**
21 **the only party prior to you getting the estate to**
22 **intervene who was representing, to the best of your**
23 **knowledge, the estate's interest and basically**
24 **everybody else's interest, my children's interest,**
25 **et cetera; is that correct?**

15:17:34-15:18:12 Page 84

1 A. As far as I know.
2 **Q. Okay. And now that you've intervened in**
3 **the Illinois insurance litigation, you came in**
4 **amidst the prior personal representative's leaving**
5 **in fraud and failing to represent the estate in the**
6 **insurance litigation?**
7 **MR. ROSE:** Objection, argumentative.
8 **MS. CRISPIN:** Misstates the facts in
9 evidence.
10 **THE COURT:** Sustained.
11 **MR. ELIOT BERNSTEIN:** Got to think that
12 one.
13 **BY MR. ELIOT BERNSTEIN:**
14 **Q. Are you aware that I am the beneficiary of**
15 **the Stanley and Simon estates?**
16 **MR. ROSE:** Objection, calls for legal
17 conclusion, irrelevant, immaterial.
18 **THE COURT:** Sustained.
19 **BY MR. ELIOT BERNSTEIN:**
20 **Q. Are you aware it was alleged that I was**
21 **not a beneficiary with standing in the estate of my**
22 **father?**
23 **MR. ROSE:** Same objection.
24 **THE COURT:** Sustained.
25 ///

15:18:44-15:19:26 Page 85

1 **BY MR. ELIOT BERNSTEIN:**
2 **Q. Are you aware that my standing as a**
3 **beneficiary in the Illinois litigation made in part**
4 **the need for legal counsel that you would possibly**
5 **depending on the Court's ruling have to continue to**
6 **pay for?**
7 **MS. CRISPIN:** Objection, Your Honor, form,
8 complex, compound.
9 **THE COURT:** Sustained.
10 **MR. ELIOT BERNSTEIN:** I will let it go for
11 now. I am done.
12 **THE COURT:** Thank you.
13 **MS. CRISPIN:** Mine will be short.
14 **MR. ROSE:** Right.
15 **CROSS (WILLIAM STANSBURY)**
16 **BY MS. CRISPIN:**
17 **Q. Mr. Stansbury, I am Ashley Crispin. I**
18 **represent Mr. O'Connell. Nice to make your**
19 **acquaintance.**
20 A. Thank you. Nice to meet you.
21 **Q. After the May 2014 hearing your lawyer**
22 **negotiated for you during that hearing some**
23 **additional terms and things that you were going to**
24 **be able to get out of the payment towards the fees**
25 **of Mr. Stamos.**

15:19:39-15:20:46 Page 86

1 For example, isn't it true that you were
2 able to contact Mr. Brown at the time and
3 Mr. O'Connell to discuss strategy that you had with
4 respect to the case?
5 MR. FEAMAN: Objection to the form of the
6 question as to my negotiating at the hearing.
7 The transcript speaks for itself.
8 THE COURT: Overruled.
9 MR. FEAMAN: Objection, relevancy.
10 THE COURT: Overruled.
11 BY MS. CRISPIN:
12 Q. As part of your agreement -- I will
13 rephrase the question. As part of your agreement
14 to make the payment to Mr. Stamos you also had
15 the ability, and this was part of what you received
16 at the hearing, to contact the counsel in Chicago
17 and say, hey, have you considered this, I have
18 information to help your case? Is that true?
19 A. It's not the way I understood it. The
20 arguments that were going back and forth, and again
21 I am going from my recollection, were privy, I
22 think was the word that Mr. Morrissey was using,
23 and what I should and should not be privy to.
24 And I think Judge Colin had suggested that
25 attorneys talk about cases all the time. I am not

15:21:08-15:21:50 Page 87

1 sure that it was discussed or agreed to, although
2 that's just my recollection, that we had any input
3 with regard to direction, strategy or anything
4 along those lines. That Mr. Brown at that time was
5 the client and that Mr. Stamos was the attorney,
6 and that was the relationship.
7 Q. Mr. Feaman represented you at that
8 hearing, correct?
9 A. He did.
10 Q. And his positions that he put before the
11 court were your positions, correct?
12 A. Yes.
13 Q. So is it true that he asked for the
14 ability as pursuant to the agreement that you were
15 going to make to pay for the Illinois litigation,
16 that he asked for you to be able to pick up the
17 phone and call counsel in Chicago and say, hey,
18 have you considered this, I have information that
19 might help your case?
20 MR. FEAMAN: Objection.
21 MS. CRISPIN: That was my question.
22 MR. FEAMAN: A, the transcript speaks for
23 itself. And B, he should be able to read page
24 and line of the transcript if he is being asked
25 to comment on something I said at the hearing.

15:22:02-15:22:45 Page 88

1 THE COURT: I need to hear the question
2 again.
3 MS. CRISPIN: Your Honor, I will rephrase.
4 THE COURT: I was going to say, ask him
5 what you want to know. Yeah, I am just missing
6 it.
7 BY MS. CRISPIN:
8 Q. Did your counsel at the hearing negotiate
9 as part of you paying for the Chicago litigation
10 the ability to contact counsel in Chicago and give
11 your opinions and your strategy?
12 MR. FEAMAN: Same objection, the
13 transcript speaks for itself.
14 MS. CRISPIN: I am asking him, Your Honor.
15 THE COURT: Overruled.
16 THE WITNESS: Can I see the transcript?
17 BY MS. CRISPIN:
18 Q. I am asking you, do you know?
19 A. Again, I do recall there was conversations
20 about the interaction of the attorneys. And my
21 recollection is Judge Colin said, you guys always
22 get together and talk about things anyway, so I am
23 not going to get in the way of that.
24 Q. At that hearing you were willing that day
25 to pay for the Illinois litigation as long as

15:22:58-15:23:46 Page 89

1 somebody would intervene on behalf of the estate;
2 is that true?
3 A. Initially, yes, initially.
4 Q. And when you say initially, what does that
5 mean?
6 A. I would have to refer to a dictionary, but
7 generally speaking initially doesn't mean
8 permanently. It means at the beginning initially.
9 Q. Why is it that there's nothing in the
10 transcript where your counsel on your behalf put
11 forth when it would be that you would stop paying
12 for the litigation?
13 MR. FEAMAN: Objection to the form, asked
14 for a state of mind of other people why
15 something did not happen.
16 THE COURT: Sustained.
17 BY MS. CRISPIN:
18 Q. Now, you said that Mr. Stamos offered to
19 Mr. O'Connell a contingency fee or hourly fee
20 arrangement. And you said you thought that was a
21 benefit that you brought to the estate; is that
22 true?
23 A. It is.
24 Q. Okay. But that's because -- and that was
25 brought to Mr. O'Connell, that was because you

15:24:02-15:25:02 Page 90

1 weren't paying; isn't that true?
2 A. No, that's not true at all.
3 **Q. So the reason that there would be a waiver**
4 **of outstanding fees so that a contingency fee**
5 **arrangement could be pursued had nothing to do with**
6 **the fact that you had failed to make payment to**
7 **Mr. Stamos?**
8 A. I would have to go back and look at the
9 record in terms of what was billed and what was
10 paid through December-ish of 2015 when Mr. Stamos
11 offered Mr. O'Connell, I believe that's when it
12 was, the opportunity to go on a contingency. But
13 my recollection is that the fees were paid
14 currently.
15 The other input is that if I confer a
16 benefit to the estate and the estate has to pay me
17 back the money, or Mr. Stamos is willing to waive
18 that and just roll it into the contingency fee, why
19 would I create an extra expense for the estate when
20 I didn't have to? So it seemed silly for me to pay
21 something to a lawyer that I would have to get paid
22 back from the estate when he already agreed to
23 waive it, and it would only be a cost item if he
24 was able to get a benefit for the estate.
25 **Q. But you haven't moved here today for you**

15:25:15-15:26:00 Page 91

1 **to change your fee arrangement that you have with**
2 **the estate which currently you are paying or you**
3 **are supposed to be paying, you haven't moved to**
4 **convert that into a contingency; is that true?**
5 A. I don't know that I have the right or
6 opportunity to do that. I think that's again the
7 client is the estate, not Bill Stansbury. I'm just
8 the bank.
9 **Q. Did you believe currently that you are**
10 **obligated to pay Mr. Stamos's fees?**
11 **MR. FEAMAN:** Madam reporter, did you get
12 his last statement in answer to the question,
13 "I am just the banker"?
14 **THE REPORTER:** I heard "I'm just the
15 bank."
16 **MR. FEAMAN:** Okay.
17 **THE COURT:** That's what he said.
18 **MR. FEAMAN:** Okay. Thank you.
19 **THE WITNESS:** Say it again.
20 **MS. CRISPIN:** Madam court reporter,
21 please.
22 (The following portion of the record was
23 read back.)
24 "Q. Did you believe currently that you
25 are obligated to pay Mr. Stamos's fees?"

15:26:12-15:26:53 Page 92

1 **THE WITNESS:** I have an agreement with
2 Mr. Stamos that I would initially fund the
3 litigation. Mr. Stamos has agreed that he will
4 take a contingency fee. Mr. Stamos's fee will
5 be waived, all hourly fees will be waived. If
6 the estate chooses not to take a contingency
7 fee, they don't have to; they can do an hourly
8 fee. So it's up to the estate to figure out
9 whether they want to have the -- it's a win-win
10 for them. Either they win because he is able
11 to collect money for the estate, or he doesn't
12 win in which case the estate doesn't spend a
13 nickle.
14 **BY MS. CRISPIN:**
15 **Q. Okay. But right now the estate hasn't**
16 **entered into a contingency fee arrangement with**
17 **Mr. Stamos, correct?**
18 A. Yeah. That's beyond my comprehension why
19 they haven't, but that's another delay that seems
20 to go on forever.
21 **MS. CRISPIN:** Your Honor, move to strike,
22 nonresponsive.
23 **THE COURT:** Sustained.
24 **BY MS. CRISPIN:**
25 **Q. The answer is, no, they haven't, right?**

15:27:03-15:27:43 Page 93

1 **They have not entered into -- Mr. O'Connell has not**
2 **entered into a contingency fee arrangement with**
3 **Mr. Stamos?**
4 A. Well, I am not privy to Mr. Stamos's and
5 Mr. O'Connell's conversations. But if you say they
6 haven't, then I have to believe that they haven't.
7 **Q. And you understand that there's an**
8 **outstanding balance in excess of \$30,000?**
9 A. There's a balance due, yes.
10 **Q. And do you owe it? Do you believe that**
11 **you are required to pay it?**
12 **MR. FEAMAN:** Calls for a legal conclusion,
13 objection.
14 **THE COURT:** Overruled.
15 **THE WITNESS:** I think when the estate has
16 the opportunity to roll that fee into a
17 contingency agreement, then for me to pay it
18 would be irresponsible on my part.
19 **BY MS. CRISPIN:**
20 **Q. That's not what I am asking you. My**
21 **question is they are currently owed over --**
22 **Mr. Stamos is currently owed over \$30,000. Are you**
23 **obligated to pay it?**
24 **MR. FEAMAN:** Objection, asked and
25 answered.

15:27:50-15:28:47 Page 94

1 MS. CRISPIN: He has not answered it.
2 THE COURT: Overruled.
3 THE WITNESS: Do I believe I owe the
4 money?
5 BY MS. CRISPIN:
6 Q. Yes.
7 A. I believe that I agreed to initially fund
8 it. Initially was several years ago. We are long
9 beyond initially.
10 Q. Do you believe you need a court order that
11 would permit you to stop funding it?
12 MR. FEAMAN: Objection, legal conclusion.
13 THE COURT: Overruled. It's what he
14 thinks.
15 THE WITNESS: If I evaporated on my way
16 home from this court, I believe that the estate
17 would continue to argue that they have a right
18 to that insurance benefit. I don't believe
19 that there is any obligation for me to continue
20 to pay for something when the attorney has
21 agreed to waive the fee in consideration for a
22 contingency agreement.
23 MS. CRISPIN: Your Honor, I would ask that
24 the witness answer the question.
25 THE COURT: He has answered. Overruled.

15:29:01-15:29:48 Page 95

1 He has given his answer.
2 BY MS. CRISPIN:
3 Q. Do you have any intention to make the
4 payment for the \$30,000 plus that's owed to
5 Mr. Stamos if the Court does not relieve you of
6 your obligation to pay?
7 MR. FEAMAN: Objection, calls for
8 speculation, and could involve the --
9 THE COURT: Sustained.
10 MS. CRISPIN: Nothing further.
11 THE COURT: All right. We are going to
12 stop here. I made a note. We are going to --
13 you can get off the stand, sir.
14 THE WITNESS: Thank you.
15 THE COURT: We are going to come back on
16 the date we had already set, that June 28th.
17 Everybody was free. Everybody was available.
18 We already have. We will start with this
19 motion first. And we will conclude that motion
20 before we begin the next motion. All right?
21 MR. ELIOT BERNSTEIN: One thing, Your
22 Honor, because I am confused about your order.
23 I do have kids, and I can't tell them I am
24 going to be in court forever. Is there a way
25 we can say that at the point that it was

15:30:02-15:30:37 Page 96

1 scheduled for an hour, whatever, we get some
2 semblance so we can notify our families, just
3 notify? I will sleep here. I don't care if
4 this goes on two years straight. I am ready to
5 put him in prison. So I am just trying to
6 figure out how I tell my family I am imprisoned
7 in court until the judge lets me go according
8 to this order.
9 THE COURT: All right. What I said is the
10 Court has the discretion to extend the various
11 hearings. And what I mean is exactly what I
12 said. Certainly my deputies go home by --
13 usually I end by 5:00. I have to. If not,
14 it's overtime. So the matters will always be
15 concluded by 5:00.
16 MR. ELIOT BERNSTEIN: All right. That
17 will help.
18 THE COURT: Thank you so much. All right.
19 Court is in recess everyone. Thank you very
20 much. Is it Friday? Yes. Have a good weekend
21 everyone. Thank you.
22
23 (The proceeding adjourned at 3:30 p.m.)
24
25

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1 C E R T I F I C A T E
2 - - -
3
4 The State of Florida
5 County of Palm Beach
6
7 I, Lisa Mudrick, RPR, FPR, certify that I
8 was authorized to and did stenographically report
9 the foregoing proceedings, pages 1 through 96, and
10 that the transcript is a true record.
11
12 Dated June 9, 2017.
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understood (4) 10:9,12;64:25;86:19	violation (4) 11:3;46:15,18;65:25	willy-nilly (1) 41:18	Y	2
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<p style="text-align: center;">3</p>	<p>70,000 (1) 40:4</p>			
<p>3 (2) 56:10,16 3:30 (1) 75:23 3:30 pm (1) 96:23 30 (1) 17:23 300 (1) 23:12 340 (1) 24:2 35 (4) 38:4,7,13;60:14</p>	<p style="text-align: center;">8</p> <p>8 (6) 68:7,8;69:14,15,16, 17 817.234 (1) 66:1</p> <p style="text-align: center;">9</p> <p>909 (1) 24:1</p>			
<p style="text-align: center;">4</p>				
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<p style="text-align: center;">5</p>				
<p>5 (3) 57:3,15;59:2 5/23/14 (1) 54:4 5/26 (1) 28:15 5:00 (2) 96:13,15 50 (1) 45:11 56988413 (1) 28:14 5th (1) 15:17</p>				
<p style="text-align: center;">6</p>				
<p>6 (3) 58:15,23;59:3 6/16/14 (1) 54:15 6920 (1) 61:17</p>				
<p style="text-align: center;">7</p>				
<p>7 (2) 59:18,24 70 (4) 41:9,10,13;45:12</p>				

THE SIMON LAW FIRM

303 EAST WACKER DRIVE

SUITE 2725

CHICAGO, IL 60601-5210

PHONE: (312) 819-0730 • FAX: (312) 819-0773

DAVID B. SIMON*

E-Mail: dsimon@chicago-law.com

ADAM M. SIMON

E-Mail: asimon@chicago-law.com

*ALSO ADMITTED IN CA

VIA CERTIFIED 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.

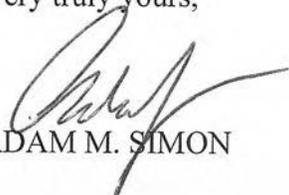
If you review the Settlement Agreement, you will see that your siblings have provided a mechanism for you to sign on and consent to the Settlement Agreement and accept your share. In the event you consent, once the funds are distributed I will distribute the funds to you, after all rights to appeal have 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,)

v.)

Case No. 13 cv 3643
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. Bernstein.

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 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.*

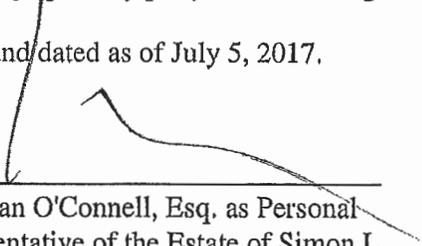
14. To effectuate this Settlement Agreement and the dismissal of the Lawsuit the Parties shall file a joint motion to dismiss pursuant to the Settlement Agreement and seek entry of an Agreed Order or Agreed Orders as follows:

- 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

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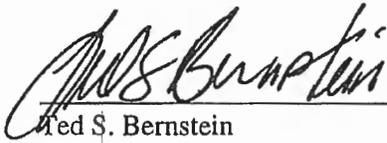
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Signed and dated as of July 5, 2017.

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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Signed and dated as of July 5, 2017.

By: Brian O'Connell, Esq. as Personal
Representative of the Estate of Simon L.
Bernstein

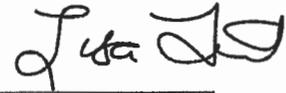
Ted S. Bernstein as Trustee of the Simon
Bernstein Irrevocable Insurance Trust Dtd
6/21/95

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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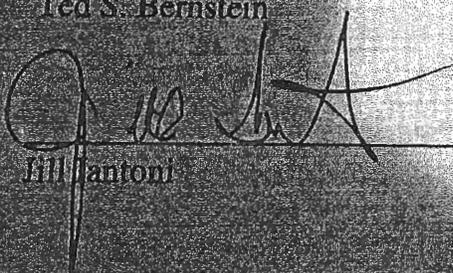
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Signed and dated as of July 5, 2017.

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

Lisa Friedstein

AS TO ELIOT

ACCEPTED AND AGREED
WITHIN 15 DAYS, signed by

Eliot Bernstein

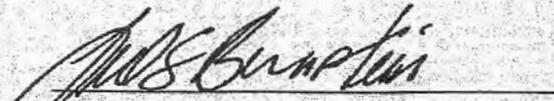
c. the parties shall execute such additional documents as might reasonably be necessary to accomplish and effectuate the terms of this Settlement Agreement, including, a declaratory order to be entered by the court, if necessary.

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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

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**

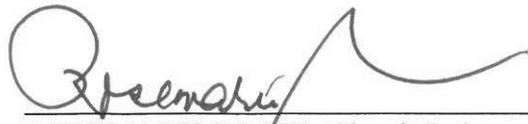
THIS CAUSE having come upon Successor Personal Representative, Brian M. O'Connell's, Verified Motion for Approval of Settlement Agreement Entered in Illinois Federal Action ("Motion"), and the Court being duly advised on the premises, it is thereupon

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 _____
day of 10/19/2017, 2017.



ROSEMARY SCHER, Circuit Judge
ROSEMARIE


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

<p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, PA. 505 S. Flagler Dr., Suite 600 West Palm Beach, FL 33401 (561) 355-6991 arose@mrachek-law.com mchandler@mrachek-law.com</p>	<p>John P. Morrissey, Esq. 330 Clematis St., Suite 213 West Palm Beach, FL 33401 john@jmorrisseylaw.com</p>	<p>Diana Lewis obo Joshua, Jacob and Daniel Bernstein. ADR & Mediation Services, LLC 2765 Tecumseh Drive West Palm Beach, FL 33409 (561) 758-3017 dzlewis@aol.com</p>
<p>Peter Feaman, Esq. Peter M. Feaman, P.A. 3695 Boynton Beach Blvd., Suite 9 Boynton Beach, FL 33436 pfeaman@feamanlaw.com</p>	<p>Shendell & Pollock, P.L. 2700 N. Military Trail, suite 150 Boca Raton, FL 33431 241-2323 Fax: 241-2330 Gary R. Shendell, Esq. gary@shendellpollock.com estella@shendellpollock.com grs@shendellpollock.com Kenneth S. Pollock, Esq. ken@shendellpollock.com britt@shendellpollock.com grs@shendellpollock.com Matthew A. Tornincasa, Esq. matt@shendellpollock.com robyne@shendellpollock.com grs@shendellpollock.com</p>	<p>Max Friedstein 2142 Churchill Lane Highland Park, IL 60035</p>
<p>Eliot Bernstein 2753 N.W. 34th St. Boca Raton, FL 33434 iviewit@iviewit.tv</p>	<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com Lisa.friedstein@gmail.com</p>
<p>Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents & Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	<p>Brian M. O'Connell, Esq. Ashley Crispin Ackal, Esq. Ciklin Lubitz & O'Connell 515 N. Flagler Dr., 20th FL West Palm Beach, FL 33401 service@ciklinlubitz.com probateservice@ciklinlubitz.com</p>	<p>Robert Spallina, Esq. rspallina@comcast.net</p>

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	
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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 Bernstein, 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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SHARON R. BOCK
 Clerk & Comptroller
 Palm Beach County

CASE NUMBER: 50-2014-CP-003698-XXXX-NB
 CASE STYLE: SHIRLEY BERNSTEIN

Dockets & Documents ▾

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Docket Number	Effective Date	Description
1	08/06/2014	PENDING
2	08/06/2014	CPFF/TR
3	08/06/2014	COMPLAINT
4	08/07/2014	ADDITIONAL COMMENTS
5	08/07/2014	RECEIPT FOR PAYMENT
6	08/08/2014	SUMMONS ISSUED
7	08/12/2014	RECEIPT FOR PAYMENT
8	08/20/2014	AGREED ORDER
9	08/22/2014	SUBPOENA RETURNED / SERVED
10	08/22/2014	SUBPOENA RETURNED / SERVED

11	08/22/2014	SUBPOENA RETURNED / SERVED
12	08/25/2014	SUMMONS ISSUED
13	08/26/2014	MOTION
14	08/26/2014	RECEIPT FOR PAYMENT
15	08/26/2014	NOTICE OF HEARING
16	08/29/2014	MOTION TO WITHDRAW
17	09/03/2014	MOTION
18	09/03/2014	SUMMONS ISSUED
19	09/03/2014	SUMMONS ISSUED
20	09/03/2014	SERVICE RETURNED (NUMBERED)
21	09/05/2014	CROSS/COUNTER/3RD - CP,GA,MH
22	09/05/2014	APPL AND AFF OF INDIGENCY
23	09/05/2014	ANSWER
24	09/05/2014	COUNTERCLAIM
25	09/05/2014	DECLARATION
26	09/08/2014	RECEIPT FOR PAYMENT
27	09/08/2014	NOTICE OF HEARING
28	09/08/2014	APPL AND AFF OF INDIGENCY
29	09/12/2014	PETITION
30	09/16/2014	PROOF OF SERVICE

31	09/16/2014	PROOF OF SERVICE
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34	10/03/2014	COMPLAINT
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36	10/10/2014	NOTICE OF APPEARANCE
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39	11/20/2014	ANSWER
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41	11/24/2014	NOTICE
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43	11/25/2014	REQUEST TO PRODUCE
44	11/25/2014	REQUEST TO PRODUCE
45	11/25/2014	NOTICE OF SERVICE
46	11/25/2014	NOTICE OF SERVICE
47	11/26/2014	AFFIDAVIT
48	12/03/2014	ORDER OF DEFAULT
49	12/05/2014	PETITION
50	12/30/2014	MOTION TO DISMISS

51 01/08/2015 NOTICE OF HEARING

52 01/12/2015 MOTION

53 01/15/2015 NOTICE OF HEARING

54 01/29/2015 ORDER

55 01/30/2015 MOTION TO COMPEL

56 02/05/2015 ORDER

57 02/06/2015 NOTICE OF HEARING

58 02/17/2015 ANSWER & AFFIRMATIVE DEFENSES

59 02/24/2015 MOTION

60 02/27/2015 MOTION TO STRIKE

61 03/13/2015 NOTICE OF HEARING

62 03/21/2015 NOTICE

63 03/23/2015 MOTION

64 03/23/2015 NOTICE OF HEARING

65 03/25/2015 NOTICE OF HEARING

66 03/31/2015 ORDER GRANTING

67 04/02/2015 MOTION

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71	04/16/2015	MOTION
72	04/17/2015	NOTICE OF HEARING
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74	05/05/2015	ORDER
75	05/05/2015	ORDER
76	05/05/2015	ORDER DENYING MOTION
77	05/06/2015	ORDER
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79	05/14/2015	PETITION
80	05/18/2015	ORDER DENYING
81	05/19/2015	ORDER OF RECUSAL
82	05/19/2015	NOTICE OF REASSIGNMENT
83	05/20/2015	ANSWER & AFFIRMATIVE DEFENSES
84	05/26/2015	ORDER DENYING
85	06/10/2015	TRUE COPY
86	06/10/2015	TRUE COPY
87	06/10/2015	TRUE COPY
88	06/15/2015	ORDER
89	06/18/2015	NOTICE OF REASSIGNMENT
90	06/18/2015	NOTICE OF UNAVAILABILITY

91	09/24/2015	ORDER SETTING HEARING
92	10/16/2015	TRUE COPY
93	11/13/2015	NOTICE
94	11/13/2015	NOTICE
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100	11/30/2015	EVIDENCE/EXHIBIT LIST FILED
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106	12/08/2015	ORDER DENYING
107	12/09/2015	MOTION
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110	12/12/2015	REQUEST

111	12/15/2015	MOTION
112	12/15/2015	MOTION
113	12/16/2015	FINAL JUDGMENT BOOK 27999 PAGE 1758
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149	01/19/2016	APPL AND AFF OF INDIGENCY
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154	02/03/2016	ORDER
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158	02/10/2016	NOTICE OF HEARING
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160	02/17/2016	ORDER DENYING
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164	03/03/2016	RE-NOTICE OF HEARING
165	03/09/2016	NOTICE OF TAKING DEPOSITION
166	03/11/2016	EXHIBIT LIST
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168	03/15/2016	NOTICE NOTICE TO COURT REGARDING SELECTION OF GUARDIAN AD LITEM F/B TED BERNSTEIN
169	03/16/2016	OBJECTION
170	03/18/2016	MOTION FOR PROTECTIVE ORDER
171	03/22/2016	NOTICE OF HEARING

172	03/29/2016	NOTICE OF APPEAL CIVIL BOOK 28200 PAGE 232-237
173	03/29/2016	APPL AND AFF OF INDIGENCY
174	03/30/2016	NOTICE OF CANCELLATION
175	04/04/2016	ORDER APPOINTING DIANA LEWIS AS GUARDIAN AD LITEM FOR ELIOT BERNSTEIN'S CHILDREN - SIGNED 4/04/16 JUDGE PHILLIP
176	04/04/2016	SUBPOENA RETURNED / SERVED
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 BERNSTEIN 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
183	04/05/2016	PETITIONER EVIDENCE #15 CORRESPONDENCE FROM TESCHER & SPALLINA TO SIMON BERNSTEIN DTD 5/24/12
184	04/05/2016	PETITIONER EVIDENCE #18 DEATH CERTIFICATE OF SIMON BERNSTEIN DTD 9/18/12
185	04/05/2016	PETITIONER EVIDENCE #10 NOTES DTD 3/12/08
186	04/05/2016	PETITIONER EVIDENCE #5 AMENDED AND RESTATED TRUST AGREEMENT SIMON L BERNSTEIN DTD 7/25/12
187	04/05/2016	PETITIONER EVIDENCE 40A COMPOSITE
188	04/05/2016	PETITIONER EVIDENCE #7 BERNSTEIN FAMILY FLOW CHART
189	04/05/2016	PETITIONER EVIDENCE #3 FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08

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
192	04/05/2016	PETITIONER EVIDENCE #1 WILL OF SHIRLEY BERNSTEIN DTD 5/20/08
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
195	04/05/2016	DEFENSE EVIDENCE #3 PETITION FOR DISCHARGE CASE # 2011CP000653 DTD 4/09/12
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
197	04/06/2016	INDEX TO RECORD ON APPEAL
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199	04/07/2016	NOTICE OF FILING
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202	04/11/2016	CERTIFICATE OF SERVICE
203	04/13/2016	APPL AND AFF OF INDIGENCY
204	04/19/2016	ORDER DENYING MOTION FOR ORDER SHOW CAUSE DTD APTIL 19, 2016 JUDGE PHILLIPS
205	04/25/2016	NOTICE OF COMPLIANCE
206	05/02/2016	NOTICE OF APPEAL CIVIL BOOK 28278 PAGE 198-203
207	05/02/2016	APPL AND AFF OF INDIGENCY

208	05/03/2016	AUTOMATIC RECEIPT APPELLATE FILING
209	05/04/2016	MEMORANDUM
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215	05/23/2016	PETITIONER EVIDENCE MOVIAVT - EXHIBIT LIST A - LIST OF COUNTER COMPLAINT DEFTS TO BE INCLUDED IN THE AMENDED COMPLAINT
216	05/23/2016	RESPONDENT EVIDENCE DFT ELLIOT BERNSTEIN - CORRESPONDENCE BETWEEN CANDICE SCHWAGER AND ALAN ROSE
217	05/23/2016	PETITIONER EVIDENCE OPPENHEIMER - ORDER FROM 4/20/15 CONTINUED HEARING ON RESPONDENT'S OBJECTION TO FINAL ACCOUNTING
218	05/23/2016	PETITIONER EVIDENCE OPPENHEIMER - RESPONSE IN OPPOSITION TO OMNIBUS MOTION - FILED 1/07/16
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
220	06/09/2016	TRUE COPY
221	06/22/2016	NOTICE OF MEDIATION
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223	07/01/2016	AUTOMATIC RECEIPT APPELLATE FILING

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
226	09/21/2016	MEDIATION REPORT
227	09/22/2016	TRUE COPY
228	09/27/2016	NOTICE OF APPEAL CIVIL BOOK 28608 PAGE 1876-1888
229	09/27/2016	NOTICE OF FILING
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234	10/10/2016	DIRECTIONS TO CLERK
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237	11/07/2016	MOTION TO APPROVE COMPROMISE & SETTLEMENT, APPT. A TRUSTEE FOR THE TRUSTS CREATED FOR D.B., JA.B. & JO.B, AND DETERMINE COMPENSATION FOR GRDN AD LITEM F/B TED S., BERNSTEIN
238	11/07/2016	NOTICE OF HEARING
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240	11/10/2016	CERTIFICATE OF SERVICE

241	11/15/2016	OBJECTION
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243	11/15/2016	NOTICE OF HEARING
244	11/22/2016	NOTICE OF HEARING
245	02/15/2017	MOTION TO APPROVE MEDIATION SETTLEMENT AGREEMENT WITH TESCHER & SPALLINA, P.A. F/B TED S. BERNSTEIN
246	02/22/2017	TRUE COPY
247	03/28/2017	TRUE COPY
248	04/28/2017	MOTION TRUSTEES MOTION FOR ENTRY OF STANDING ORDER GOVERNING HEARINGS F/B TEDD S BERNSTEIN
249	05/08/2017	NOTICE OF HEARING
250	05/09/2017	NOTICE OF HEARING
251	05/22/2017	ORDER APPROVING SETTLEMENT; DISMISSING REMAINING CLAIMS AND RETAINING JURISDICTION TO ENFORCE SETTLEMENT, APPOINT A TRUSTEE FOR CERTAIN TRUSTS AND DETERMINE COMPENSATION FOR GUARDIAN AD LITEM JDG R. SCHER 05/22/17
252	05/23/2017	ORDER ORDER GOVERNING HEARINGS SIGNED BY JUDGE R SCHER ON MAY 23, 2017
253	06/06/2017	APPL AND AFF OF INDIGENCY
254	06/07/2017	APPL AND AFF OF INDIGENCY
255	06/21/2017	NOTICE OF APPEAL CIVIL BOOK 29178 PAGE 1908-1923
256	06/21/2017	NOTICE OF FILING
257	06/21/2017	E-FILED DUPLICATE FILING

258	06/21/2017	E-FILED DUPLICATE FILING
262	06/23/2017	MANDATE
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260	06/26/2017	ACKNOWLEDGMENT OF NEW CASE
261	07/18/2017	TRUE COPY
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
264	07/27/2017	NOTICE OF HEARING
265	08/04/2017	MOTION TO HOLD ELIOT BERNSTEIN IN CONTEMPT OF COURT OR ISSUE ORDER TO SHOW CAUSE AGAINST ELIOT BERNSTEIN AND FOR SANCTIONS F/B MOVANTS, TED S BERNSTEIN, AS SUCCESSOR TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST
266	08/23/2017	TRUE COPY
267	09/05/2017	ORDER GRANTING TED BERNSTEIN MOTION FOR LEAVE TO FILE MOTION TO HOLD ELIOT BERNSTEIN IN CONTEMP OF COURT AND FOR SANCTIONS - SIGNED 9/05/17 JUDGE SCHER
268	09/13/2017	ORDER TO SHOW CAUSE
269	09/15/2017	ORDER TO SHOW CAUSE
270	09/20/2017	NOTICE OF FILING
271	10/27/2017	MOTION TO MODIFY ORDER DATED MAY 22, 2017; TO DIRECT PAYMENT FOR BENEFIT OF ELIOT'S CHILDREN TO COURT REGISTRY; AND TO DETERMINE COMPENSATION FOR GUARDIAN AD LITEM AND DISCHARGE GUARDIAN F/B TED S BERNSTEIN



SHARON R. BOCK
 Clerk & Comptroller
 Palm Beach County

CASE NUMBER: 50-2015-CP-001162-XXXX-NB
 CASE STYLE: SIMON BERNSTEIN

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34	03/08/2016	MOTION FOR APPOINTMENT OF A GUARDIAN AD LITEM TO REPRESENT THE INTERESTS OF ELIOT BERNSTEIN'S CHILDREN - F/B TED BERNSTEIN
35	03/08/2016	NOTICE OF HEARING
36	03/09/2016	MOTION SUCCESSOR TRUSTEES AMENDED MOTION TO DISMISS FOR LACK OF STANDING OR, ALTERNATIVELY, TO APPOINT A GUARDIAN AD LITEM TO REPRESENT THE INTEREST OF ELIOT BERNSTEIN'S CHILDREN F/B TED S BERNSTEIN
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38	03/09/2016	NOTICE OF HEARING
39	04/08/2016	ORDER DISMISSING ACTION FOR LACK OF STANDING SIGNED JUDGE JOHN L PHILLIPS 04-08-16 BOOK 28224 PAGE 667-669
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
42	06/06/2017	APPL AND AFF OF INDIGENCY
43	06/07/2017	APPL AND AFF OF INDIGENCY



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CASE STYLE: ALEXANDRA BERNSTEIN

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14	10/10/2012	WILL
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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

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

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

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

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

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

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:

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

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

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

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

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

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 REIMBURSEMENT OF ADVANCED FUNDS - F/B WILLIAM STANSBURY

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

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 BENFIICIARY 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 E.P.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

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

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

506	11/22/2016	NOTICE OF HEARING
507	11/28/2016	RESPONSE TO: OMNIBUS RESPONSE IN OPPOSITION TO STANSBURY'S 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

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 NON-PARTY 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

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 INCLUDING DISCOVERY AND DEPOSITIONS, WITNESS LISTS, EXHIBITS & PROPER TIME ALLOTTED 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

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 BERNSTEIN'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

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

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

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 DENYING 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

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 STANSBURY'S 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

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 BERNSTEIN - 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

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 REPRESENTATIVES "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

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 COMPLIANCE, 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

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 APPOINTING 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

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 REIMBURSEMENT 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

721	10/17/2017	ORDER GRANTING SUCCESSOR P.R.'S MOT. FOR ORDER AUTHORIZING ESTATE'S WITNESS JAMES STAMOS, TO APPEAR AT EVIDENTIARY HRG. SCHEDULED FOR 10/19/17 ON SUCCESSOR P.R.'S VERIFIED MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT ENTERED IN ILLINOIS FEDERAL ACTION JDG R. SCHER 10/17/17
722	10/19/2017	ORDER ON SUCCESSOR PERSONAL REPRESENTATIVES VERIFIED MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT ENTERED IN ILLINOIS FEDERAL ACTION GRANTED SIGNED JUDGE ROSEMARIE SCHER
723	10/26/2017	EXHIBIT LIST
724	10/27/2017	MOTION TO DIRECT PAYMENTS FOR BENEFIT OF ELIOT'S CHILDREN TO COURT REGISTRY IN LIEU OF APPOINTING TRUSTEE; AND TO DETERMINE COMPENSATION FOR GUARDIAN AD LITEM AND DISCHARGE GUARDIAN F/B TED S BERNSTEIN
726	11/01/2017	TRUE COPY
725	11/02/2017	INVOICE



SHARON R. BOCK
 Clerk & Comptroller
 Palm Beach County

CASE NUMBER: 50-2011-CP-000653-XXXX-NB
 CASE STYLE: TESCHER & SPALLINA, P.A. (& ALL PARTNERS, ASSOC.)

Dockets & Documents ▾

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1	02/10/2011	ADDITIONAL COMMENTS
2	02/10/2011	CPFF/FO-PP-PR-GA
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4	02/10/2011	RECEIPT FOR PAYMENT
5	02/10/2011	PETITION FOR ADMINISTRATION
6	02/10/2011	DEATH CERT PROBATE DECEDENT
7	02/10/2011	WILL BOOK 024364 PAGE 00792
8	02/10/2011	NOTICE OF TRUST
9	02/10/2011	ORDER ADMITTING WILL
10	02/10/2011	OATH

11 02/10/2011 LETTERS OF ADMINISTRATION BOOK 024364 PAGE 00776

12 04/06/2011 NOTICE OF FILING

13 04/06/2011 NOTICE OF FILING

14 04/25/2011 PROOF OF SRV NOT TO CREDITORS

15 08/01/2011 PROOF OF SERV NOTICE OF ADMIN

16 09/09/2011 INVENTORY - ESTATE

17 10/06/2011 PROOF OF SERVICE

18 10/24/2012 AFFIDAVIT/STMNT RE: CREDITORS

19 10/24/2012 PETITION FOR DISCHARGE

20 10/24/2012 WAIVER

21 10/24/2012 WAIVER

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23 10/24/2012 WAIVER

24 10/24/2012 WAIVER

25 10/24/2012 WAIVER

26 10/24/2012 NON-TAX CERT/RCPT/AFFIDAVIT

27 10/24/2012 PROBATE CHECKLIST

28 11/06/2012 EXPARTE CLERKS MEMO

29 11/19/2012 WAIVER

30 11/19/2012 WAIVER

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35	01/03/2013	FINAL DISPOSITION SHEET
36	01/03/2013	ORDER OF DISCHARGE BOOK 025696 PAGE 00720
37	01/03/2013	DISPOSED BY JUDGE
38	05/06/2013	PETITION
39	05/07/2013	MEMORANDUM
40	05/08/2013	CPFF/REOPEN (\$50.00)
41	05/08/2013	RECEIPT FOR PAYMENT
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44	05/29/2013	PETITION
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50	08/28/2013	NOTICE

51	08/29/2013	PROOF OF SERVICE
52	09/04/2013	NOTICE
53	09/05/2013	ORDER SETTING HEARING
54	09/11/2013	NOTICE OF APPEARANCE
55	09/16/2013	NOTICE OF FILING
56	09/25/2013	AGREED ORDER
57	09/25/2013	ORDER
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62	10/11/2013	OATH
63	10/16/2013	NOTICE OF FILING
64	10/17/2013	NOTICE OF HEARING
65	10/17/2013	MOTION
66	10/22/2013	NOTICE OF APPEARANCE
67	10/23/2013	WAIVER
68	10/23/2013	WAIVER
69	10/23/2013	WAIVER
70	10/23/2013	ORDER DENYING

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72 10/24/2013 NOTICE

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74 10/25/2013 WAIVER AND CONSENT

75 10/29/2013 LETTERS OF ADMINISTRATION BOOK 26417 PAGE 1878

76 11/01/2013 REQUEST TO PRODUCE

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143	06/10/2015	TRUE COPY
144	06/10/2015	TRUE COPY
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147	10/16/2015	TRUE COPY
148	12/23/2015	NOTICE OF UNAVAILABILITY
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150	12/28/2015	EMERGENCY MOTION

151	01/04/2016	ORDER DENYING
155	01/15/2016	NOTICE OF APPEAL CIVIL BOOK 28054 PAGE 1472-1491
156	01/20/2016	INVOICE
157	01/21/2016	AUTOMATIC RECEIPT APPELLATE FILING
158	01/21/2016	AUTOMATIC RECEIPT APPELLATE FILING
159	04/01/2016	INDEX TO RECORD ON APPEAL
160	04/06/2016	AUTOMATIC RECEIPT APPELLATE FILING
161	05/02/2016	APPL AND AFF OF INDIGENCY
162	06/09/2016	TRUE COPY
163	06/22/2016	NOTICE OF MEDIATION
164	08/10/2016	PETITION FOR DISCHARGE
165	08/10/2016	AMENDED
166	09/21/2016	MEDIATION REPORT
167	11/15/2016	PETITION
168	11/15/2016	NOTICE OF HEARING
169	11/21/2016	PAID \$5.00 ON RECEIPT 1925756
172	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
171	11/22/2016	NOTICE OF HEARING

173	11/28/2016	MOTION NOV 29, 2016 HEARING STATUS CONFERENCE LISTING OF OPEN ISSUES AND PENDING FILINGS F/B ELIOT BERNSTEIN
174	05/08/2017	NOTICE OF HEARING
175	05/09/2017	NOTICE OF HEARING
176	05/18/2017	MOTION MOTION OBJECTION-OPPOSITION TO UMC HEARING ON TED S BERNSTEINS AMENDED RENEWED PETITION TO RE CLOSE ESTATE AND FOR DISCHARGE OF SUCCESSOR PR F/B ELIOT I BERNSTEIN
177	06/06/2017	APPL AND AFF OF INDIGENCY
178	06/07/2017	APPL AND AFF OF INDIGENCY
179	06/23/2017	MANDATE

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION

SHIRLEY BERNSTEIN, File No. 502011 CP000653XXXXSB

Deceased.

PETITION FOR ADMINISTRATION
(testate Florida resident)

2011 FEB 10 AM 8:40
SHARON R. JACOBS
CLERK OF COURT
PALM BEACH COUNTY
SOUTH CITY BLVD.

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 Boca Raton, FL 33496	husband	adult
Ted S. Bernstein	880 Berkeley Street Boca Raton, FL 33487	son	adult
Pamela B. Simon	950 North Michigan Avenue, Suite 2603 Chicago, IL 60606	daughter	adult
Eliot Bernstein	2753 NW 34 th St. Boca Raton, FL 33434	son	adult



Jill Iantoni	2101 Magnolia Lane Highland Park, IL 60035	daughter	adult
Lisa S. Friedstein	2142 Churchill Lane 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.

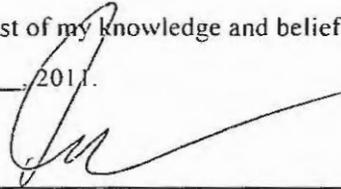
8. The original of the decedent's last will, dated May 20, 2008, is being filed simultaneously with this Petition with the Clerk of the Court for Palm Beach County, Florida.

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.

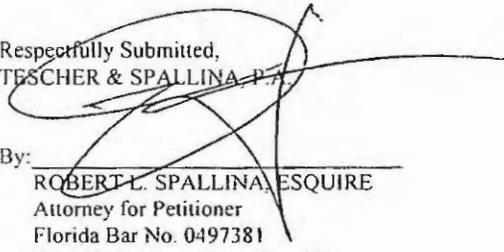
Under penalties of perjury, I declare that I have read the foregoing Petition for Administration, and the facts alleged are true, to the best of my knowledge and belief.

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



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF PROBATE DIVISION 12
SIMON L. BERNSTEIN, File No. _____
Deceased. 502012 CP00 4391 XXXXSB

2012 OCT -2 AM 8:58
SHARON A. BOURG, CLERK
PALM BEACH COUNTY, FL
SOUTH CTY BRANCH-FILED

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 Boca Raton, FL 33487	son	adult
Pamela B. Simon	950 North Michigan Ave. Suite 2603 Chicago, IL 60606	daughter	adult
Eliot Bernstein	2753 NW 34 th St. Boca Raton, FL 33434	son	adult
Jill Iantoni	2101 Magnolia Lane Highland Park, IL 60035	daughter	adult



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

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APPEARANCES:

On behalf of the Plaintiff:

ALAN ROSE, ESQUIRE
GREGORY WEISS, ESQUIRE
MRACHEK FITZGERALD ROSE KONOPKA
THOMAS & WEISS, P.A.
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On behalf of the Defendant:

ELIOT IVAN BERNSTEIN, PRO SE, ESQUIRE
2753 NW 34th Street
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On behalf of Molly Simon, Alexandra, Eric & Michael
Bernstein:

JOHN P. MORRISSEY, ESQUIRE
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I N D E X

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WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
ROBERT SPALLINA				
BY MR. ROSE:	11			
BY MR. MORRISSEY:		82		
BY MR. BERNSTEIN:		91		

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1 P R O C E E D I N G S

2 - - -

3 THE COURT: We're here on the Bernstein case.
4 Everybody ready to go?

5 MR. ROSE: Good morning, Your Honor. Yes.
6 Alan Rose on behalf of the plaintiff, Ted S.
7 Bernstein, as successor trustee.

8 THE COURT: Okay.

9 MR. ROSE: And with me is my partner, Greg
10 Weiss. May not be for the whole trial, but he is
11 with us for the beginning.

12 THE COURT: Okay. Well, great. Thanks for
13 coming.

14 And who's on the other side?

15 MR. BERNSTEIN: Eliot Bernstein, pro se, sir.

16 THE COURT: Okay. You're not going to have
17 any counsel? Who's with you at the table?

18 MR. BERNSTEIN: That's my lovely wife,
19 Candice.

20 THE COURT: All right. And why are you at the
21 table?

22 MR. BERNSTEIN: That's one of the questions I
23 would like to address. I'm here individually.

24 THE COURT: Right.

25 MR. BERNSTEIN: And I was sued individually.

1 But I'm also here on behalf, supposedly, of my
2 minor children, who aren't represented by counsel.
3 And I'm sued as a trustee of a trust that I've
4 never possessed.

5 THE COURT: Are you asking me a question?

6 MR. BERNSTEIN: Yes.

7 THE COURT: What's the question?

8 MR. BERNSTEIN: Well, my children are being
9 sued.

10 THE COURT: What's the question?

11 MR. BERNSTEIN: And I was sued as their
12 trustee, but I'm --

13 THE COURT: Stop, please.

14 MR. BERNSTEIN: Yes, sir.

15 THE COURT: I would love to talk with you all
16 day --

17 MR. BERNSTEIN: Okay.

18 THE COURT: -- but we're not going to have
19 that happen.

20 MR. BERNSTEIN: Okay.

21 THE COURT: This is not a conversation. This
22 is a trial. So my question is, What is your
23 question? You said you had a question.

24 MR. BERNSTEIN: I tried to get counsel for my
25 children who was willing to make a pro hoc vice --

1 THE COURT: When will you ask me the question?

2 Because this is all --

3 MR. BERNSTEIN: Well, I'd like to stay the
4 proceeding.

5 THE COURT: Okay. The request for a
6 continuance is denied. Thank you.

7 MR. BERNSTEIN: Have you read the filing I
8 filed? Because my children are minor --

9 THE COURT: Was that your question?

10 MR. BERNSTEIN: Well, my children are
11 minors --

12 THE COURT: Please stop.

13 MR. BERNSTEIN: -- and they're not represented
14 here.

15 THE COURT: What is your name again, sir?

16 MR. BERNSTEIN: Eliot Bernstein.

17 THE COURT: Okay. Mr. Bernstein, I'll be
18 courteous, unless it doesn't work; then I'll be
19 more direct and more aggressive in enforcing the
20 rules that I follow when I conduct trials.

21 I've asked you several times if you had
22 questions. You finally asked me one, and it was,
23 Did you read my filing? No, I did not. You asked
24 for a continuance. I have denied that because it's
25 untimely.

1 Now I'm turning back to the plaintiff, and
2 we're going forward with this trial. That is one
3 day set on my docket. We're going to have this
4 trial done by the end of the day. You'll have half
5 the time to use as you see fit; so will the other
6 side. I'll not care if you waste it, but I'll not
7 participate in that. Thank you.

8 Now, from the plaintiff's side, what is it
9 that the Court is being asked to decide today?

10 MR. ROSE: Before I answer, could
11 Mr. Morrissey make an appearance, sir?

12 THE COURT: All right.

13 MR. MORRISSEY: Yes, I'm here on behalf of
14 four of the defendants, Judge, four adult
15 grandchildren, Alexandra Bernstein, Eric Bernstein
16 Michael Bernstein and Molly Simon, all of whom have
17 joined in the plaintiff's complaint today.

18 THE COURT: Okay. Last time I'll ask this
19 question of the plaintiff. What is it that I'm
20 asked to decide today?

21 MR. ROSE: We are asking you to decide whether
22 five testamentary documents are valid, authentic
23 and enforceable. And that is set forth in count
24 two of the amended complaint in this action. The
25 five documents are a 2008 will of Shirley

1 Bernstein, a 2008 trust of Shirley Bernstein, and
2 an amendment by Shirley Bernstein to her 2008
3 trust.

4 THE COURT: When was the amendment?

5 MR. ROSE: Amendment was in November of 2008.

6 THE COURT: All right. So there's also a 2008
7 amendment?

8 MR. ROSE: Yes, sir. In fact, I have a -- I
9 don't know if you can read it, but I did put up
10 here on the -- there are seven testamentary
11 documents. We believe five of them to be valid and
12 operative, and two of them to have been with --
13 revoked by later documents.

14 So for Shirley, there are three documents that
15 count two seeks you to determine are valid,
16 authentic and enforceable according to their terms.

17 And for Simon Bernstein, he has a 2012 will,
18 and a 2012 amended and restated trust agreement.
19 And we're asking that these five documents be
20 validated today.

21 There also is a 2008 will and trust that
22 you'll hear testimony were prepared, but have been
23 revoked and superseded by later documents.

24 THE COURT: Does everybody agree that Simon's
25 2008 will and trust are invalid or is there some

1 claim that they're valid?

2 MR. ROSE: I can't answer.

3 THE COURT: All right. I'll ask.

4 Are you claiming that the Simon Bernstein 2008
5 will or 2008 trust are valid, or do you agree that
6 they are invalid?

7 MR. BERNSTEIN: Well, I individually disagree.

8 THE COURT: Okay. Thank you.

9 MR. BERNSTEIN: And my children --

10 THE COURT: I just wanted to know --

11 MR. BERNSTEIN: -- aren't represented by
12 counsel, so they can't have an opinion --

13 THE COURT: Okay.

14 MR. BERNSTEIN: -- even though they're parties
15 to the case.

16 THE COURT: Okay. Like I say, you can waste
17 all your time you want. I won't object to it, but
18 I won't participate in it.

19 You can put on your first witness.

20 MR. ROSE: Thank you. Plaintiff will call
21 Robert Spallina.

22 Thereupon,

23 (ROBERT SPALLINA)

24 having been first duly sworn or affirmed, was examined
25 and testified as follows:

1 THE WITNESS: I do.

2 MR. ROSE: May I approach, Your Honor?

3 THE COURT: Sure. All approaches are okay.

4 MR. ROSE: Okay. I brought for Your Honor --
5 would you like a book instead of the exhibits?

6 THE COURT: Nothing better than a huge book.

7 MR. ROSE: We may not use all of them, but
8 we'll adjust it later.

9 THE COURT: All right.

10 MR. ROSE: And then I was going to hand the
11 witness the original for the admission into the
12 court file as we go.

13 THE COURT: All right.

14 MR. ROSE: I have a book for Mr. Eliot
15 Bernstein.

16 DIRECT EXAMINATION

17 BY MR. ROSE:

18 Q. Would you state your name for the record?

19 A. Robert Spallina.

20 Q. Did you know Simon and Shirley Bernstein,
21 Mr. Spallina?

22 A. Yes, I did.

23 Q. And when did you first meet Simon and Shirley
24 Bernstein?

25 A. In 2007.

1 Q. What was your occupation at the time?

2 A. I was working as an estate planning attorney.

3 Q. With a law firm?

4 A. Yes.

5 Q. And what was the name of the law firm?

6 A. Tescher, Gutter, Chaves, Rubin, Ruffin and
7 Forman and Fleisher.

8 Q. And did Simon and Shirley Bernstein retain
9 your law firm?

10 A. Yes, they did.

11 Q. I'm going to approach with Exhibit No. 9 --
12 Plaintiff's Exhibit 9. Ask if you'd identify that
13 document?

14 A. This was an intake sheet to open up the file,
15 dated November 16th of 2007.

16 Q. And the clients are Simon and Shirley
17 Bernstein?

18 A. The clients were Simon and Shirley Bernstein,
19 yes.

20 MR. ROSE: I would move Exhibit 9 into
21 evidence, Your Honor.

22 THE COURT: Any objection?

23 [No verbal response]

24 THE COURT: No objection being stated, I'll
25 receive that as Plaintiff's 19.

1 (Plaintiff's Exhibit No. 9 was received into
2 evidence.)

3 BY MR. ROSE:

4 Q. Now, what was the purpose of Simon and Shirley
5 Bernstein retaining your law firm?

6 A. They wanted to review and go over their
7 existing estate planning and make changes to their
8 documents.

9 Q. I'm going to hand you Exhibit No. 10, and ask
10 you if you can identify for the record Exhibit 10.

11 A. These are meeting notes, my meeting notes,
12 and -- and then partner Don Tescher's meeting notes from
13 several different meetings that we had with Si and
14 Shirley during the time following them retaining us as
15 clients.

16 Q. And is it your standard practice to take notes
17 when you're meeting with clients?

18 A. Yes.

19 Q. And were these notes kept in your company's
20 files and were they produced with Bates stamp numbers?

21 A. Yes, they were.

22 MR. ROSE: I would move Exhibit 10 into
23 evidence, Your Honor.

24 THE COURT: Is there any objection to the
25 exhibit?

1 [No verbal response].

2 THE COURT: No objection being stated, they'll
3 be received as Plaintiff's 10.

4 (Plaintiff's Exhibit No. 10 was received into
5 evidence.)

6 BY MR. ROSE:

7 Q. Now, for today's purposes, are those notes in
8 chronological or reverse chronological order?

9 A. This is reverse chronological order.

10 Q. Okay. Can you go to the bottom of the stack
11 and start with the earliest notes. Do they reflect a
12 date?

13 A. Yes. 11/14/07.

14 Q. And if you'd turn to the last page, is that
15 your partner's notes that are in evidence?

16 A. Yes. We both would always take notes at the
17 meetings.

18 Q. And so the first -- was that the first meeting
19 with Mr. Simon or Shirley Bernstein?

20 A. I believe so, yes.

21 Q. Now, before you met with Simon and Shirley
22 Bernstein, did you have any prior relationship with
23 them?

24 A. No, we did not.

25 Q. Did you personally know either of them before

1 that date?

2 A. No, I did not.

3 Q. 11/14/2007. Okay. And if you'd just flip
4 back to the client intake. I think that was dated
5 November the 26th?

6 A. It was two days later, 11/16. The file was
7 opened two days later.

8 Q. So file open.

9 Now, did you know in advance of the meeting
10 what they were coming in to talk about?

11 A. Yeah. They were coming in to talk about their
12 estate planning.

13 Q. And did they provide you in advance of the
14 meeting with any of their prior estate planning
15 documents?

16 A. I believe we had copies of documents. I don't
17 know if they provided them at that meeting or if they
18 provided them before for us to look at, or after, but I
19 know that there were existing documents that were in our
20 file.

21 Q. Okay. Let me approach and hand you
22 Exhibit 40A, which is -- bears Tescher Spallina
23 Number 1.

24 Does that appear to be an envelope from
25 Stephen Greenwald --

1 A. Yes.

2 Q. -- directed to Simon Bernstein?

3 A. Yes, it is.

4 Q. And copy of this was in your files when they
5 were produced?

6 A. Yes.

7 Q. And was Stephen Greenwald the prior lawyer
8 that represented Simon and Shirley Bernstein, as far as
9 you know?

10 A. Yes. Yes, he was.

11 Q. I'm going to hand you Exhibit 40B, which is a
12 letter from Mr. Greenwald to Simon and Shirley
13 Bernstein.

14 Is that also -- is that also provided in your
15 files?

16 A. Yes, sir.

17 Q. Does it bear a Bates stamp of your law firm?

18 A. Yes, it does.

19 Q. Okay. And does Mr. Greenwald, in that letter,
20 disclose what he is sending to Simon --
21 Mr. and Mrs. Simon L. Bernstein?

22 A. Yes, he did. Their estate planning documents,
23 including their ancillary documents, their wills, their
24 trusts, health care powers, durable powers and living
25 wills.

1 Q. And if -- I'll show you 40C, D, E and F, and
2 ask if you can identify these as some of the documents
3 that were included with the letter from Mr. Greenwald?

4 A. We have each of the first codicils to
5 Mr. and Mrs. Bernstein's wills, and we have each of
6 their wills.

7 MR. ROSE: I would move Exhibit 40A through F
8 into evidence, Your Honor.

9 THE COURT: Any objection?

10 [No response.]

11 THE COURT: No objection being stated, I'm
12 going to receive this as Plaintiff's 40A through F.

13 (Plaintiff's Exhibit Nos. 40A-F were received
14 into evidence.)

15 BY MR. ROSE:

16 Q. Within Exhibit 40, is there a will and a --
17 for Simon and a will for Shirley?

18 A. Yes, there is.

19 Q. And could you tell the Court the date of those
20 documents?

21 A. August 15, 2000.

22 THE COURT: Are both documents the same date?

23 THE WITNESS: Yes, they are, Your Honor.

24 THE COURT: All right. Thanks. I just wanted
25 to make sure I don't get confused.

1 BY MR. ROSE:

2 Q. Can you generally describe what the estate
3 plan reflected in Exhibit 40 would be, who are the
4 beneficiaries and what percentages?

5 A. Okay. Just give me a minute. I haven't seen
6 these in...

7 The plan under the documents -- and let me
8 just make sure it's the same under both documents. The
9 plan under the documents was to provide all the assets
10 to the survivor of Shirley and Si, and that at the death
11 of the survivor of the two of them, assets would pass
12 to -- it appears to be Ted, Pam, Eliot, Jill and Sue and
13 Lisa -- and Lisa. So it looks to be a typical estate
14 plan; everything would pass to the survivor at the first
15 death, and then at the second death everything to the
16 children.

17 Q. How many of the children under the 2000
18 documents?

19 A. This shows all five. The will shows all five.

20 Q. What page are you looking at?

21 A. The first page of the will. Is this -- oh,
22 no. That's just as to tangible personal property. I'm
23 sorry.

24 Q. That's okay. Are you on -- are you in Simon's
25 or Shirley's?

1 A. I'm in -- on both documents, to make sure the
2 disposition was the same.

3 Q. Okay. So on the page -- the first page, it
4 talks under --

5 A. It speaks to tangible personal property.

6 Q. Split equally among the five children?

7 A. Among the five children.

8 Q. Let me just stop you one second right there.
9 If you would, turn --

10 MR. ROSE: This might help, Your Honor, if
11 you'd turn to Tab 7. It may be out of order.
12 Might be a good time just to go over the family
13 tree and let -- get everyone on the same page of...

14 We prepared a chart, and I'm going to put
15 the -- it lists Simon and Shirley and the names of
16 their children on the second line, and then under
17 each child with arrows, the names of the
18 grandchildren and which parents they belong to.

19 THE WITNESS: This looks accurate.

20 MR. ROSE: I would move Exhibit 7 into
21 evidence, Your Honor.

22 THE COURT: Any objection?

23 [No response.]

24 THE COURT: No objection being stated, that's
25 in evidence as Plaintiff's 7.

1 (Plaintiff's Exhibit No. 7 was received into
2 evidence.)

3 BY MR. ROSE:

4 Q. So under the 2000 documents, for personal
5 property, it's split among the five children.

6 And when you get to the residuary estate or
7 the amount that was put into trusts, who are the
8 beneficiaries?

9 A. Again, at the death of the survivor of the two
10 of them, tangible personal property would go to the five
11 children, and the residuary of the estate would go to
12 four of the five children. It appears that Pam is cut
13 out of these documents. And I recall that now, yes.

14 Q. Okay. So under the 2000 documents, Eliot
15 Bernstein would get 25 percent of the residuary?

16 A. Correct.

17 Q. Now, if you look at page 5, it talks
18 about -- page 5, near the top, it says "upon the death
19 of my husband," then "the principal of his trust shall
20 pass," and then the next sentence says "to the extent
21 that said power of appointment -- oh, "and such shares
22 equal or unequal and subject to such lawful trust terms
23 and conditions as my husband shall by will appoint."

24 Do you see what I'm talking about?

25 A. Yes, I do.

1 Q. That's a power of appointment?

2 A. Correct.

3 Q. And then it says, the next sentence, To the
4 extent the power of appointment is not effectively
5 exercised, then it goes to the four of the five
6 children?

7 A. Correct.

8 Q. So under the 2000 documents, the survivor
9 would have the power to give it all to one?

10 A. Correct.

11 Q. And theoretically change it and give some to
12 Pam?

13 A. That's true, by the language of this document.

14 Q. Okay. So I'm just going to write. We have a
15 power of appointment, which we don't need to belabor, in
16 favor of the survivor; and then if it's not exercised,
17 Eliot gets 25 percent, and three other siblings get the
18 balance?

19 A. 25 percent each.

20 Q. Okay.

21 A. Equal shares.

22 Q. Now, when Simon and Shirley came to you, did
23 they give you an indication whether they wanted to keep
24 in place the 2000 structure?

25 A. No. They wanted to change the dispositions

1 under their documents.

2 Q. Okay. So if we work through your notes now,
3 which are in evidence as Exhibit No. 10, the first
4 meeting was November the 14th, 2007. You had a
5 discussion about Simon's net worth -- Simon and
6 Shirley's net worth, how much money they had at that
7 time?

8 A. Yes.

9 Q. Okay. I'm going to show you Exhibit No. 12
10 before we --

11 Do you recognize the handwriting on
12 Exhibit 12?

13 A. No.

14 Q. Okay. I believe it's Simon Bernstein's
15 statement of his net worth.

16 But you have seen this document before?

17 A. I don't recall.

18 Q. Okay. And you're not familiar with his
19 handwriting to --

20 A. No. Other than his signature.

21 Q. That's fine.

22 But during the discussion, did you discuss
23 Simon's net worth?

24 A. Yes. Both my partner and I.

25 Q. And if I look at Mr. Tescher's notes, which

1 are a little easier to read, he lists the joint
2 brokerage account, some money for Simon, Simon, a
3 house -- the house appears to have a million dollar
4 mortgage -- a condo, some miscellaneous and some life
5 insurance. And he totals -- that totals to 13 million,
6 and then he lists 5 million for 33 shares of the
7 company.

8 Do you see that?

9 A. Yes, I do.

10 Q. Okay. So if I add up what Mr. Tescher wrote
11 in his notes, I get to about \$18 million.

12 And this is on November the 14th of '07,
13 around 18 million, but that includes life insurance?

14 A. Yes, it does.

15 Q. Okay. Now, did you meet with them -- how long
16 were these meetings with Simon and Shirley Bernstein?

17 A. They could be an hour; sometimes more.

18 Q. Now, if we flip through your notes, does it
19 reflect a second meeting?

20 A. Yes, it does.

21 Q. And what's the date of the second meeting?

22 A. 12/19/07.

23 Q. And do you have any -- I'm sorry. 12/19?

24 A. 12/19/07.

25 Q. Okay. And what's the -- let's just put all

1 the dates up here. That was the second meeting.

2 Are there notes from a third meeting?

3 A. The next meeting was January 31, '08.

4 Q. Okay. Is there a fourth meeting?

5 A. March 12 of '08.

6 Q. Now, just to put this in perspective, the
7 document that we are going to -- well, the document
8 that's been admitted into probate in this case is a will
9 of Shirley Bernstein that bears a date of May 20, 2008.

10 Does that sound consistent with your memory?

11 A. Yeah, it was clearly 2008.

12 MRS. CANDICE BERNSTEIN: Excuse me. Can you
13 turn that so we can see it?

14 THE WITNESS: Sure. Sorry.

15 THE COURT: Ma'am, you are not a party. You
16 are not an attorney. And you are not really
17 supposed to be sitting there. I'm letting you sit
18 there as a courtesy. If you ask for and inject
19 yourself any further in the proceeding than that,
20 I'll have to ask you to be seated in the gallery.
21 Do you understand?

22 MRS. CANDICE BERNSTEIN: Yes, sir.

23 THE COURT: Thank you.

24 BY MR. ROSE:

25 Q. So you have four meetings with Simon and

1 Shirley Bernstein.

2 And did it take that long to go over what they
3 wished to do with their estate planning documents?

4 A. It was more of us, you know, trying to get a
5 handle on everything that they had, the business, prior
6 planning. From the first meeting to the March meeting,
7 it was only a couple of months. The holidays were in
8 there. So it wasn't uncommon for us to meet with a
9 client more than once or twice when they had a
10 sophisticated plan and asset schedule.

11 Q. At this time --

12 A. By the last meeting, we knew what we needed to
13 do.

14 Q. And around this -- based on your notes, did
15 Simon Bernstein believe he had a net worth all in of
16 about 18 million when he met with you?

17 A. Yeah, it appears that way, 18, 19 million
18 dollars.

19 Q. And did he discuss at all with you that he was
20 involved in a business at that time, an insurance
21 business?

22 A. Yes.

23 Q. And did he give you an indication of how well
24 the business was doing at around the times of these
25 meetings between November 2007 and March or May of 2008?

1 A. Yeah, the business was doing well at that
2 time. He was -- he was very optimistic about the future
3 of the business.

4 Q. Now, did you do any -- did you prepare any
5 documents before the will was signed in May? Did you
6 prepare drafts of the documents?

7 A. Yes, we did. We always prepare drafts of
8 documents.

9 Q. And did you share the drafts with Simon and
10 Shirley?

11 A. Yes, we did.

12 Q. Okay. I'm going to hand you Exhibit 11, and
13 ask if you can identify that for the record?

14 A. This is a letter from our firm dated April 19
15 of 2008. It's transmitting the documents to the client,
16 with an explanation that they could follow, better than
17 reading their documents -- a summary of the documents.

18 Q. Is that a true and authentic copy of a
19 document that you created?

20 A. Yes, it appears to be.

21 MR. ROSE: I would move Exhibit 11 into
22 evidence, Your Honor.

23 THE COURT: All right. Any objection?

24 [No response.]

25 THE COURT: All right. Then that's in

1 evidence as Plaintiff's 11.

2 (Plaintiff's Exhibit No. 11 was received into
3 evidence.)

4 BY MR. ROSE:

5 Q. And if I read Exhibit 11, the first three
6 words say, "Enclosed are drafts of each of your wills
7 and revocable trusts, the children's family trust, each
8 of your durable powers of attorney, designations of
9 health care surrogate and living wills," correct?

10 A. Yes.

11 Q. So about a month and 11 days before anything
12 was signed, documents were sent by Federal Express to
13 Simon and Shirley Bernstein?

14 A. Correct.

15 Q. And it appears to have gone to Simon's
16 business?

17 A. Yes.

18 Q. Now, if you look at -- does your -- does your
19 letter, sort of in laymen's terms, rather than reading
20 through the legalese of a will, explain what the estate
21 planning was under the documents that have yet to be
22 signed but that you were preparing?

23 A. Yes, it does, as much as possible in laymen's
24 terms.

25 Q. Can you just give us a short -- well, the will

1 itself for both Simon and Shirley was a relatively
2 simple will that poured over into a revocable trust, one
3 for each?

4 A. Yes, poured over wills for both.

5 Q. And whoever died first would inherent the
6 personal property?

7 A. All tangible personal property under the will
8 would pass to the survivor.

9 Q. So assuming Simon survived Shirley, he would
10 be the sole beneficiary of her estate?

11 A. Correct.

12 Q. And then any of her residuary would go into a
13 trust?

14 A. That's correct.

15 Q. And he, in fact, outlived Shirley?

16 A. He did.

17 Q. Okay. Now, if you go to the second page, at
18 the top, you describe the will of Shirley Bernstein.

19 It's essentially identical to Si -- it says "Si."

20 Just for the record, that's Simon shorthand?

21 A. Yes.

22 Q. Si is the personal representative of Shirley's
23 estate, and Ted is designated as successor if Simon is
24 unable to serve.

25 That was what was in the document you sent in

1 April?

2 A. Yes. I believe so, yes.

3 Q. And that provision remained in the final
4 documents you signed?

5 A. Yes.

6 Q. Now, did Ted eventually become a successor
7 personal representative upon Simon's death?

8 A. Yes, he did.

9 Q. Then you next start to talk about the Simon L.
10 Bernstein trust agreement.

11 And theoretically, that was going to be the
12 primary testamentary document?

13 A. Correct, it was.

14 Q. And that's fairly standard?

15 A. Yes. When a client wants to avoid probate, we
16 use a revocable trust to title assets in prior to death.
17 Those assets remain confidential; they're not part of
18 the court record. And the trust is also used to avoid
19 the need for the appointment of a guardian in the event
20 of incapacity, because there's a successor trustee
21 mechanism.

22 Q. Okay. Now, under Simon's trust agreement,
23 moving down to the third paragraph, under that heading,
24 it says that both trusts provide for mandatory income
25 distributions. And then the next sentence starts, "Upon

1 Shirley's death, she has been given a special power to
2 appoint the remaining assets of both the marital trust
3 and the family trust to any of your lineal descendants
4 and their spouses, a power to redirect and reallocate."

5 Do you see that?

6 A. Yes.

7 Q. Now, is that consistent with the way the
8 documents were intended to be drafted?

9 A. Yes, it is.

10 Q. And I guess it's sort of similar to what
11 existed in the 2000 wills?

12 A. Yes. Typically, you give the survivor of the
13 spouse a power to appoint in the event that they want to
14 change any of the estate planning of the first to die.
15 Found in most first marriage documents with only
16 children from that marriage.

17 Q. And this is a first marriage with all five
18 children being the product of the same marriage --

19 A. Yes.

20 Q. -- as far as you know?

21 A. As far as I know.

22 Q. And as far as you know, Simon and Shirley
23 Bernstein, they each married only once in their
24 lifetime, to each other?

25 A. That's all I know.

1 Q. If you flip to the next page, there's a
2 shorter paragraph for Shirley.

3 It basically says -- it's virtually identical,
4 except that Simon is the initial successor, and after
5 that, Ted would be Simon's replacement if he passed
6 away?

7 A. Correct.

8 Q. And is that the mechanism by which Ted
9 Bernstein became the successor trustee in this lawsuit?

10 A. Yes, it is.

11 Q. Now, if Shirley died first, then did the
12 documents give Simon the same power of appointment over
13 the assets in her trust that was provided for in the
14 Simon document if he died?

15 A. Same power of appointment was in both
16 documents. They were identical documents, with one
17 exception.

18 Q. And what was the exception; the name of the
19 successor trustee?

20 A. The name of the successor trustee.

21 Q. And then Simon wanted his then business
22 partner, Bill Stansbury, to be his successor trustee in
23 both his will and his trust, and Shirley wanted her
24 oldest son, Ted, to be her successor in both documents?

25 A. Correct. The signer, non-survivor.

1 Q. Okay. And Shirley, I guess it says here, also
2 made a specific gift of \$200,000 to someone named
3 Matthew Logan?

4 A. Correct.

5 Q. If you look at our family tree chart, I think
6 Matthew Logan is under Ted.

7 He is the son of Ted's second wife, Deborah?

8 A. Correct.

9 Q. Okay. So there was a \$200,000 special gift to
10 Matthew that was in the documents that you sent on
11 April 9th?

12 A. Correct.

13 Q. Then you prepared family trusts for the
14 children.

15 Were those trusts created at the time?

16 A. Yes, they were.

17 Q. Now, after you sent your letter on April 9th,
18 did you have a further discussion with Simon and Shirley
19 before the documents were signed?

20 A. I can't recall, but we probably -- we probably
21 did, to set up a meeting and talk -- you know, either,
22 A, talk about the documents, the draft documents, any
23 changes that they wanted to make on the draft documents.
24 It would be typical of us to do that, although I don't
25 have any meeting notes that showed that, so...

1 Q. Now, under -- we'll talk -- let's talk about
2 the ones that matter.

3 Because Shirley died first, her 2008 trust
4 became the beneficiary of her estate?

5 A. Correct.

6 Q. And then Simon had a power of appointment,
7 correct?

8 A. Um-hum.

9 Q. And if -- you have to say yes or no.

10 A. Yes.

11 Q. And if he didn't exercise the power of
12 appointment, was there a default set of beneficiaries
13 that were designated in the documents you drafted in
14 2008?

15 A. Yes.

16 Q. And what was the default set of beneficiaries?

17 A. Simon had and Shirley had in their documents
18 excluded Pam and Ted at the death of the survivor of the
19 two of them.

20 Q. Okay. So if the power of appointment was not
21 properly exercised, it would just go to three, and Eliot
22 would end up with 33 and a third percent and two of the
23 other sisters would get the balance?

24 A. That's correct.

25 Q. Did Simon and Shirley eventually execute

1 documents in 2008?

2 A. Yes, they did.

3 Q. I'm going to hand you Exhibit No. 1, which
4 is --

5 A. A copy of Si's will from --

6 Q. Do you have Exhibit 1?

7 A. Excuse me. Sorry. Shirley's will.

8 Q. Is that a conformed copy of the document?

9 A. Yes, it is.

10 MR. ROSE: I would move Exhibit 1 into
11 evidence.

12 THE COURT: Any objection?

13 [No response.]

14 THE COURT: That's in evidence as

15 Plaintiff's 1.

16 (Plaintiff's Exhibit No. 1 was received into
17 evidence.)

18 BY MR. ROSE:

19 Q. Now, that says "conformed copy." If I turn to
20 the last page, there's no handwritten signatures.

21 A. Correct.

22 Q. Do you know where the original of that
23 document sits today?

24 A. It was filed with the court.

25 Q. Okay. So somewhere in the courthouse, the

1 original goes.

2 And that's something that the client would
3 keep?

4 A. Correct. This is what we would send to the
5 client to include with their files.

6 Q. When you filed the original with the court,
7 did anyone object while Simon was alive?

8 A. No.

9 Q. Okay. I'm going to hand you Exhibit No. 2.
10 Do you recognize that document?

11 A. Yes. This is Shirley's trust agreement that
12 she executed in 2008.

13 Q. Now, does that document have copies of her
14 signature?

15 A. Yes. These are actual copies of the signing
16 parties and their signatures.

17 Q. And how many originals would have been created
18 of this document?

19 A. We always created three originals of the trust
20 agreements.

21 Q. Okay. Now, if you turn to the next -- if you
22 turn to the last page, it says that Shirley put a dollar
23 into her trust when it was created.

24 A. Yes.

25 Q. And that's to make it a valid trust?

1 A. Yeah, I mean, it's not required today, but
2 it's pretty much just form to show a dollar. She had
3 certainly funded it more than that.

4 Q. And eventually Shirley put some assets into
5 the trust?

6 A. Yes.

7 Q. Okay. And if you go to the page before that,
8 page 27, it appears to be a signature page, correct?

9 A. Yes.

10 Q. Now, were you one of the witnesses to the
11 signature of Shirley Bernstein on Exhibit 2?

12 A. Yes, I was.

13 Q. And were you present with Shirley Bernstein
14 and the other witness, Traci Kratish, at the time of the
15 execution of the documents?

16 A. Yes, I was.

17 Q. And they're notarized by someone named
18 Kimberly Moran.

19 Does she work for your office?

20 A. Yes, she did.

21 Q. And through her involvement with your firm
22 and -- did she personally know Shirley and Traci
23 Kratish, as well as yourself?

24 A. Yes, she did.

25 Q. Now, at the same time that Shirley signed her

1 documents, did Simon sign a similar set of 2008 will and
2 trust, similar to the drafts that were sent in April?

3 A. Yes, he did. We were all sitting in the main
4 conference area in their offices together.

5 Q. In Simon's office or your office?

6 A. In Simon's offices.

7 Q. Okay. So why would someone from your office
8 come to Simon's office rather than rely on the notary
9 that they have there?

10 A. Because we wanted to accommodate Shirley and
11 Si in their offices and not have them travel.

12 Q. You personally went there. Did you personally
13 go through to make sure that the documents were signed
14 with all the formalities required under Florida law to
15 make them valid and enforceable?

16 A. Yes, we did. That's why we were there.

17 Q. And if Simon did not have a 2008 will
18 and -- sorry.

19 If Simon did not have a 2002 will and trust,
20 would it be your belief that the 2008 will and trust
21 would be valid?

22 A. Yes.

23 Q. Were they properly signed with all the same
24 testamentary formalities required by Florida law?

25 A. Yes, they were.

1 Q. Okay. Did Shirley at some point amend her
2 trust agreement?

3 A. Yes, she did.

4 Q. And do you recall why she amended it?

5 A. She amended it to remove Matt Logan from the
6 document that she had included previously as a specific
7 device.

8 Q. Do you know why Matt was removed?

9 A. It's attorney-client privilege.

10 Does it matter?

11 Q. I'll withdraw the question.

12 Was Matthew removed at the direction of
13 Shirley?

14 A. Yes.

15 Q. I'll withdraw --

16 A. Yes. Yes. Yes.

17 Q. Did Shirley sign a document that effectively
18 removed Matthew?

19 A. Yes, she did.

20 Q. Let me hand you Exhibit No. 3, and ask you if
21 you recognize that document?

22 A. Yes, I do.

23 Q. Now, was this document signed with the same
24 testamentary formalities as the 2008 trust?

25 A. Yes, it was.

1 MR. ROSE: We would move Exhibit 3 into
2 evidence, Your Honor.

3 THE COURT: Any objection?

4 [No response.]

5 THE COURT: All right. That's in evidence as
6 Plaintiff's 3.

7 (Plaintiff's Exhibit No. 3 was received into
8 evidence.)

9 BY MR. ROSE:

10 Q. Now, if you look -- there's a paragraph 1 and
11 a paragraph 3, but no paragraph 2.

12 Do you know why that is?

13 A. It's just a mistake in drafting.

14 Q. And did you specifically discuss with Shirley,
15 whose privilege I technically would control -- my client
16 would control --

17 Did you specifically discuss with Shirley the
18 fact that the effect of the first amendment would be to
19 remove the specific gift that she had made for Matthew
20 Logan?

21 A. Yes. Even prior to the signing of the
22 document.

23 Q. And is this the last relevant testamentary
24 document that Shirley ever signed that you're aware of?

25 A. Yes, it is.

1 Q. Did you meet with Simon and Shirley in person
2 to talk about this amendment?

3 A. Si had called me and said that Shirley had a
4 change to her documents, and asked me to give her a call
5 and have lunch with her. I called her. We arranged for
6 a meeting in her house to execute the document.

7 Q. Now, you brought your -- you brought Kimberly
8 with you to get -- for convenience and to make sure the
9 documents were properly executed?

10 A. Correct. She had -- she had her personal
11 assistant that was there, Rachel Walker, to serve as
12 another witness.

13 Q. Just so I don't have to go back, what's the
14 date of the amendment?

15 A. November 18th, 2008.

16 Q. So now we five documents that exist; 2008,
17 will, trust, will, trust, and an amendment to Shirley's
18 trust.

19 Did you share any of those documents with any
20 of Simon and Shirley's children at that time?

21 A. No, we did not.

22 Q. Did any of the -- did any of the children play
23 any role in bringing Simon or Shirley to your offices?

24 A. Not that I'm aware, no.

25 Q. Did any of the children accompany them

1 to -- any time they came to visit you, did any of the
2 children come with them, drag them along?

3 A. No.

4 Q. So you prepared -- did you do some other
5 estate planning in addition to the 2008 testamentary
6 documents?

7 A. Yes, we did.

8 Q. Can you briefly describe some of the things
9 you did?

10 A. We had set up a Florida limited partnership.
11 We created a general partner entity for that
12 partnership, a limited liability company.

13 Q. What's the name of the Florida limited
14 partnership?

15 A. Bernstein Family Investments, LLLP.

16 Q. Was that an entity that was in existence or
17 was it created under your direction?

18 THE COURT: Can I stop you a second? Is this
19 going to help me figure out the validity of the
20 testamentary documents?

21 MR. ROSE: Only in the very narrowest sense.
22 I'm just trying to establish that they had a very
23 lengthy and extensive relationship, and they did a
24 lot of estate planning for Simon and Shirley. But
25 I'll be very brief.

1 THE COURT: Well, if that becomes relevant
2 later, perhaps you could come back to it. But I
3 don't see the relevance at this point, so I'll ask
4 you to move on.

5 MR. ROSE: Yes, sir.

6 BY MR. ROSE:

7 Q. Now, was Simon concerned at all about asset
8 protection as part of some of the things you discussed?

9 A. Yes, he was.

10 Q. Now, we have -- did you have any discussion
11 with him about who was expected to live longer or if
12 either of them had health problems that you had any
13 knowledge of?

14 A. Si was not -- he was in good health, but he
15 had had some heart issues. And Shirley had had other
16 issues as well. And I think it -- early on, he didn't
17 know, but as the relationship went on, we kind of knew
18 that Shirley was sicker than him and would probably pass
19 first.

20 Q. So Shirley died -- it's in the public
21 record -- but December --

22 A. 2010, yeah.

23 Q. -- 8th. So Simon was her -- he survived her;
24 he becomes the sole beneficiary as far as tangible
25 personal property under her will?

1 A. Yes, he does.

2 Q. The residuary goes into the Shirley Bernstein
3 Trust?

4 A. That's correct.

5 Q. He's the sole successor trustee and the sole
6 beneficiary --

7 A. Yes, he is.

8 Q. -- during the term of his life?

9 A. Correct.

10 Q. Now, was there a great deal of effort put into
11 inventorying the assets, things like that?

12 A. No, there wasn't. For purposes of opening up
13 Shirley's probate, we had asked Si to estimate the value
14 of, you know, her tangible personal property. And
15 that's what we included on the inventory that was filed
16 in the probate.

17 Q. Now, if I'm correct, 2010 was the year there
18 were no estate taxes at all?

19 A. No estate taxes.

20 Q. Simon's the sole beneficiary?

21 A. Sole beneficiary. Even if there were taxes,
22 there wouldn't have been any tax on the first death,
23 because everything went to Si, and there was a marital
24 deduction.

25 Q. While Simon was alive, did Ted have any access

1 to the documents, as far as you know? Did you ever send
2 the testamentary documents of Simon or Shirley to Ted?

3 A. No, we did not.

4 Q. Did Ted play any role in the administration of
5 the estate while Simon was alive?

6 A. No, he did not.

7 Q. Did any of the other children play any role in
8 the administration of the estate while Simon was alive?

9 A. No, they did not.

10 Q. Now, did you have to -- well, strike that.

11 Because it was only Simon, was it sort of the
12 decision by Simon, That I don't want to spend a lot of
13 time and money in this estate because it's just wasting
14 my own money?

15 A. Yes.

16 Q. And that's not unusual in a situation where
17 you have a surviving spouse that's the sole beneficiary?

18 A. Correct.

19 Q. Now, did there come a point in time when Pam,
20 who was not a named beneficiary of the -- Shirley's
21 documents, learned of the fact that she had been
22 excluded?

23 A. Yes, there was.

24 Q. Okay. And did you get involved with
25 discussions with Pam or her lawyer?

1 A. She had hired an attorney, who had made a
2 request to get a copy of her mother's documents. And I
3 called Si, spoke to Si about it, and he authorized me
4 giving Pam those documents -- or her attorney those
5 documents.

6 Q. Were they provided to any of the other
7 children; that would be Ted or his brother, Eliot, or
8 his two sisters, Lisa or Jill?

9 A. No, they were not.

10 Q. And did Simon Bernstein at some point decide
11 to change his testamentary documents?

12 A. Yes, he did.

13 Q. Do you recall approximately when that
14 happened?

15 A. Early 2012, he called and requested that we
16 meet to go over his documents.

17 Q. I'm going to hand you an exhibit marked
18 Exhibit 13, and ask you if you recognize those as your
19 own notes?

20 A. Yes. These are my notes from that meeting in
21 2012.

22 MR. ROSE: I would move Exhibit 13 into
23 evidence, Your Honor.

24 THE COURT: Any objection?

25 [No response.]

1 THE COURT: All right. That's in evidence as
2 Plaintiff's 13 then.

3 (Plaintiff's Exhibit No. 13 was received into
4 evidence.)

5 BY MR. ROSE:

6 Q. Now, during this meeting, did Simon discuss
7 the possibility of altering his estate plan?

8 A. Yes, he did.

9 Q. Did you also go over his current finances?

10 A. Yes, we did.

11 Q. Now, we've seen from 2007 that he had
12 disclosed about \$18 million.

13 As part of the meeting in February of 2012, he
14 gave you sort of a summary of where he stood at that
15 time?

16 A. Yes, he did.

17 Q. And what was the status of the Shirley
18 Bernstein probate administration in early 2012, about
19 13 months after she passed away?

20 A. It was still not closed.

21 Q. Do you know why it was not closed?

22 A. I think that we were still waiting -- I'm not
23 sure that -- we were still waiting on waivers and
24 releases from the children to close the estate, to
25 qualify beneficiaries under the estate if Si were to

1 die. We had to get waivers and releases from them.

2 Q. Standard operating procedure?

3 A. Standard operating procedure.

4 Q. Okay. So Simon here, it says -- it says at
5 the top "SIPC receivable."

6 Do you know what that is?

7 A. Yes, I do. That was -- Si had made an
8 investment in a Stanford product that was purported to
9 be a CD; it was an offshore CD. And when the Stanford
10 debacle hit, I guess he filed a claim with SIPC to get
11 those monies back, because it was supposedly a cash
12 investment.

13 Q. And so he invested in a Ponzi scheme and lost
14 a bunch of money?

15 A. Correct.

16 Q. Some of the 18 million he had in 2007 he lost
17 in the next four and a half years in investing in a
18 Ponzi scheme?

19 A. That's correct.

20 Q. And then the maximum that the SIPC -- which is
21 like the FDIC for investments.

22 You're familiar with that, correct?

23 A. Yes.

24 Q. The maximum is 500,000.

25 You don't actually necessarily recover

1 500,000? You have a receivable, right?

2 A. Yes.

3 Q. Do you know how much he actually realized from
4 the SIPC?

5 A. I believe he never received anything.

6 Q. Okay. And then it said, LIC receivable,
7 \$100,000.

8 Am I reading that correct?

9 A. Yes.

10 Q. And LIC was the company he was involved, with
11 others?

12 A. Yes.

13 Q. Okay. So I put here 600 that he put, but the
14 600 is really probably closer to 100 if you didn't get
15 the SIPC money?

16 A. Correct.

17 Q. So I'm going to just put a little star here
18 and put it's really 100,000, and sort that out.

19 So then he says -- he has -- Si's estate, this
20 would be his personal assets. He's got an interest in
21 the LLLP.

22 That is not relevant to discuss how it was
23 formed, but there was an LLLP that was owned, some by
24 Si's trust, some by Shirley's trust?

25 A. Correct.

1 Q. And at the time, he thought the value was
2 1,150,000 for his share?

3 A. That's correct.

4 MR. BERNSTEIN: Can I object, Your Honor?

5 THE COURT: What's the objection?

6 MR. BERNSTEIN: Relevance.

7 THE COURT: Overruled.

8 MR. BERNSTEIN: Okay.

9 BY MR. ROSE:

10 Q. And then he had an IRA that says 750,000.

11 A. Correct.

12 Q. And those two things totaled 1,550,000?

13 A. No. They totaled one million nine. Right?

14 Q. Okay. You're right.

15 You wrote next to it "estate tax."

16 What does that mean, on the side next to it?

17 A. I think what I had done was offset the value
18 of the assets in his estate by the loans that were
19 outstanding at the time.

20 Q. And it shows a million seven in loans?

21 A. A million seven in loans.

22 Q. So we had loans back in 2008 -- I'm sorry.

23 November of 2007 time period -- or 2008, which were
24 only -- so we have loans now, you said, a million seven?

25 A. Well, he had a \$1.2 million loan with

1 JP Morgan that was collateralized with the assets of the
2 LLLP.

3 Q. And then you list -- just to speed up, then
4 you have -- underneath that, it says Shirley's asset was
5 empty, right? Because whatever was in had gone to
6 Simon?

7 A. Yeah, her estate had nothing in it.

8 Q. She had a Bentley, I think, when she died.
9 Do you know what happened to the Bentley?

10 A. I wasn't aware that she had a Bentley.

11 Q. Did you come to learn that she had a Bentley
12 and Simon gave it to his girlfriend, and she traded it
13 in at the dealership and got a Range Rover?

14 A. Much, much, much later on --

15 Q. But you know --

16 A. -- after Si's death.

17 Q. But you know that to be the case?

18 A. I wasn't aware that it was traded for the
19 Range Rover. I thought he bought her the Range Rover.
20 I didn't realize he used a Bentley to do it.

21 Q. Okay. Somehow you know the Bentley became
22 something for Maritza?

23 A. Yes.

24 Q. That's the name of his girlfriend?

25 A. Yes.

1 Q. Okay. Then it says, in Shirley's trust,
2 condo, one million -- I'm sorry. I should go to the
3 next column. It says "FMV."

4 That would be shorthand for Fair Market Value?

5 A. Yes.

6 Q. So condo, 2 million, which is here; house,
7 3 million; half of the LLLP, which is Shirley's half
8 after -- I assume, after the deduction of the loan, was
9 800,000?

10 A. Um-hum.

11 Q. Then it says "LIC." That's the company Life
12 Insurance Concepts that Mr. -- that Simon, his son Ted,
13 and a gentleman named Bill Stansbury had formally been
14 involved, another attorney, shares by then. Because
15 we're in February of 2012.

16 But, in any event, that's Simon's company?

17 A. Correct.

18 Q. And he told you in 2007 it was worth --
19 Mr. Tescher's -- notes, like -- his interest was worth
20 5 million.

21 What did he tell you it was worth in 2012?

22 A. Zero.

23 Q. Then underneath that -- I put zero here, so
24 zero today.

25 So his net worth -- and then there was a home

1 that he owned for -- that Eliot lives in, right? He
2 didn't really own it, but he controlled it, Simon?

3 A. Yes.

4 Q. Okay. Did you set up the entity that owned
5 the home?

6 A. Yes, I did.

7 Q. Just to save time, there's an entity called
8 Bernstein Family Realty that owns the house.

9 Simon controlled that entity while he was
10 alive?

11 A. Yes, he did.

12 Q. And his estate holds a mortgage on the house
13 for 365,000?

14 A. Correct.

15 Q. So there's some interest there.

16 He didn't put it on his sheet when he talked
17 to you, but that still would have existed in some form,
18 right?

19 A. Yes.

20 Q. And it still exists to this day.

21 We don't know the value of it, but there still
22 is a mortgage, right?

23 A. Yes.

24 Q. Okay. But either way, the point of this whole
25 story is, his net worth went down significantly between

1 2007 and 2012?

2 A. Yes, it did.

3 Q. And in your world, that's not uncommon, with
4 the stock market crash, the depression, things like
5 that, that a lot of clients with high net worth would
6 have suffered losses during that time?

7 A. Many, many of them did. And even the values
8 that are on this sheet were not the real values.

9 Q. We know that the --

10 A. Clients have a tendency to overstate their net
11 worth.

12 Q. All right. And we know the Ocean Drive house
13 sold for about a million four?

14 A. Correct.

15 Q. And the Court -- there's an order that
16 approved the sale, the gross sale price of a million one
17 for St. Andrews?

18 A. Correct.

19 Q. Okay. So that's still -- that's less than
20 half, even then, Simon thought he would get.

21 Now, if you look at the bottom of the
22 Exhibit No. 13, it says a word, begins with an "I." I
23 can't really read it.

24 Can you read that?

25 A. Insurance.

1 Q. Well, did you have some discussions with Simon
2 about his insurance?

3 A. Yes, we did.

4 Q. In fact, I think -- Mr. Spallina, we talked
5 about he had -- I'm sorry.

6 Mr. Tescher's notes had a \$2 million life
7 insurance?

8 A. Correct.

9 Q. Okay. Is this the same life insurance?

10 A. Yes, it is.

11 Q. And was there a discussion about -- I guess it
12 says 1 million --

13 That's one million seven-fifty?

14 A. A million 75 -- yeah, one million seven-fifty
15 was the value of the policy.

16 Q. And the death benefit was a million six?

17 A. Million six. There was a small loan or
18 something against the policy.

19 Q. Okay. And then it says "Maritza."

20 What was Maritza down there for?

21 A. Si was considering changing -- the purpose of
22 the meeting was to meet, discuss his assets. And he
23 was, you know, having a lot of, I guess, internal -- he
24 had received another letter from his daughter -- he
25 asked me to read the letter from Pam -- that she still

1 was not happy about the fact that she had been
2 disinherited under her mother's documents if the assets
3 were to pass under the documents and he didn't exercise
4 his power of appointment. And this meeting was to kind
5 of figure out a way, with the assets that he had, to
6 take care of everybody; the grandchildren, the children,
7 and Maritza.

8 And so he thought maybe that he would change
9 the beneficiary designation on his life insurance to
10 include her. And we had talked about providing for her,
11 depending on -- an amount -- an increasing scale,
12 depending on the number of years that he was with her.

13 Q. So if you look at the bottom, it says 0 to
14 2 years, 250.

15 Is that what you're referring to?

16 A. Yes. Two to four years, 500,000. And then
17 anything over plus-four years would be -- I think that's
18 600,000.

19 Q. Now, during this discussion, was Simon
20 mentally sharp and aware of what was going on?

21 A. Oh, yeah. Yeah, he was -- he was the same
22 Simon. He was just -- you know, he was struggling with
23 his estate now. He was getting -- he felt -- I guess he
24 was getting pulled. He had a girlfriend that wanted
25 something. He had his daughter who, you know, felt like

1 she had been slighted. And he wanted to try to make
2 good by everybody.

3 Q. And at that point in time, other than the
4 house that he had bought that Eliot lived in, were you
5 aware that he was supporting Eliot with a very
6 significant amount of money each year?

7 A. I was not.

8 MR. BERNSTEIN: Object to the relevance.

9 THE COURT: Overruled.

10 BY MR. ROSE:

11 Q. Okay. So that's February.

12 A. Yes.

13 Q. What happens next in relation to Simon coming
14 in to meet with you to talk about changing his
15 documents?

16 A. He had called me on the phone and he -- we
17 talked again about, you know, him changing his
18 documents. He had been thinking about giving his estate
19 and Shirley's estate to his grandchildren. And at the
20 February meeting, I did not think it was a great idea
21 for him to include his girlfriend, Maritza, as a
22 beneficiary of the life insurance policy.

23 Q. He took your advice? He didn't change that,
24 as far as you know?

25 A. He did not.

1 Q. Okay. I'm sorry. Continue.

2 A. He did not.

3 I had suggested that he provide for her in
4 other ways; a joint account that would pass to her at
5 his death, but not to mix her in with his family in
6 their dispositive documents. And he ultimately took
7 that advice and decided that he wanted to give his
8 estate to his ten grandchildren, and that the policy --
9 which I had never seen a copy of the policy, but, you
10 know -- he had had. And I knew that he was paying for
11 it, because -- it almost lapsed, or did lapse at one
12 point, and it got reinstated -- that that policy was to
13 pass to an insurance trust that named his five children
14 as beneficiaries.

15 Q. And that's something Simon specifically
16 discussed with you when you were going over his estate
17 planning in 2012?

18 A. Correct -- or something that we had known
19 about before that meeting. But he was -- at the
20 meeting, he was starting to talk about doing a change to
21 the beneficiary designation to include Maritza, and I
22 wanted to talk him out of that.

23 Q. And at some point, he made a decision to
24 actually change his documents, correct?

25 A. He did. He did.

1 Q. And did he direct you to set up any kind of a
2 communication with his children?

3 A. Yes. He said, I want you to get -- put
4 together a conference call with me and you and my five
5 children so I can talk to them about what I want to do
6 with my estate and Shirley's estate.

7 THE COURT: All right. This would be a good
8 time for us to take a pause for a morning break.
9 We'll be in session again in 10 minutes.

10 As far as time use goes, so far Plaintiff's
11 side has used 60 minutes. So you have 90 remaining
12 in your portion of the day. And that's where we
13 stand.

14 MR. ROSE: We'll be well within our time, sir.

15 THE COURT: Great. Okay.

16 We'll be in recess for ten minutes. Is ten
17 minutes enough time for everybody? That's what
18 it'll be then.

19 (A break was taken.)

20 THE COURT: We're ready to proceed. Please
21 continue.

22 MR. ROSE: Thank you.

23 BY MR. ROSE:

24 Q. I think we were when Shirley died in December
25 of 2010, and you meet with Si, according to

1 Plaintiff's 13, on February 1st of 2012.

2 I think by May of 2012 was when this
3 conference call that you mentioned was?

4 A. Yes, it was.

5 Q. Okay. And did the five children attend the
6 conference call?

7 A. Yes, they all did.

8 Q. Were you present on the call?

9 A. Yes, I was.

10 Q. Was Simon present?

11 A. Yes, he was.

12 Q. Where was Simon physically during the call?

13 A. His office -- I believe his office.

14 Q. Were you in the same room as Simon?

15 A. No, I was not.

16 Q. You were in your office?

17 A. I was in my office.

18 Q. Okay. Generally, what was discussed during
19 this conference call?

20 A. Simon wanted to talk to his children about
21 providing for his estate and his wife's estate to go to
22 the ten grandchildren; wanted to have a discussion with
23 his children and see what they thought about that.

24 Q. And was he asking them for their approval or
25 permission or...

1 A. Well, I think he wanted to see what they all
2 thought, you know, based on things that had happened in
3 the past and documents that had been created in the
4 past. And I don't know that it was going to sway his
5 opinion, but when he told me, you know, to -- you know,
6 to have the conference call, to contact his -- he said,
7 This is what I'm going to do, so...

8 Q. During the call, did Simon ask his children if
9 anybody had an objection to him leaving his and
10 Shirley's wealth to the ten grandchildren?

11 A. Yes. He asked what everybody thought.

12 Q. Did Eliot respond?

13 A. Yes, he did.

14 Q. What did he say?

15 A. I'm paraphrasing, but he said something to the
16 effect of, Dad, you know, whatever you want to do,
17 whatever makes you happy, that's what's important.

18 Q. Did you also discuss during that call the need
19 to close Shirley's estate?

20 A. Yes, we did. We had told Si that we needed to
21 get back the waivers of accounting, the releases, and we
22 asked -- he asked them to get those back to us as soon
23 as possible.

24 Q. Okay. If I hand you Exhibit 14, it appears to
25 be an email from Eliot Bernstein to you addressing the

1 waiver that he needed to sign?

2 A. Yes, it is.

3 MR. ROSE: I move Exhibit 14 into evidence.

4 THE COURT: Any objection?

5 [No response.]

6 THE COURT: All right. That's in evidence

7 then as Plaintiff's 14.

8 (Plaintiff's Exhibit No. 14 was received into
9 evidence.)

10 MR. ROSE: As a matter of housekeeping, Your
11 Honor, I think I might have failed to move in
12 Exhibit 2, which is Shirley Bernstein's 2008 trust
13 agreement, which I would move, to the extent it's
14 not in evidence, 1, 2 and 3, which are the
15 operative documents Mr. Spallina's already
16 testified about.

17 THE COURT: Any objection?

18 MR. BERNSTEIN: What was that? I'm sorry.

19 THE COURT: Is there any objection to
20 Plaintiff's 1, which is the will of Shirley
21 Bernstein, Plaintiff's 2, which is the Shirley
22 Bernstein Trust Agreement, and Plaintiff's 3, which
23 is the First Amendment to the Shirley Bernstein
24 Trust Agreement?

25 MR. BERNSTEIN: No.

1 THE COURT: All right. Those are all in
2 evidence then as Plaintiff's 1, 2 and 3.

3 (Plaintiff's Exhibit No. 2 was received into
4 evidence.)

5 BY MR. ROSE:

6 Q. Okay. This email is dated May -- May 17,
7 2012, from Eliot, correct?

8 A. Yes, it is.

9 Q. This would have been after the conference
10 call?

11 A. This, I believe, was after the conference
12 call, yep.

13 Q. And he says he's attached the waiver
14 accounting and portions of petition for discharge,
15 waiver of service for a petition for discharge, and
16 receipt of beneficiary and consent to discharge that he
17 had signed.

18 Did you receive those from Eliot?

19 A. Yes, I did. We received -- that was the first
20 waivers that we received.

21 Q. Then it says "as I mentioned in the phone
22 call."

23 Did you have any separate phone calls with
24 Eliot Bernstein, you and he, or is he referring to the
25 conference call?

1 A. I think he's referring to the conference call.

2 Q. Okay. I have not yet -- "I have not seen any
3 of the underlying estate documents or my mother's will
4 at this point, yet I signed this document after our
5 family call so that my father can be released of his
6 duties as personal representative and put whatever
7 matters that were causing him stress to rest."

8 Do you see that?

9 A. Yes, I do.

10 Q. Now, while Simon was alive, did you ever get
11 authorization to share the testamentary documents with
12 Eliot Bernstein?

13 A. I did not.

14 Q. Now, after the call and after the discussion
15 with the siblings, did you prepare a draft of -- of new
16 documents for Simon?

17 A. Yes, I did.

18 Q. I'm going to hand you Exhibit 15; ask if
19 that's a letter that you sent to Simon Bernstein
20 enclosing some new drafts?

21 A. Yes, it is.

22 Q. Now, what's the date of that?

23 A. May 24th, 2012.

24 Q. And what's -- what is the summary -- well,
25 strike that.

1 You sent this letter to Simon Bernstein?

2 A. Yes, I did.

3 Q. By FedEx to his home?

4 A. Yes, I did.

5 MR. ROSE: I would move Exhibit 15 in
6 evidence.

7 THE COURT: Any objection?

8 [No response.]

9 THE COURT: All right. That's in evidence as
10 Plaintiff's 15.

11 (Plaintiff's Exhibit No. 15 was received into
12 evidence.)

13 BY MR. ROSE:

14 Q. Okay. So then first page says, "Dear Si, we
15 have prepared drafts of a new will and an amended and
16 restated trust agreement."

17 Are those the 2012 documents that were his
18 final ones?

19 A. Yes, they are.

20 Q. Okay. Then you sort of do the same thing you
21 did in 2008; you give a little summary of what the
22 estate plan is.

23 "Your amended and restated trust provides that
24 on your death, your assets will be divided among and
25 held in separate trusts for your then living

1 grandchildren," correct? I was reading paragraph -- the
2 middle paragraph.

3 A. Yes, I see that. Yes.

4 Q. I actually skipped the part above, which is
5 probably more important, which says -- in the middle of
6 the first paragraph, it says, "In addition, you have
7 exercised the special power of appointment granted to
8 you under Shirley's trust agreement in favor of your
9 grandchildren who survive you."

10 Do you see that?

11 A. Yes.

12 Q. Okay. And so that was Simon's intent as
13 discussed on the conference call?

14 A. Yes, it was.

15 Q. Do you know if you made any changes to these
16 draft documents from May 24th until the day they were
17 signed?

18 A. I don't believe so. If I did, it was for
19 grammar or something else. The dispositive plan that
20 was laid out in this memo was ultimately the subject of
21 the documents that he executed in July.

22 Q. I'm going to hand you Exhibit 16, which is a
23 durable power of attorney.

24 If you flip to Exhibit 16, the last page, does
25 it bear a signature of Simon Bernstein?

1 A. Yes, it does.

2 Q. And it indicates you were a witness to the
3 signature?

4 A. Yes.

5 Q. Along with Kimberly Moran, who is someone from
6 your office?

7 A. Correct.

8 Q. And someone named Lindsay Baxley notarized the
9 documents?

10 A. Yes, she did.

11 Q. Do you know who Lindsay Baxley was?

12 A. Lindsay Baxley worked in Ted and Si's office.

13 Q. She was like a secretary?

14 A. Assistant to Ted, I believe, maybe.

15 Q. Okay. And if you look at --

16 MR. ROSE: Well, first of all, I'll move
17 Exhibit 16 into evidence.

18 THE COURT: Any objection?

19 [No response.]

20 THE COURT: No objection made, then I'll
21 receive this as Plaintiff's 16.

22 (Plaintiff's Exhibit No. 16 was received into
23 evidence.)

24 BY MR. ROSE:

25 Q. If you look at the last page where the notary

1 block is there, it says "personally known" with an
2 underline, or "produced identification" with an
3 underline. And she's checked the box "personally
4 known" -- or she's checked the line.

5 Do you see that?

6 A. Yes.

7 Q. So do you believe that -- did you know Lindsay
8 Baxley by that point in time?

9 A. Yes, I did.

10 Q. And you believe -- she obviously knew Simon,
11 she knew Kim Moran from other dealings between your
12 offices?

13 A. Yes.

14 Q. Okay. And did you all sign this durable power
15 of attorney with testamentary formalities?

16 A. Yes, we did.

17 Q. And what's the date of that?

18 A. July 25, 2012.

19 Q. I'm going to approach with Exhibit 4, and ask
20 you if you recognize Exhibit 4?

21 A. Yes, I do.

22 Q. Okay. And what is Exhibit 4?

23 A. This is Si's new will that he executed in
24 2012, on July 25th, the same day as that durable power
25 of attorney.

1 Q. Now, were you present when Simon executed his
2 new will, which is Exhibit 4?

3 A. Yes, I was.

4 Q. If you turn to the last page --

5 Well, actually, if you turn to the first page,
6 does it say "copy" and bear a clerk's stamp?

7 A. It does.

8 Q. Okay.

9 MR. ROSE: I would represent to the Court that
10 I went to the clerk's office -- unlike with
11 Shirley's will, I went to the clerk's office and
12 obtained a -- like, a copy made by the clerk of the
13 document itself, rather than have the typewritten
14 conformed copy.

15 MR. BERNSTEIN: Can I object to that?

16 THE COURT: What's the objection?

17 MR. BERNSTEIN: Is he making a statement? I'm
18 not sure --

19 THE COURT: You're asking me a question. I
20 don't know.

21 MR. BERNSTEIN: I'm objecting. Is that a
22 statement?

23 THE COURT: The objection is? What are you
24 objecting to?

25 MR. BERNSTEIN: With the statement being

1 from --

2 THE COURT: Okay. That was a statement by
3 somebody who's not a sworn witness, so I'll sustain
4 the objection.

5 MR. BERNSTEIN: And the chain of custody of
6 the document, I'm just trying to clarify that.
7 Okay.

8 THE COURT: The objection was to the
9 statement. I've sustained the objection.

10 Next question, please.

11 BY MR. ROSE:

12 Q. Unlike the trust, how many originals of a will
13 do you have the client sign?

14 A. There's only one.

15 Q. And then you give the client the one with the
16 typewritten -- you call it conformed copy?

17 A. We conform the copy of the will.

18 Q. And after Simon died, was your law firm
19 counsel for the personal representative of the Estate of
20 Simon Bernstein?

21 A. Yes, we were.

22 Q. Did you file the original will with the court?

23 A. Yes, we did.

24 Q. Is it your belief that the original of this
25 document is somewhere in the Palm Beach County Court

1 system with the clerk's office?

2 A. Yes, I do.

3 MR. ROSE: I'd move Exhibit 4 in evidence,
4 Your Honor.

5 THE COURT: All right. Any objection?

6 [No response.]

7 MR. BERNSTEIN: No objection stated, I'll
8 receive this as Plaintiff's 4.

9 (Plaintiff's Exhibit No. 4 was received into
10 evidence.)

11 BY MR. ROSE:

12 Q. Now, if you turn to the next to the last page
13 of Exhibit --

14 A. Yes.

15 Q. -- Exhibit 4, you'll see it bears a signature
16 of Simon Bernstein and two witnesses, yourself and
17 Kimberly Moran, who all assert that you signed in the
18 presence of each other?

19 A. Yes.

20 Q. And then in the next page, it has what would
21 be a self-proving affidavit?

22 A. Correct.

23 Q. Now, if you look at the signature block where
24 the notary signed, where it says "who is personally
25 known to me," it doesn't seem to have a check box there.

1 It just says "who is personally known to me or who has
2 produced [blank] as identification," right?

3 A. Correct.

4 Q. Is this the same person who notarized the
5 exhibit we just put in evidence, Exhibit 15, the durable
6 power of attorney -- 16, the durable power of attorney?

7 A. Yes.

8 Q. Okay. And again, with regard to
9 Exhibit 4 -- strike that.

10 Do you recall where you signed Exhibit 4?

11 A. Yes.

12 Q. In whose office?

13 A. This was also done in Si's office.

14 Q. Okay. So you took -- you went personally
15 again, along with Kim Moran, as your practice, to make
16 sure that the documents were signed properly; true?

17 A. Correct.

18 Q. And that's important because, if the documents
19 aren't properly signed, they might not be valid and
20 enforceable?

21 A. That's correct.

22 Q. And I'm going to hand you Exhibit 5. This is
23 the Simon L. Bernstein Amended and Restated Trust
24 Agreement.

25 Was that signed the same day, at the same

1 time, with the same procedures?

2 A. Yes, it was.

3 Q. And would this have been signed with three
4 originals?

5 A. Yes, it would be.

6 MR. ROSE: I would move Exhibit 5 into
7 evidence, Your Honor.

8 THE COURT: Any objection?

9 [No response.]

10 THE COURT: All right. That's in evidence as
11 Plaintiff's 5.

12 (Plaintiff's Exhibit No. 5 was received into
13 evidence.)

14 BY MR. ROSE:

15 Q. Now, we looked at the history when you did the
16 first set of documents. In the second set, you started
17 in February through July.

18 Did you have a number of telephone conferences
19 with Simon during that time?

20 A. Yes, we did.

21 Q. And at least a couple of face-to-face
22 meetings?

23 A. Yes, we did.

24 Q. Did at any time Simon give you any indication
25 that he was not fully mentally sharp and aware and

1 acting of his own volition?

2 A. Nope. He was Si that we had known since 2007.

3 Q. I'll close with Exhibit 17. This is a letter
4 you sent to Simon Bernstein, enclosing a copy of his
5 conformed will for him.

6 A. Yes, it is.

7 Q. And it's dated the 26th, the day after he
8 signed the documents?

9 A. Correct.

10 Q. And did you also leave him with two of the
11 originals of his trust?

12 A. Yes, we did.

13 MR. ROSE: I move -- did I move 17 in? Or I
14 will move it in.

15 THE COURT: Number 7, is it?

16 MR. ROSE: Seventeen, sir.

17 THE COURT: Oh, I'm sorry.

18 Any objection?

19 [No response.]

20 THE COURT: All right. Then that's in
21 evidence as Plaintiff's 17.

22 (Plaintiff's Exhibit No. 17 was received into
23 evidence.)

24 BY MR. ROSE:

25 Q. Now, Simon passed away on September 13, 2012.

1 Does that sound right?

2 A. Yes, it does.

3 Q. I have Exhibit 18 as his death certificate.

4 MR. ROSE: I'll just move 18 into evidence.

5 THE COURT: Any objection?

6 [No response.]

7 THE COURT: All right. That's in evidence as
8 Plaintiff's 18.

9 (Plaintiff's Exhibit No. 18 was received into
10 evidence.)

11 BY MR. ROSE:

12 Q. So that's the death certificate for Simon
13 Bernstein.

14 Did you have any further discussions or
15 meetings with Simon after he signed the will and trust
16 in 2012 and before he died?

17 A. Not that I recall, no.

18 Q. And you filed a notice of administration,
19 opened an asset, published it in the Palm Beach Daily
20 Review, did what you had to do?

21 A. Yes, we did.

22 Q. And you and Mr. Tescher were the personal
23 representatives of the estate?

24 A. Yes, we were.

25 Q. And you and Mr. Tescher became the successor

1 trustees of Simon's amended trust after he passed away?

2 A. Yes, we did.

3 Q. I guess while he was still alive, he was still
4 the sole trustee of his trust, which was revocable
5 still?

6 A. Correct.

7 Q. And then upon his death, at some point, did
8 Ted Bernstein become aware that he was going to become
9 the successor trustee to the Shirley trust?

10 A. Yes. We had a meeting with Ted.

11 Q. And that was the first time he learned about
12 the contents of her trust, as far as you know?

13 A. Correct.

14 Q. Initially, did anybody object to the documents
15 or the fact that the beneficiaries were supposed to be
16 the 10 grandchildren?

17 A. No.

18 Q. When was there first some kind of an objection
19 or a complaint?

20 A. I can't recall exactly when it happened.

21 Q. Okay. Did you at some point get a letter from
22 a lawyer at the Tripp Scott firm?

23 A. Yes, we did.

24 Q. Okay. I think she was asking you about
25 something called the status of something called I View

1 It Company? Do you recall that?

2 A. Vaguely.

3 Q. Did you know what the Iviewit company was
4 before you received a letter from the Tripp Scott
5 lawyer?

6 A. I'm not sure. I'm not sure. I know today. I
7 can't tell if I'm answering because I know about it
8 today or if I knew about it at that time.

9 Q. Okay. And did -- was she asking for some
10 documents from you?

11 A. Is this Ms. Yates?

12 Q. Yes.

13 A. Yes.

14 Q. And did you provide her with certain
15 documents?

16 A. She had asked for copies of all of Shirley's
17 and Si's estate planning documents.

18 Q. And did you provide her with all of the
19 documents?

20 A. Yes, we did.

21 Q. Was one of the documents that you provided her
22 not an accurate copy of what Shirley had executed during
23 her lifetime?

24 A. That is true.

25 Q. Okay. And I guess I'll hand you Exhibit 6,

1 and this -- is Exhibit 6 a document that is not a
2 genuine and valid testamentary document of Shirley
3 Bernstein?

4 A. That's correct.

5 Q. Can you explain to the Court why Exhibit 6 was
6 prepared and the circumstances?

7 A. It was prepared to carry out the intent of
8 Mr. Bernstein in the meeting that he had had with his
9 five children, and perhaps a vague -- or a layman -- a
10 layman can make a mistake reading Shirley's documents
11 and not understand who the intended beneficiaries were
12 or what powers I had. So this document was created.

13 Q. Is it your belief that under the terms of
14 Shirley's document from -- the ones she actually signed,
15 that Simon had the power to appoint the funds to the ten
16 grandchildren?

17 A. Yes. We -- we prepared the documents that
18 way, and our planning transmittal letter to him
19 reflected that.

20 Q. And this document is, I think you said, to
21 explain it to a layperson in simpler fashion?

22 A. It was created so that the person that, you
23 know, didn't read estate planning documents and prepare
24 estate planning documents for a living -- you know,
25 there was no intent to cut out Pam and Ted's children,

1 basically.

2 Q. Now, did you ever file this exhibit in the
3 courthouse?

4 A. No, we did not.

5 Q. Did you ever use it for any purpose?

6 A. No, we did not.

7 Q. Was it at one point provided to Eliot's
8 counsel?

9 A. Yes, it was.

10 Q. Now, the fact -- putting aside this document,
11 were any of the other documents that we're talking about
12 in any way altered or changed from the ones that were
13 signed by Shirley or Simon?

14 A. No, they were not.

15 Q. Now, after these issues came to light, did
16 Mr. Eliot Bernstein begin to attack you through the
17 internet and through blogging and things like that?

18 A. He was doing that long before this document
19 came to light.

20 Q. Okay. What was Eliot doing?

21 A. His first thing that he did was -- with
22 respect to the courts, was to file an emergency petition
23 to freeze assets and after his brother as successor
24 trustee of his mother's trust had sold the condo.

25 MR. BERNSTEIN: Your Honor, can I object to

1 this line of questioning for relevance to validity?

2 THE COURT: What's the line of questioning
3 you're talking about?

4 MR. BERNSTEIN: The slander defamation going
5 on about me with, you know, what I do and --

6 THE COURT: Well, I wasn't aware there's a
7 line of questioning going on. There is a question.
8 You've objected to it.

9 MR. BERNSTEIN: Yes.

10 THE COURT: What's the objection to that
11 question?

12 MR. BERNSTEIN: The relevancy to a validity
13 hearing.

14 THE COURT: Okay. Can I have the court
15 reporter read the question back?

16 (A portion of the record was read by the
17 reporter.)

18 THE COURT: What is the relevance of whether
19 this guy's posting on Facebook that's negative or
20 not?

21 MR. ROSE: Well, a couple of things, but,
22 primarily, we're just trying to determine whether
23 these documents are valid.

24 THE COURT: Right.

25 MR. ROSE: And he is the only one who's saying

1 they're not valid, so I want to give some
2 explanation as to why he's saying they're not
3 valid, as opposed to --

4 THE COURT: I don't care why he's saying
5 they're valid or invalid. I'll wait to see what
6 the facts are. So I'll sustain the objection.

7 MR. ROSE: That's fine.

8 BY MR. ROSE:

9 Q. Did Simon Bernstein make any special
10 arrangements, other than -- strike that.

11 Did Simon or Shirley make any special
12 arrangements, other than the testamentary documents that
13 are admitted into evidence, for special benefits for
14 Eliot Bernstein and his family?

15 A. No, they did not.

16 Q. Any special education trusts, other than
17 the -- these five documents? And I believe there was
18 some shares of stock that were put in trust for all ten
19 grandchildren, right?

20 A. There was no special arrangements made other
21 than the estate planning documents.

22 Q. After Simon died, did Eliot claim to you that
23 Simon was supposed to have made some special
24 arrangements for him?

25 MR. BERNSTEIN: Object to the relevancy again.

1 THE COURT: Overruled.

2 THE WITNESS: Yes, he did.

3 BY MR. ROSE:

4 Q. Did he ever give you an indication how much
5 money he thought he was going to inherit when his
6 father died, or his children would inherit when his
7 father died?

8 A. Through his subsequent attorney, yes, he did.

9 Q. And how much money did he indicate he thought
10 there should be?

11 A. I heard a number from one of his attorneys of
12 40- to a \$100 million.

13 Q. Are you aware of any assets that Simon
14 Bernstein had other than what he disclosed to you at the
15 two times that we've looked at in 2007 and again in
16 February of 2012?

17 A. No, I am not.

18 MR. ROSE: No further questions, Your Honor.

19 THE COURT: All right. Thanks.

20 Is there any cross?

21 MR. BERNSTEIN: Yes.

22 MR. MORRISSEY: Judge, I have questions as
23 well.

24 THE COURT: Okay. Well, then, let me have the
25 direct finished. That way, all the

1 cross-examination can take place without
2 interruption. So everybody make sure you're
3 fitting within the Plaintiff's side of the room's
4 time limitations. We'll strictly obey those.

5 CROSS (ROBERT SPALLINA)

6 BY MR. MORRISSEY:

7 Q. Good afternoon, Mr. Spallina. My name's John
8 Morrissey. I represent four of the adult grandchildren
9 of Simon Bernstein.

10 And since we're here today about validity, I'm
11 just going to go over, and try to be very brief,
12 concerning the execution of these documents and your
13 knowledge about the execution.

14 Exhibit 1, which has been entered as the will
15 of Shirley Bernstein, I'd ask you to direct your
16 attention to that document. And I'm looking here at
17 page 7. I ask that you turn to page 7 of Exhibit 1.

18 Were you a witness of this document, this will
19 that was executed by Shirley Bernstein on May 20th of
20 2008?

21 A. Yes, I was.

22 Q. And was Diana Banks the other witness?

23 A. Yes, she was.

24 Q. And did you and Diana witness Mrs. Bernstein's
25 execution of this document?

1 A. Yes, we did.

2 Q. You were present during her execution?

3 A. Yes, we were.

4 Q. And was she present during your execution of
5 this document as a witness?

6 A. Yes, she was.

7 Q. And was she, Shirley Bernstein, present during
8 Diana Banks' execution of this document?

9 A. Yes, she was.

10 Q. Okay. And I'm again focused on this
11 Exhibit No. 1, this will of Shirley Bernstein dated
12 May 20th of 2008.

13 Is it your opinion that at the time Shirley
14 Bernstein executed this document she understood
15 generally the nature and extent of her property?

16 A. Yes, she did.

17 Q. Okay. And at the time Shirley Bernstein
18 executed Exhibit 1, did she have a general understanding
19 of those who would be the natural objects of her bounty?

20 A. Yes, she did.

21 Q. Okay. And at the time she -- Shirley
22 Bernstein executed Exhibit 1, did she have a general
23 understanding of the practical effect of this will?

24 A. I believe she did.

25 Q. Okay. And in your opinion, was Shirley

1 Bernstein unduly influenced by any beneficiary of
2 Exhibit 1 in connection with its execution?

3 A. Not to my knowledge.

4 Q. Okay. And do you have any knowledge of any
5 beneficiary or anyone actively procuring Exhibit 1?

6 A. No, I do not.

7 Q. Okay. Moving on to Exhibit 2, which is
8 Shirley Bernstein's trust executed on the same date,
9 that is May 20th of 2008, I'll direct your attention to
10 page 27 of Exhibit No. 2. And it appears that Shirley
11 Bernstein executed that document on May 20th of 2008.
12 And the witnesses were yourself and Traci -- I can't
13 read her last name.

14 A. Traci Kratish.

15 Q. Okay. Did Shirley Bernstein execute
16 Exhibit No. 2 in the presence of both you and Traci
17 Kratish?

18 A. Yes, she did.

19 Q. Okay. And did you execute Exhibit No. 2 in
20 the presence of Shirley Bernstein and Traci Kratish?

21 A. Yes, I did.

22 Q. Okay. And did Traci Kratish execute
23 Exhibit No. 2 in your presence and Shirley Bernstein's
24 presence?

25 A. Yes, she did.

1 Q. Okay. And at the time Shirley Bernstein
2 executed Exhibit No. 2, which is her 2008 trust, is it
3 your opinion that she had a general understanding of the
4 nature and extent of her property?

5 A. Yes, she did.

6 Q. Okay. And at the time that Shirley Bernstein
7 executed Exhibit No. 2, is it your opinion that she
8 understood generally the relationship of those who
9 would -- were the natural objects of her bounty?

10 A. Yes.

11 Q. Okay. And at the time Shirley Bernstein
12 executed Exhibit No. 2, is it your opinion that she
13 generally understood the practical effect of this
14 document?

15 A. I believe she did.

16 Q. Okay. And did you have any belief that
17 Shirley Bernstein was unduly influenced in connection
18 with -- by any beneficiary in connection with her
19 execution of Exhibit No. 2?

20 A. Not to my knowledge.

21 Q. Okay. And do you know or have any information
22 about any beneficiary or anyone else actively procuring
23 Exhibit No. 2?

24 A. I do not.

25 Q. Okay. And with respect -- now we'll move on

1 to Exhibit No. 3, which is the first amendment of
2 Shirley Bernstein's trust, executed on November 18th of
3 2008. And I'll direct your attention on that Exhibit 3
4 to Page No. 2. And on Page No. 2 --

5 Well, let me ask this question. Did Shirley
6 Bernstein execute Exhibit No. 3 in the presence of both
7 you and Rachel Walker?

8 A. Yes, she did.

9 Q. Okay. And did you execute Exhibit No. 3 in
10 the presence of Shirley Bernstein and Rachel Walker?

11 A. Yes, I did.

12 Q. And did Rachel Walker execute this document,
13 Exhibit No. 3, in the presence of Shirley Bernstein and
14 yourself?

15 A. Yes, she did.

16 Q. Okay. And at the time Exhibit No. 3 was
17 executed, is it your opinion that Ms. Bernstein
18 understood generally the nature and extent of her
19 property?

20 A. Yes, I believe so.

21 Q. And is it your opinion that at the time
22 Shirley Bernstein executed Exhibit No. 3, she generally
23 understood the relationship of those who would be the
24 natural objects of her bounty?

25 A. Yes, I believe so.

1 Q. Okay. And at the time Shirley Bernstein
2 executed Exhibit No. 3, is it your opinion that she
3 generally understood the practical effect of this trust
4 amendment?

5 A. Yes, I believe so.

6 Q. Okay. And do you have any knowledge or
7 information about any beneficiary or any other person
8 unduly influencing Shirley Bernstein to execute
9 Exhibit No. 3?

10 A. I do not.

11 Q. Okay. And do you have any knowledge or
12 information about any person, beneficiary or otherwise,
13 actively procuring Exhibit No. 3?

14 A. I do not.

15 Q. Okay. Moving on to Exhibit No. 4 then, which
16 is the will of Simon Bernstein, and that is a will that
17 Mr. Bernstein executed on July -- yes, July 25 of 2012.
18 And let me direct your attention to page 7 of that will,
19 Exhibit No. 4.

20 And did Simon Bernstein execute this document
21 in the presence of you and Kimberly Moran on July 25,
22 2012?

23 A. Yes, he did.

24 Q. And did you execute this document,
25 Exhibit No. 4, as a witness in the presence of Simon

1 Bernstein and Kimberly Moran on that date?

2 A. Yes, I did.

3 Q. And did Kimberly Moran execute Exhibit No. 4
4 as a witness in the presence of Simon Bernstein and
5 yourself?

6 A. Yes, she did.

7 Q. Okay. And on this date -- or at the time of
8 execution on this date of July 25, 2012, did Simon
9 Bernstein understand in a general way the nature and
10 extent of his property?

11 A. Yes, he did.

12 Q. Okay. At the time that Exhibit No. 4 was
13 executed, did Simon Bernstein generally understand the
14 relationship of those who would be the natural objects
15 of his bounty?

16 A. Yes, he did.

17 Q. And at the time Exhibit No. 4 was executed,
18 did -- in your opinion, did Simon Bernstein understand
19 the practical effect of this will?

20 A. Yes, he did.

21 Q. Okay. And do you have any knowledge or
22 information about any person, whether beneficiary or
23 otherwise, actively procuring this Exhibit No. 4?

24 A. No, I do not.

25 Q. Do you have any information about any person,

1 beneficiary or otherwise, unduly influencing Simon
2 Bernstein to execute Exhibit No. 4?

3 A. I do not.

4 Q. Okay. And moving on to the last document
5 then, Exhibit No. 5, which is the Simon Bernstein
6 Amended and Restated Trust Agreement, and I'll direct
7 your attention to page 24 of that Exhibit No. 5.

8 On July 25, 2012, did Simon Bernstein execute
9 this trust agreement in the presence of you and Kimberly
10 Moran?

11 A. Yes, he did.

12 Q. And did you execute this trust, Exhibit No. 5,
13 as a witness in front of Simon Bernstein and Kimberly
14 Moran?

15 A. I did.

16 Q. And did Kimberly Moran execute Exhibit No. 5
17 as a witness in front of Simon Bernstein and yourself?

18 A. She did.

19 Q. Okay. And at the time Simon Bernstein
20 executed Exhibit No. 5, in your opinion, did he
21 generally understand the nature and extent of his
22 property?

23 A. He did.

24 Q. And at the time Exhibit No. 5 was executed,
25 did Simon Bernstein, in your opinion, generally

1 understand the relationship of those who would be the
2 natural objects of his bounty?

3 A. He did.

4 Q. And did Simon Bernstein, when Exhibit No. 5
5 was executed, understand generally the practical effect
6 of this trust agreement?

7 A. Yes, he did.

8 Q. And at the time Exhibit No. 5 was executed, do
9 you have any knowledge about any person, whether
10 beneficiary or otherwise, unduly influencing
11 Mr. Bernstein, Simon Bernstein, to execute this
12 Exhibit No. 5?

13 A. Nothing that I'm aware of.

14 Q. Okay. And do you have any knowledge or
15 information about any person, whether beneficiary or
16 otherwise, actively procuring Exhibit No. 5?

17 A. I do not.

18 MR. MORRISSEY: I have no further questions,
19 Judge.

20 THE COURT: All right. Thanks.

21 Now, is there any cross? You're not required
22 to ask any questions, but you just need to let me
23 know if you're going to.

24 MR. BERNSTEIN: Oh, are you asking me? I had
25 no idea.

1 THE COURT: I'm not asking you. I'm just
2 telling you, if you have questions for the witness,
3 this is your opportunity to ask them; if you don't
4 have any questions, you don't have to ask any. But
5 if you're going to, you have to start now.

6 CROSS (ROBERT SPALLINA)

7 BY MR. BERNSTEIN:

8 Q. Mr. Spallina, you were called today to provide
9 some expert testimony, correct, on the --

10 A. No, I was not.

11 Q. Oh, okay. You're just going based on your
12 doing the work as Simon Bernstein's attorney and Shirley
13 Bernstein's attorney?

14 A. Yes.

15 Q. Okay. Are you still an attorney today?

16 A. I am not practicing.

17 Q. Can you give us the circumstances regarding
18 that?

19 A. I withdrew from my firm.

20 Q. Are you under a consent order with the SEC?

21 MR. ROSE: Objection. Relevance.

22 THE COURT: Sustained.

23 BY MR. BERNSTEIN:

24 Q. Did you sign a consent order for insider
25 trading --

1 A. Yes, I did.

2 Q. -- with the SEC?

3 You did. Can you give us the circumstances of
4 your consent order?

5 MR. ROSE: Objection. Relevance.

6 THE COURT: That won't be relevant. Please
7 move on to the next question.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. Were you -- did you plead to a felony crime?

11 MR. ROSE: Objection. Relevance.

12 THE COURT: Overruled.

13 MR. BERNSTEIN: Well, it's relevant as to --

14 THE COURT: I didn't ask for argument.

15 MR. BERNSTEIN: Well, what did you say?

16 THE COURT: I didn't ask for argument. I
17 sustained the objection -- no, I sustained the last
18 objection. This one I'm overruling.

19 You can answer.

20 MR. BERNSTEIN: I can't ask him if he's a
21 felon?

22 THE COURT: You're asking the wrong guy.

23 MR. BERNSTEIN: Okay. Are --

24 THE COURT: The witness is -- you asked the
25 question.

1 BY MR. BERNSTEIN:

2 Q. Are you a convicted felony?

3 THE COURT: Let's back up a second.

4 MR. BERNSTEIN: Yes, sir.

5 THE COURT: When you're asking for a ruling,
6 and I make one, then we're going to have the
7 witness answer.

8 MR. BERNSTEIN: Okay.

9 THE COURT: I made my ruling. I'm letting the
10 witness answer your earlier question, unless you're
11 withdrawing it. Are you withdrawing your earlier
12 question?

13 MR. BERNSTEIN: No.

14 THE COURT: You can answer the question, which
15 is, did you plead to a felony?

16 MR. BERNSTEIN: Sorry, sir.

17 THE WITNESS: I have not.

18 THE COURT: Okay. Next question.

19 BY MR. BERNSTEIN:

20 Q. Have you pled guilty to a misdemeanor?

21 A. I have not.

22 Q. Were you involved in a insider trading case?

23 MR. ROSE: Objection. Relevance.

24 THE COURT: Sustained. Next question.

25 MR. BERNSTEIN: Does that mean he doesn't have

1 to answer that?

2 THE COURT: How many times have you been in
3 court?

4 MR. BERNSTEIN: Just a few where I've had to
5 do this.

6 THE COURT: You know how this works.

7 MR. BERNSTEIN: I really don't.

8 THE COURT: All right. If I sustain an
9 objection, that's means he does not answer the
10 question.

11 MR. BERNSTEIN: Okay. And overruled?

12 THE COURT: If I overrule an objection, that
13 means the witness does answer the question.

14 MR. BERNSTEIN: Okay.

15 THE COURT: And I've asked you to ask your
16 next question.

17 MR. BERNSTEIN: Okay.

18 BY MR. BERNSTEIN:

19 Q. Is that your picture on the Florida Law
20 Review, SEC case settled against Florida attorneys?

21 MR. ROSE: Objection. Relevance.

22 THE COURT: Sustained.

23 Do you have any questions on the issues that I
24 have to decide in this case?

25 MR. BERNSTEIN: Well, his testimony is based

1 on his truthfulness.

2 THE COURT: My question is, do you have any
3 questions you want to ask about the issues relevant
4 to this case?

5 MR. BERNSTEIN: Yes. This is relevant to this
6 case.

7 THE COURT: I disagree.

8 MR. BERNSTEIN: Oh, okay.

9 THE COURT: I thought I made that very clear
10 in my ruling. You probably want to move on to a
11 relevant issue.

12 MR. BERNSTEIN: Okay.

13 BY MR. BERNSTEIN:

14 Q. Mr. Spallina, have you been in discussion with
15 the Palm Beach County Sheriff's Office regarding the
16 Bernstein matters?

17 MR. ROSE: Objection. Relevance.

18 THE COURT: Overruled.

19 You can answer that.

20 THE WITNESS: Yes, I have.

21 BY MR. BERNSTEIN:

22 Q. And did you state to them that you
23 fraudulently altered a Shirley trust document and then
24 sent it through the mail to Christine Yates?

25 A. Yes, I did.

1 Q. Have you been charged with that by the Palm
2 Beach County Sheriff yet?

3 A. No, I have not.

4 Q. Okay. How many times were you interviewed by
5 the Palm Beach County Sheriff?

6 MR. ROSE: Objection. Relevance.

7 THE COURT: Sustained.

8 BY MR. BERNSTEIN:

9 Q. Did you mail a fraudulently signed document to
10 Christine Yates, the attorney for Eliot Bernstein's
11 minor children?

12 MR. ROSE: Objection. Relevance.

13 THE COURT: Overruled.

14 THE WITNESS: Yes.

15 BY MR. BERNSTEIN:

16 Q. And when did you acknowledge that to the
17 courts or anybody else? When's the first time you came
18 about and acknowledged that you had committed a fraud?

19 A. I don't know that I did do that.

20 Q. Well, you just said you went to the Palm Beach
21 County Sheriff and admitted altering a document and put
22 it in the mail.

23 THE COURT: Let me stop you there. If you
24 want to ask the witness questions, you're permitted
25 to do that. If you would like to argue with the

1 witness, that's not -- do you have any questions
2 you want to ask?

3 MR. BERNSTEIN: Yes.

4 BY MR. BERNSTEIN:

5 Q. So you sent a fraudulent document to Eli
6 Bernstein's minor children's counsel.

7 Can you tell us what that document did to
8 affect the dispositive Shirley trust document?

9 A. It has no effect.

10 Q. What was its intended effect of altering the
11 document?

12 A. To carry out your father's wishes in the
13 agreement that he had made with the five of you for a
14 layperson that would be reading the documents.

15 Q. You were carrying out his wishes by
16 fraudulently altering a document?

17 MR. ROSE: Objection.

18 THE COURT: Sustained.

19 That's argumentative. I don't want you to
20 argue with the witness. That's an argument.

21 MR. BERNSTEIN: Okay.

22 BY MR. BERNSTEIN:

23 Q. Did the fraudulently altered document change
24 the beneficiaries that were listed in Shirley's trust?

25 A. They did not.

1 Q. Who are the beneficiaries of Shirley's trust?

2 A. It depends on -- under the trust instrument,
3 in the absence of Si exercising his power of
4 appointment, it would be yourself and your two sisters,
5 Lisa and Jill.

6 Q. Oh. So the only beneficiaries in Shirley's
7 trust are me, Lisa and Jill.

8 Is that directly or through a family trust?

9 A. Your father had established -- your parents
10 had established family trusts for the three of you to
11 receive assets from the trust.

12 Q. Okay. So in that document that you sent to
13 Christine Yates, did you include Ted and Pam's lineal
14 descendants under the amendment that you fraudulently
15 drafted and sent to her?

16 MR. ROSE: Objection. Argumentative.

17 THE COURT: Sustained.

18 BY MR. BERNSTEIN:

19 Q. Did in any way the document that you
20 fraudulently altered and sent to Yates change the
21 beneficiaries from Eliot, Lisa and Jill and their lineal
22 descendants to anybody else?

23 THE COURT: May I ask a question?

24 MR. BERNSTEIN: Yes, sir.

25 THE COURT: This document that you're

1 referring to, is anybody asking me to probate that
2 document?

3 MR. BERNSTEIN: Well, it's part of the estate
4 plan. It's part --

5 THE COURT: Is anybody seeking relief, either
6 you or the other side, under that document?

7 MR. BERNSTEIN: Yeah. They're seeking to
8 change the beneficiaries of my mom's trust through
9 that document and others.

10 THE COURT: You're misperceiving my question.

11 MR. BERNSTEIN: Oh, okay. Sorry.

12 THE COURT: That document, which
13 is -- nobody's put it in evidence; I don't know
14 what it is, but it's -- that thing that you're
15 asking the witness about, is somebody seeking
16 relief based upon that document?

17 MR. ROSE: Absolutely not. The opposite.

18 THE COURT: All right. Are you seeking relief
19 based upon that document?

20 MR. BERNSTEIN: Yeah. Oh, absolutely.

21 THE COURT: All right. Are you claiming that
22 that document is subject to probate?

23 MR. BERNSTEIN: Yeah.

24 THE COURT: Is the lady who's giving you
25 advice your attorney?

1 MR. BERNSTEIN: No.

2 THE COURT: Ma'am, are you admitted to the bar
3 in Florida? Remember what I told you earlier.
4 I've let you sit there as a courtesy. Generally, I
5 don't let wives or friends or anybody else sit at
6 the table where the parties are because it confuses
7 me. But you're giving that guy advice and you're
8 also not listening to me, which I find odd, because
9 I'm going to have you move you back to the gallery
10 now. Please have a seat in the gallery. Please
11 have a seat in the gallery. Please have a seat in
12 the gallery. Soon. When courtesy is not returned,
13 courtesy is withdrawn. Please have a seat in the
14 gallery. Thank you.

15 Do you have any other questions of the
16 witness?

17 MR. BERNSTEIN: Can I submit this as evidence
18 to the Court?

19 THE COURT: Is that the document you've been
20 asking the witness about?

21 MR. BERNSTEIN: Yeah.

22 THE COURT: All right. Any objection to it
23 being received as an exhibit?

24 MR. ROSE: I don't have any objection to it
25 being received as an exhibit. But as Your Honor

1 noted, we aren't seeking to probate it, and we're
2 not suggesting it's valid in the first place.

3 THE COURT: All right. Well, let me see what
4 that document is, so then I'll see if I can make
5 some sense out of it.

6 You can't -- Gary's always afraid that if
7 somebody's not a member of the bar, they might do
8 something bad to me. Officers of the court aren't
9 allowed to do things bad to the judge. Other folks
10 don't know that. And so Gary watches out carefully
11 for my well-being.

12 MR. BERNSTEIN: Gotcha.

13 THE COURT: Okay. So this is a document
14 that's titled "First Amendment to Shirley Bernstein
15 Trust Agreement."

16 MR. BERNSTEIN: Correct.

17 THE COURT: And it's in the book that I've
18 been given earlier by the plaintiff as Tab 6.
19 You're seeking to put it into evidence as
20 Defendant's 1?

21 MR. BERNSTEIN: Okay.

22 THE COURT: Right?

23 MR. BERNSTEIN: Sure. Yes, sir.

24 THE COURT: You're offering it as an exhibit?

25 MR. BERNSTEIN: No, Evidence 1.

1 THE COURT: The objection to it is that it's
2 not relevant?

3 MR. ROSE: Not relevant. Right, relevance.
4 And it's also not something we're seeking to be
5 probated or treated as authentic and genuine.

6 THE COURT: Well, the other side is seeking to
7 use the terms of this document instead of the terms
8 of the amendment that's in evidence, right?

9 MR. ROSE: I don't believe that's what he's
10 doing.

11 THE COURT: I'm not sure what he's doing, but
12 in an abundance of caution, I'm going to receive it
13 for what relevance it might have. I don't perceive
14 any yet, but we'll see what happens.

15 So this is Defendant 1.

16 (Defendant's Exhibit No. 1 was received into
17 evidence.)

18 THE COURT: Any other questions of the
19 witness?

20 MR. BERNSTEIN: Sure.

21 BY MR. BERNSTEIN:

22 Q. You've testified here about Kimberly Moran.
23 Can you describe your relationship with her?

24 A. She's been our long-time assistant in the
25 office.

1 Q. Was she convicted of felony fraudulent
2 notarization in the Estate of Shirley Bernstein?

3 MR. ROSE: Objection. Relevance.

4 THE COURT: Overruled.

5 You're asking if she was convicted of a felony
6 with respect to the Estate of Shirley Bernstein?

7 You can answer the question.

8 MR. BERNSTEIN: Correct.

9 THE WITNESS: I believe she was.

10 BY MR. BERNSTEIN:

11 Q. And what was she convicted for?

12 A. She had notarized the waiver releases of
13 accounting that you and your siblings had previously
14 provided, and we filed those with the court.

15 Q. We filed those with the court.

16 Your law firm submitted fraudulent documents
17 to the court?

18 A. No. We filed -- we filed your original
19 documents with the court that were not notarized, and
20 the court had sent them back.

21 Q. And then what happened?

22 A. And then Kimberly forged the signatures and
23 notarized those signatures and sent them back.

24 Judge Colon has a rule in his court to have
25 those documents notarized, even though that's not the

1 requirement under the Florida Probate Code.

2 Q. So when you didn't follow the rule, you
3 frauded [sic] and forged the document?

4 MR. ROSE: Objection. Argumentative.

5 THE COURT: Sustained.

6 THE WITNESS: I had nothing to do with that.

7 THE COURT: You've got to stop a second.

8 MR. BERNSTEIN: Yes, sir.

9 THE COURT: If you continue to argue with the
10 witness, then I'll assume you don't have any more
11 questions. I sustained that last objection to
12 argumentative.

13 MR. BERNSTEIN: I'm a little confused --

14 THE COURT: I'm sorry about your confusion,
15 but there are ways you could have dealt with that
16 before this trial. If you are confused during the
17 trial, you better get unconfused as quickly as you
18 can because bad things will happen. And I don't
19 want bad things to happen. I want to get the facts
20 so that I can accurately decide the case on its
21 merits.

22 Stop arguing, ask questions, let the witness
23 answer, and listen to any rulings that I make on
24 the objections. That's the last time I'll repeat
25 that advice to you. Thank you.

1 BY MR. BERNSTEIN:

2 Q. What law firm submitted those documents to the
3 court?

4 A. Tescher & Spallina, P.A.

5 Q. Are you a partner in that firm?

6 A. I was.

7 Q. So your firm that you were a partner with sent
8 in documents that were fraudulent to the court?

9 MR. ROSE: Objection. Cumulative.

10 THE COURT: Sustained.

11 BY MR. BERNSTEIN:

12 Q. Did Tescher & Spallina law firm submit
13 Kimberly Moran's forged and fraudulent document waivers
14 to the court?

15 MR. ROSE: Objection. Cumulative.

16 THE COURT: He already said he did.

17 MR. BERNSTEIN: What is that?

18 THE COURT: Cumulative means you've already
19 had that answer given.

20 MR. BERNSTEIN: No, I didn't have that.

21 THE COURT: He's already said that he did.

22 MR. BERNSTEIN: I'm asking if they deposited
23 them with the court.

24 THE COURT: And he said they didn't.

25 MR. BERNSTEIN: Well, I asked him, and he

1 said --

2 THE COURT: I won't argue with you. Do you
3 want to go on to the next item or not?

4 MR. BERNSTEIN: Oh, okay, I do.

5 THE COURT: Okay. Next question, please.

6 BY MR. BERNSTEIN:

7 Q. Did your office -- did you submit documents to
8 close the estate of Shirley with Simon as the personal
9 representative at a time Simon was dead?

10 A. We did.

11 Q. You did? Excuse me? I didn't hear an answer.

12 A. I said yes.

13 Q. So Shirley's estate was closed by a dead
14 personal representative.

15 Can you give me the time that the estate was
16 closed by Simon while he was dead?

17 MR. ROSE: Objection. Argumentative.

18 THE COURT: Overruled.

19 You can answer.

20 THE WITNESS: I believe it was October,
21 November 2012.

22 BY MR. BERNSTEIN:

23 Q. Do you want to check your records on that?

24 A. I believe it was after his death. I know he
25 died September 13, 2012. And we had received late from

1 one of your sisters the signed waiver. So it was
2 probably in November, somewhere around there.

3 Q. You stated that Simon -- that Kimberly did
4 five waivers for the siblings that she sent back in
5 fraudulently to the court through your law firm.

6 Did she also do a fraudulent forged signature
7 of a waiver for Simon?

8 A. I'm not sure. I guess if you're saying she
9 did --

10 Q. Well, the court has on file a waiver of
11 Simon's that she's admitted to.

12 A. We filed all of the waivers originally with
13 the court all signed by the appropriate parties, and the
14 court kicked those back. And she forged and notarized
15 new documents and sent them to the court. She felt she
16 had made a mistake.

17 Q. Okay. Are you aware of an April 9th full
18 waiver that was allegedly signed by Simon and you?

19 A. Yeah. That was the waiver that he had signed.
20 And then in the May meeting, we discussed the five of
21 you, all the children, getting back the waivers of the
22 accountings.

23 Q. Okay. And in that April 9th full waiver you
24 used to close my mother's estate, does Simon state that
25 he has all the waivers from all of the parties?

1 A. He does. We sent out -- he signed that, and
2 we sent out the waivers to all of you.

3 Q. Okay. So on April 9th of 2012, Simon signed,
4 with your presence, because your signature's on the
5 document, a document stating he had all the waivers in
6 his possession from all of his children.

7 Had you sent the waivers out yet as of
8 April 9th?

9 THE COURT: What is it that you want the
10 witness to answer? There was several questions.

11 MR. BERNSTEIN: Oh, compounded a little bit?

12 THE COURT: Yes.

13 MR. BERNSTEIN: Sorry.

14 THE COURT: So you even --

15 MR. BERNSTEIN: I'll kick that back.

16 THE COURT: So you even know the lingo of the
17 objections.

18 MR. BERNSTEIN: I'll kick that back to one at
19 a time, because it's an important point.

20 BY MR. BERNSTEIN:

21 Q. April 9th, 2012, you have a signed full waiver
22 of Simon's that says that he is in possession of all of
23 the signed waivers of all of the parties?

24 A. Standard operating procedure, to have him
25 sign, and then to send out the documents to the kids.

1 Q. Was Simon in possession -- because it's a
2 sworn statement of Simon saying, I have possession of
3 these waivers of my children on today, April 9th,
4 correct, the day you two signed that?

5 Okay. So if you hadn't sent out the waivers
6 yet to the --

7 A. I'm not certain when the waivers were sent
8 out.

9 Q. Were they sent out after the --

10 A. I did not send them out.

11 Q. Okay. More importantly, when did you receive
12 those? Was it before April 9th or on April 9th?

13 A. We didn't receive the first one until May.
14 And it was your waiver that we received.

15 Q. So how did you allow Simon, as his attorney,
16 to sign a sworn statement saying he had possession of
17 all of the waivers in April if you didn't get mine 'til
18 May?

19 MR. ROSE: Objection. I think it's relevance
20 and cumulative. He's already answered.

21 THE COURT: What's the relevance?

22 MR. BERNSTEIN: Oh, this is very relevant.

23 THE COURT: What is the relevance on the issue
24 that I have to rule on today?

25 MR. BERNSTEIN: On the validity? Well, it's

1 relevant. If any of these documents are relevant,
2 this is important if it's a fraud.

3 THE COURT: I'll sustain the objection.

4 MR. BERNSTEIN: Okay. Can I -- okay.

5 BY MR. BERNSTEIN:

6 Q. When did you get -- did you get back prior to
7 Simon's death all the waivers from all the children?

8 A. No, we did not.

9 Q. So in Simon's April 9th document where he
10 says, he, Simon, on April 9th has all the waivers from
11 his children while he's alive, and you didn't even get
12 one 'til after he passed from one of his children, how
13 could that be a true statement?

14 MR. ROSE: Objection. Relevance. Cumulative.

15 THE COURT: Sustained.

16 Here's what I'm going to decide at the end of
17 the day; I'm going to decide whether Shirley's 2008
18 will and trust and 2008 amendment are valid and
19 enforceable. I'm going to decide whether Simon's
20 2012 will and 2012 trust documents are valid and
21 enforceable. You have a lot more on your mind than
22 I have on mine. You do. Right? But those are the
23 things that I'm working on. So I'm focused like a
24 laser and you're focused more like a shotgun. I'm
25 telling you this so that you can focus more tightly

1 on the questions you're asking and the facts you're
2 developing so they'll help me make an accurate
3 decision on those things that I'm going to decide
4 today. You can keep asking questions that don't go
5 anywhere, but I would hope that you'll adjust your
6 approach so that you'll help me make an accurate
7 decision.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. And on validity, let's just get right to that
11 real quick. You've testified to a lot of documents here
12 today, correct, of the estate documents you drafted,
13 correct?

14 A. Yes, I did.

15 Q. Did you gain any pecuniary interest, did you
16 gain any titles in those documents?

17 A. Pecuniary interest? No. I was named by your
18 father as personal representative and trustee of his
19 trust.

20 Q. And so you executed -- you drafted the
21 documents, you signed them as a witness, and you gained
22 interest in the documents, correct?

23 A. No, I did not.

24 Q. You didn't gain interest as a trustee --

25 MR. ROSE: Objection.

1 BY MR. BERNSTEIN:

2 Q. -- or a personal representative of those
3 documents?

4 MR. ROSE: Objection. Cumulative. Asked and
5 answered.

6 THE COURT: Overruled.

7 THE WITNESS: I was named as his personal
8 representative and trustee, along with my partner.

9 BY MR. BERNSTEIN:

10 Q. Did you witness the document?

11 A. I did.

12 Q. Did you draft the document?

13 A. I did.

14 Q. Okay. You mentioned there was Kimberly Moran
15 there at the signing of these documents, correct?

16 A. She was.

17 Q. Okay. Can you point her out, because I'm
18 going to need her to testify as to the validity?

19 A. I do not see her in the courtroom.

20 Q. Okay. You mentioned a Traci Kratish. Can you
21 point her out in the courtroom today to validate the
22 documents?

23 A. I don't see Traci in the room either.

24 Q. So she was another witness that is not here
25 present to validate the documents today? Well, it's

1 awful -- okay.

2 Is Kimberly Moran here who notarized the
3 documents.

4 MR. ROSE: Objection. Cumulative. Asked that
5 a minute ago.

6 MR. BERNSTEIN: I didn't -- did I? Was it
7 Moran --

8 THE COURT: No, I thought it was some other
9 name.

10 MR. BERNSTEIN: So did I.

11 THE COURT: Is Kimberly here?

12 THE WITNESS: She's not.

13 THE COURT: Okay. Next question.

14 BY MR. BERNSTEIN:

15 Q. Okay. Being a former estate planning
16 attorney. To validate a document, wouldn't you have the
17 parties who witnessed and notarized and signed present?

18 MR. ROSE: Objection. Relevance.

19 Misstates --

20 THE COURT: Sustained.

21 BY MR. BERNSTEIN:

22 Q. Is it necessary to validate documents with the
23 necessary notaries and witnesses present?

24 MR. ROSE: Objection. Calls for a legal
25 conclusion.

1 THE COURT: Well, I'm the one that's going
2 make that decision. I don't care what the witness
3 says about the law.

4 MR. BERNSTEIN: I gotcha. Okay.

5 THE COURT: So this would be a good time for
6 us to take a pause. We're not making headway.

7 You ever here of cavitation when it comes to
8 boat propellers?

9 MR. BERNSTEIN: No.

10 THE COURT: Okay. I don't know a lot about
11 the physics of it, but a boat goes forward based on
12 a propeller spinning in the water. And it happens
13 sometimes in racing boats, maybe other boats too,
14 that you get the propeller going so fast or you do
15 something so much with the propeller that it
16 cavitates, which means that it's not actually
17 pushing in the water. It's making a lot of noise.
18 It's spinning like crazy. It's furiously working,
19 but it's not propelling the boat forward. I want
20 to suggest to you that you've hit a point of
21 cavitation. So this would be a good time for us to
22 take our lunch break so that when we get back we'll
23 go forward with this ship that is our trial.

24 MR. BERNSTEIN: How long?

25 THE COURT: It'll be until 1:30.

1 MR. BERNSTEIN: Okay.

2 THE COURT: That'll give everybody a time to
3 revive, if necessary, and we'll reconstitute
4 ourselves at 1:30. Thanks.

5 (A break was taken.)

6 (Proceedings continued in Volume 2.)

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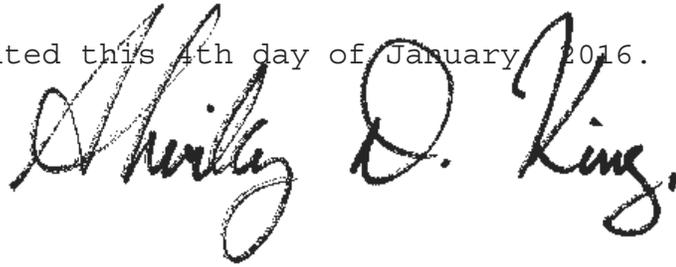
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C E R T I F I C A T E

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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1 IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 CASE No. 502014CP003698XXXXNB

4 TED BERNSTEIN,

5 Plaintiff,

6 -vs-

7 DONALD R. TESCHER, ELIOT IVAN BERNSTEIN,
8 LISA SUE FRIEDSTEIN, JILL MARLA IANTONI, et al.,

9 Defendants.

10 TRIAL BEFORE THE HONORABLE
11 JOHN L. PHILLIPS
12 VOLUME 2 PAGES 117 - 260

13 Tuesday, December 15, 2015
14 North County Courthouse
15 Palm Beach Gardens, Florida 33410
16 9:43 a.m. - 4:48 p.m.

17 Reported By:
18 Shirley D. King, RPR, FPR
19 Notary Public, State of Florida
20 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

1 license.

2 A. I said I withdrew from my firm. It wasn't
3 that I was not practicing.

4 Q. Okay. In the chain of custody of these
5 documents, you stated that there were three copies made?

6 A. Yes.

7 Q. Do you have those three original trust copies
8 here?

9 A. I do not.

10 MR. BERNSTEIN: Does anybody?

11 THE COURT: Do you have any other questions of
12 the witness?

13 MR. BERNSTEIN: Yeah. I wanted to ask him
14 some questions on the original documents.

15 THE COURT: Okay. Keep going.

16 BY MR. BERNSTEIN:

17 Q. Okay. So the original documents aren't in the
18 court?

19 A. I don't have them.

20 Q. Your firm is not in possession of any of the
21 original documents?

22 A. I'm not sure. I'm not at the firm anymore.

23 Q. When you left the firm, were there documents
24 still at the firm?

25 A. Yes, there were.

1 Q. Were you ordered by the court to turn those
2 documents over to the curator, Benjamin Brown?

3 A. I don't recall.

4 MR. ROSE: Objection. Can he clarify the
5 question, which documents? Because I believe the
6 curator was for the estate, and the original will
7 was already in file, and the curator would have no
8 interest in the trust --

9 THE COURT: Which documents? When you say
10 "those documents," which ones are you referring to?

11 MR. BERNSTEIN: Any of the trusts and estate
12 documents.

13 THE COURT: Okay. That's been clarified.
14 You can answer, if you can.

15 THE WITNESS: I believe that he was given -- I
16 believe all the documents were copied by
17 Mr. Pollock's office, and that he was given some
18 type of zip drive with everything. I'm not sure,
19 though. I couldn't --

20 BY MR. BERNSTEIN:

21 Q. Did the zip drive contain the original
22 documents?

23 A. Did not. I believe the original documents
24 came back to our office. Having said that, we would
25 only have -- when we made and had the client execute

1 three documents, two originals of those documents would
2 remain with the client, and then we would keep one
3 original in our file, except -- including, most of the
4 time, the original will, which we put in our safe
5 deposit box. So we would have one original of every
6 document that they had executed, including the original
7 will, and they would keep two originals of everything,
8 except for the will, which we would give them conformed
9 copies of, because there was only one original will.

10 Q. Okay. I asked a specific question. Did your
11 firm, after the court order of Martin Colin, retain
12 documents, original documents?

13 MR. ROSE: Objection. Sorry. I should have
14 let him finish.

15 MR. BERNSTEIN: -- original documents?

16 THE WITNESS: I believe --

17 MR. ROSE: Relevance and misstates the --
18 there's no such order.

19 THE COURT: Well, the question is, Did your
20 firm retain the original documents?

21 Is that the question?

22 MR. BERNSTEIN: Yes, sir.

23 THE COURT: Overruled.

24 Answer, please.

25 THE WITNESS: I believe we had original

1 documents.

2 BY MR. BERNSTEIN:

3 Q. After the date you were court ordered to
4 produce them to the curator?

5 MR. ROSE: Object -- that's the part I object
6 to.

7 THE COURT: Sustained.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. To your knowledge -- so, to your knowledge,
11 the documents can't all be here since they may be at
12 your firm today?

13 A. I don't practice at the firm anymore, so I'm
14 not sure where the documents are.

15 Q. Okay. And you said you made copies of all the
16 documents that you turned over to the curator? Did you
17 turn over any original documents as ordered by the
18 court?

19 MR. ROSE: Objection. Same objection.
20 There's no court order requiring an original
21 document be turned over.

22 THE COURT: What order are you referring to?

23 MR. BERNSTEIN: Judge Colin ordered when they
24 resigned due to the fraudulent alteration of the
25 documents that they turn over --

1 THE COURT: I just said, what order are you
2 referring to?

3 MR. BERNSTEIN: It's an order Judge Colin
4 ordered.

5 THE COURT: All right. Well, produce that
6 order so I can see it, because Judge Colton's [sic]
7 been retired for six or seven years.

8 MR. BERNSTEIN: Okay. I don't have it with
9 me, but...

10 THE COURT: Well, Judge Colton's a retired
11 judge. He may have served in some other capacity,
12 but he doesn't enter orders, unless he's sitting as
13 a replacement judge. And that's why I'll need to
14 see the order you're talking about, so I'll know if
15 he's doing that. Okay. Thanks. Next question.

16 BY MR. BERNSTEIN:

17 Q. Okay. Has anyone, to the best of your
18 knowledge, seen the originals while you were in custody
19 of them?

20 A. Yes.

21 Q. Okay. Who?

22 A. I believe Ken Pollock's firm was -- Ken
23 Pollock's firm was the firm that took the documents for
24 purposes of copying them.

25 Q. Did anybody ask you, refer copies to inspect

1 the documents?

2 A. Other than Ken Pollock's office, I don't
3 recall.

4 Q. Did I ask you?

5 A. Perhaps you did.

6 MR. BERNSTEIN: Okay. I'd like to go through
7 some of the documents with him real quick. But I
8 don't have my wife to hand me the documents, so
9 it's going to take me incredibly long. These are
10 just copies I have. Can I approach him?

11 THE COURT: All approaches are okay.

12 MR. BERNSTEIN: Okay.

13 BY MR. BERNSTEIN:

14 Q. Are these the documents that you drafted,
15 Shirley's will and Shirley's trust agreement?

16 MR. ROSE: Your Honor, could I see what he's
17 handing the witness before he hands it to them?

18 THE COURT: Say again.

19 MR. ROSE: I don't know what he's handing the
20 witness.

21 THE COURT: All right. You'll need to show
22 the other side the documents that you're handing to
23 the witness so that they're looking at the same
24 thing you're talking about.

25 MR. ROSE: These are not accurate. These are

1 multiple things stapled together. I'd object to
2 the exhibit -- or the use of it.

3 THE COURT: Ma'am, if you come back up past
4 that bar one more time, you'll be in contempt of
5 court. I don't want you to be in contempt of
6 court. Do you understand my instruction?

7 MRS. BERNSTEIN: Yes.

8 THE COURT: Thank you.

9 MR. ROSE: I don't know if that's filed with
10 the court and I don't know that these are genuine.
11 And the second document has attached to it --

12 THE COURT: Well, you don't need to tell me
13 what the papers are. The thing that the person
14 who's asking the questions has to do is show you
15 the documents that he's going to show the witness.

16 MR. ROSE: Okay.

17 THE COURT: Then I intend to move forward. I
18 expect he'll show the witness the documents and
19 then he'll probably ask a question.

20 Am I right?

21 MR. BERNSTEIN: Do you want to see those?

22 THE COURT: Nope.

23 So then if there's an objection to the
24 documents coming in, if at some time they're
25 proffered as an exhibit, then I'll take the

1 objection.

2 Have you seen the documents that are in his
3 hand that are going to be shown to the witness?

4 MR. ROSE: Oh, yes, sir. I'm sorry.

5 THE COURT: Okay. That's fine.

6 Proceed.

7 BY MR. BERNSTEIN:

8 Q. Okay. Can you look at the initials on the
9 pages of that document and describe them -- describe
10 what they look like?

11 A. The initials?

12 Q. Yes.

13 A. On each page, there's an SB --

14 Q. Okay.

15 A. -- for your mother's initials.

16 Q. And it's clearly SB?

17 A. Is it clearly SB?

18 Q. Yeah. Looks like SB?

19 A. Yes, it's clearly SB.

20 Q. Okay. And on this will signed on the same
21 date by my mother in your presence, is that my mom's
22 initials? And does it look like an SB? Do they even
23 look similar?

24 A. Well, your mother was asked to sign these
25 documents.

1 Q. Okay.

2 A. When we execute a will, unlike the bottom of
3 the trust agreement where we initial the trust pages, on
4 the bottom of the will, she's supposed to sign her
5 signature. And which she has done at the bottom of each
6 page, is sign her signature consistent with the
7 signature page that she signed.

8 Q. So what you're saying is, she signed this
9 document, that she initialed this document?

10 A. Right. We only ask that for purposes of the
11 trust that they initial each page. For purposes of the
12 will, that they sign each page.

13 So this is the signature that she has -- this
14 is her signature on the bottom of this document.

15 Q. Well, there's no line saying that's her
16 signature, correct? There would be --

17 A. But that was our practice.

18 Q. Okay.

19 A. That was our practice, to have --

20 Q. Okay. You testified to my dad's state of mind
21 that he was fine.

22 Si was usual when you saw him from May through
23 his death; is that correct?

24 A. Are you speaking about 2012?

25 Q. Yes.

1 A. Correct.

2 Q. Are you aware of any medical problems my
3 father was having at that time?

4 A. No, I'm not.

5 Q. Are you aware of any stress he was under?

6 A. No, I was not.

7 Q. Mr. Rose had you read into or -- read into the
8 record a letter that I wrote with my waiver, saying,
9 anything -- I haven't seen the dispositive documents,
10 but I'll do anything, 'cause my dad is under stress, to
11 relieve him of his stress.

12 Do you know what stress I was referring to?

13 A. I don't.

14 Q. Were you in the May meeting with my father,
15 May 10, 2012?

16 A. I was -- are you talking about on the
17 telephone call?

18 Q. Correct.

19 A. I wasn't together with him.

20 Q. Okay. Were you together with anybody on that
21 call?

22 A. No. I was on -- in my -- my office phone.

23 Q. Okay. And at that meeting, did Si state that
24 he was having this meeting to end disputes among certain
25 parties and himself?

1 A. I don't recall.

2 Q. Were there any disputes you were aware of?

3 A. The only thing that he ever brought to my
4 attention was the letter that Pam had sent him.

5 Q. And what did Pam's letter state, basically?

6 A. I can't remember it. I mean, it was the
7 letter that he showed me in February of 2012. But the
8 general gist of that letter was that she was unhappy
9 about not being part of their estates.

10 Q. Just her or her and her children?

11 A. She may have spoke to her children.

12 Q. Was there anybody else who was left out of the
13 wills and trusts?

14 A. That was causing him stress?

15 Q. No. Just anybody at this point that was left
16 out, other than Pam.

17 A. Yes. Ted.

18 Q. And are you aware of anything Ted and Pam were
19 doing to force upon Si changes?

20 A. Not to my knowledge, other than the letter
21 that Pam had sent to him just expressing her
22 dissatisfaction.

23 Q. You said you talked to her attorney?

24 A. I talked to her attorney.

25 Q. And you told her attorney, while Si was

1 living, that she had been cut out of the estates and
2 trusts with her brother Ted?

3 A. I don't recall the conversation with the
4 attorney, but, ultimately, Si gave me authorization to
5 send documents to the attorney. So we may have had a
6 conversation about it.

7 Q. So you're stating that Si told you to -- he
8 authorized you to tell his daughter that she had been
9 cut out of the estates and trusts?

10 A. He authorized me to send documents to the
11 attorney.

12 Q. Did you send those documents to the attorney?

13 A. I believe we did, yes.

14 Q. Okay. Was Ted and his lineal descendants
15 disinherited?

16 A. They were, under the original documents.

17 Q. Well, under Shirley's document that's
18 currently theirs, Ted considered predeceased for all
19 purposes of disposition according to the language in the
20 document you drafted?

21 A. To the extent that assets passed to him under
22 the trust.

23 Q. Well, the document says, for all purposes of
24 disposition, Ted Bernstein is considered predeceased,
25 correct?

1 A. You'll have to state the question again.

2 Q. Does the document you drafted say that Ted
3 Bernstein is both considered predeceased under the
4 beneficiary definition with his lineal descendants and
5 considered predeceased for all purposes of dispositions
6 of the trust?

7 MR. ROSE: Objection. Best evidence. The
8 document's in evidence.

9 THE COURT: Sustained.

10 MR. BERNSTEIN: I'll have him read it.

11 THE COURT: Well, I mean, I can read it. It's
12 in evidence. So when it comes time, just point me
13 to the part that you want me to read, and I'll read
14 it. But I don't need to have the witness read it
15 to me. That's of no benefit.

16 MR. ROSE: Your Honor, and for the record,
17 those issues are part of the other counts and
18 aren't being tried today.

19 MR. BERNSTEIN: Page 7, Your Honor, of the
20 Shirley trust.

21 THE COURT: What exhibit number is that?

22 MR. BERNSTEIN: You want me to enter it as my
23 exhibit?

24 THE WITNESS: Plaintiff's Exhibit 2, Your
25 Honor.

1 THE COURT: All right. Let me go to page 7 of
2 Plaintiff's 2.

3 MR. BERNSTEIN: Can I enter this one into the
4 record?

5 THE COURT: Is it the same as the one I
6 already have?

7 MR. BERNSTEIN: According to Alan, it's not.

8 THE COURT: According to who?

9 MR. BERNSTEIN: Mr. Rose.

10 THE COURT: All right. Well, if it comes time
11 for you to put any exhibits in on your case, if
12 that's not a duplicate of an exhibit that's already
13 in, you're welcome to put it into evidence. But
14 this is not the time when you put evidence in.
15 This is the time when you're cross-examining the
16 plaintiff's witness.

17 MR. BERNSTEIN: Okay.

18 THE COURT: So on Page 7 of Plaintiff's 2, you
19 can go on with your questioning.

20 BY MR. BERNSTEIN:

21 Q. Are you there and are we on the same page?

22 Yes?

23 A. Yes, I am.

24 Q. Okay. In the definition of -- under E1, do
25 you see where it starts "notwithstanding the foregoing"?

1 A. Yes.

2 Q. Okay. Can you read that?

3 A. "Notwithstanding the foregoing, as I have
4 adequately provided for them during my lifetime, for
5 purposes of the dispositions made under this trust to my
6 children, Ted S. Bernstein and Pamela B. Simon and their
7 respective lineal descendants shall be deemed to have
8 predeceased the survivor of my spouse and me, provided,
9 however, if my children Eliot Bernstein, Jill Iantoni
10 and" --

11 Q. Okay, that's -- you can stop there.

12 Would you consider making distributions a
13 disposition under the trust?

14 A. It would it depend on other factors.

15 Q. What factors?

16 MR. ROSE: Objection. Relevancy.

17 THE COURT: Sustained.

18 BY MR. BERNSTEIN:

19 Q. Is a validity hearing a disposition of the
20 trust?

21 MR. ROSE: Objection. Calls for a legal
22 conclusion.

23 THE COURT: Sustained.

24 MR. BERNSTEIN: Well, he drafted the document,
25 so I'm trying to get what his meaning was when he

1 put it in. And it's relevant to the hearing today.

2 THE COURT: I ruled it's not relevant.

3 MR. BERNSTEIN: Oh, you did rule that?

4 THE COURT: Do you have another question of
5 the witness? Or we're moving on.

6 MR. BERNSTEIN: Okay.

7 BY MR. BERNSTEIN:

8 Q. So for purposes of disposition, Ted, Pam and
9 her lineal descendants are considered predeceased,
10 correct?

11 MR. ROSE: Objection. Relevancy, cumulative
12 and best evidence.

13 THE COURT: Sustained.

14 The document says what it says.

15 MR. BERNSTEIN: Okay.

16 THE COURT: When you ask a witness if it says
17 what it says, I don't pay any attention to his
18 answer, because I'm reading what it says.

19 MR. BERNSTEIN: Okay.

20 BY MR. BERNSTEIN:

21 Q. Did you produce a fraudulent copy of the
22 Shirley trust agreement?

23 A. No, I did not.

24 Q. So when you sent to Christine Yates this trust
25 agreement with the attached amendment that you've

1 already admitted you fraudulently altered, was that
2 producing a not valid copy of the trust that was
3 distributed to a party?

4 A. We've already talked about the amendment was
5 not a valid amendment.

6 Q. No, I'm asking, did you create a not valid
7 trust of my mother's and distribute it to Christine
8 Yates, my children's attorney?

9 MR. ROSE: Objection. Cumulative. He's
10 covered this.

11 MR. BERNSTEIN: Well, it has to go to the
12 validity, Your Honor, because --

13 THE COURT: The question I'm figuring out is,
14 have we already covered this?

15 MR. BERNSTEIN: We touched on a piece of it.
16 The more important part --

17 THE COURT: Okay. Then I'll let you reask
18 your question to cover something that we've not
19 already covered.

20 MR. BERNSTEIN: Okay. And we covered that
21 the --

22 THE COURT: You don't have to remind me.

23 MR. BERNSTEIN: Oh, okay.

24 THE COURT: Listen, see, this -- look at this.
25 I take notes. I write stuff down. Now, a lot of

1 times, if you see me not writing and I'm doodling,
2 that means you're not scoring any points.

3 MR. BERNSTEIN: You've got to show me --

4 THE COURT: The point is, I should be writing
5 notes. So that means you're not doing any good.

6 MR. BERNSTEIN: Gotcha.

7 THE COURT: So, please, the reason I write it
8 is so we don't have to repeat things.

9 BY MR. BERNSTEIN:

10 Q. Okay. You've already stated that you created
11 a fraudulent amendment.

12 Did you attach it to a Shirley trust document?

13 A. No. We included the amendment with the
14 documents that we transmitted to her.

15 Q. So it was included as part of the Shirley
16 trust document as an amendment, correct?

17 A. It was included as an amendment.

18 Q. To the Shirley trust document.

19 Thereby, you created a fraudulent copy, a not
20 valid copy of the Shirley trust, correct?

21 MR. ROSE: Objection. Argumentative.

22 Cumulative.

23 THE COURT: Overruled.

24 You can answer. Did that create a fraudulent
25 version of the trust?

1 THE WITNESS: It could have, yes, Your Honor.

2 BY MR. BERNSTEIN:

3 Q. Can you explain why it couldn't have?

4 A. Because Si ultimately exercised his power of
5 appointment, which was broader than the definitional
6 provision in the document.

7 Q. That's not my question. I'll just say it was
8 asked and not answered.

9 Okay. So there are not validly -- not valid
10 Shirley trust agreements in circulation, correct?

11 A. That's not true.

12 Q. Well, the Shirley trust agreement you said
13 sent to Christine Yates you've just stated was invalidly
14 produced.

15 A. To Christine Yates.

16 Q. Yeah, okay. So I said "in circulation."

17 Is Christine Yates out of circulation?

18 A. I don't know what Christine Yates did with the
19 documents.

20 Q. Well, I got a copy, so they're even more in
21 circulation.

22 So my point being, you sent from your law firm
23 fraudulent -- a non-valid copy of the document --

24 A. Which document?

25 Q. -- the Shirley trust and her amendment to

1 Christine Yates, right?

2 MR. ROSE: Objection. Cumulative.

3 THE COURT: Sustained.

4 MR. BERNSTEIN: Okay. We'll move on from
5 that.

6 BY MR. BERNSTEIN:

7 Q. Would you know about when you did that
8 fraudulent alteration of the document?

9 A. January 2013.

10 Q. And you were a fiduciary -- or you were
11 counsel to the alleged fiduciary, Ted Bernstein, of the
12 Shirley Bernstein trust, correct?

13 A. Yes, we were.

14 Q. And you were counsel to Ted Bernstein as the
15 alleged personal representative of Shirley's estate?

16 A. Yes, we were.

17 Q. And as Ted's counsel in the Shirley trust, can
18 you describe what the not valid trust agreement that was
19 sent to Ms. Yates did to alter the beneficiaries of the
20 document?

21 MR. ROSE: Objection. Cumulative.

22 THE COURT: Overruled.

23 What alterations did that make to the
24 beneficiaries?

25 THE WITNESS: It didn't make any alterations

1 to the beneficiaries. The document's not a valid
2 document and so it couldn't have made any changes
3 to the estate planning.

4 BY MR. BERNSTEIN:

5 Q. Okay. But what did it intend to do?

6 MR. BERNSTEIN: Sorry. Excuse me, Your Honor.

7 What did you say?

8 THE COURT: Next question.

9 BY MR. BERNSTEIN:

10 Q. Okay. What did it intend to do?

11 A. I answered that question earlier.

12 THE COURT: I can't let the witness object to
13 questions. That won't work.

14 THE WITNESS: I'm sorry, Your Honor. Earlier
15 you asked me the question, and I responded to you
16 that it was to carry out your father's intent and
17 the agreement that you all had made prior to his
18 death, on that telephone call, and to have a
19 document that would provide, perhaps, clarity to a
20 vague misinterpretation of your mother's document.

21 BY MR. BERNSTEIN:

22 Q. So instead of going to the court, you just
23 frauded a document to an attorney, who's representing
24 minor children in this case -- produce a fraudulent copy
25 of the trust document, making us have total trouble

1 understanding what's real and not, especially with your
2 firm's history of fraudulent and forged documents
3 submitted to the court in this case.

4 THE COURT: Okay. Thanks. You're just
5 ranting. Ranting is not allowed.

6 MR. BERNSTEIN: Sorry.

7 THE COURT: If you'd like to ask a question,
8 I'll let you do that. If I have to call you on
9 this too many more times, I'm going to assume that
10 you're done questioning the witness.

11 MR. BERNSTEIN: Okay.

12 BY MR. BERNSTEIN:

13 Q. When did you first meet my parents?

14 A. 2007.

15 Q. And how did you meet them?

16 A. I met them through someone that made a
17 referral to them to our office.

18 Q. You didn't know Ted Bernstein prior to meeting
19 Si?

20 A. I don't recall who we met first. I'm not
21 sure.

22 Q. What firm were you with at the time?

23 A. Tescher, Gutter, Chaves, Josepher, Rubin and
24 Ruffin and Forman.

25 Q. And how long were you with them?

1 A. Five-plus years.

2 Q. And where were you before that?

3 A. I was in school.

4 Q. Okay. Did you work at Sony Digital ever?

5 A. I did.

6 Q. You did. And when was that, before school or
7 after?

8 A. That was from 1994 to '96.

9 Q. So after school?

10 A. After college.

11 Q. Okay. So that was -- you just forgot about
12 that one in your history.

13 Is there any other parts of your biography I'm
14 missing?

15 MR. ROSE: Objection. Argumentative.

16 THE COURT: Sustained.

17 BY MR. BERNSTEIN:

18 Q. Can you repeat, since I'm -- there was a
19 little clarification error there. Your history, you
20 started --

21 THE COURT: That's not necessary to repeat the
22 history. Do you have a new question?

23 MR. BERNSTEIN: Well, I'm trying to get the
24 history.

25 THE COURT: I don't want him to repeat what

1 he's already said. That moves the case backwards.

2 I want to go forward. You're cavitating.

3 MR. BERNSTEIN: Okay.

4 BY MR. BERNSTEIN:

5 Q. Did the altered trust document sent to
6 Christine Yates attempt to convince Yates and others she
7 sent that document to that Ted and Pam's lineal
8 descendants were actually inside the document?

9 A. Say the question again.

10 Q. Well, we read the section where they're
11 considered predeceased, Ted and Pam and their lineal
12 descendants.

13 When you altered that amendment that you said
14 you were just doing Si's wishes postmortem by altering a
15 document, my question is, did you put language in there
16 that would have made Ted and Pam's lineal descendants
17 now beneficiaries of Shirley's trust?

18 MR. ROSE: Objection. I think it's
19 cumulative. We've covered this.

20 THE COURT: Sustained.

21 MR. BERNSTEIN: Okay.

22 BY MR. BERNSTEIN:

23 Q. Can the beneficiary of Shirley's trust be Ted,
24 Pam or their lineal descendants?

25 A. If the assets of her trust were to pass under

1 the trust, no --

2 Q. Okay.

3 A. -- under the trust.

4 Q. So in the trust language of the Shirley trust
5 document, Ted's lineal descendants and Pam's lineal
6 descendants can get no dispositions, distributions,
7 whatever you want to call it?

8 A. You have to ask the question in a different
9 way, because I answered the question. I said, if it
10 passes under the trust, that they would not inherent.
11 If.

12 Q. Okay. When Shirley died, was her trust
13 irrevocable at that point?

14 A. It was.

15 Q. Who were the beneficiaries?

16 A. Simon Bernstein.

17 Q. And who were the beneficiaries -- well, Simon
18 Bernstein wasn't a beneficiary. He was a trustee.

19 A. No, he became the beneficiary of her trust
20 when she died. He was the sole beneficiary of her trust
21 when she died.

22 Q. Okay. And then who would it go to when he
23 died?

24 MR. ROSE: Objection. Cumulative.

25 THE COURT: Sustained.

1 BY MR. BERNSTEIN:

2 Q. Okay. When Simon died, who would the benefits
3 of Shirley's trust go to?

4 MR. ROSE: Objection. Cumulative.

5 THE COURT: Are you asking him to tell you
6 what would happen if the mother died first, then
7 the father died second, and we have the trust
8 documents and the wills that are in place so far
9 that have been testified to at the trial?

10 MR. BERNSTEIN: Correct.

11 THE COURT: I already know all that stuff.

12 MR. BERNSTEIN: Well --

13 THE COURT: So what is the new question you
14 want to ask that's not cumulative?

15 MR. BERNSTEIN: Okay. Well, I'm trying to get
16 to a very significant point there.

17 THE COURT: Get there. Just go there and see
18 what happens.

19 MR. BERNSTEIN: I just have to learn to ask
20 these questions a little more like a lawyer.

21 THE COURT: Yes.

22 MR. BERNSTEIN: So I have to rethink how to
23 ask that.

24 BY MR. BERNSTEIN:

25 Q. Do you recall talking to Detective Ryan

1 Miller?

2 MR. ROSE: Objection. Relevance.

3 THE COURT: Sustained.

4 BY MR. BERNSTEIN:

5 Q. Can you tell me all the roles you had in these
6 estates and trusts, and your partner, Don Tescher?

7 A. We were the attorneys to your parents. Upon
8 your dad's death, we became counsel to his estate and
9 served as co-PRs and co-trustees under his documents.

10 Q. Any other roles?

11 A. Served as counsel for -- we served as counsel
12 for Ted as fiduciary under your mother's documents.

13 Q. And who served as your counsel as trustee
14 PR -- co-trustee, co-PR?

15 A. Mark Manceri.

16 Q. Mark Manceri submitted that he was your
17 attorney?

18 A. I believe so, yes.

19 Q. Did you take a retainer out with him?

20 MR. ROSE: Objection. Relevance.

21 THE WITNESS: I'm sorry.

22 THE COURT: What's the relevance of the
23 retainer question?

24 THE WITNESS: I'm sorry. I take that back.

25 Mark Manceri was not counsel to us with respect to

1 the estate, except on a very specific matter.

2 THE COURT: The question that was objected to
3 was, did you take out a retainer? What's the
4 relevance of that?

5 MR. BERNSTEIN: Well, I'm trying to figure out
6 if he was properly representing before the court
7 these documents, and to his credibility, meaning
8 his --

9 THE COURT: I'll sustain the objection.

10 MR. BERNSTEIN: Okay.

11 BY MR. BERNSTEIN:

12 Q. And a question about the court. How long
13 before you notified the court as a personal
14 representative fiduciary that you had produced a
15 fraudulent trust of Shirley's?

16 A. To whom? I don't know that we ever
17 represented the document to the court, and I don't know
18 that anyone ever came to the court and said that we did.

19 Q. Well, I did in a petition I filed and served
20 on you --

21 MR. ROSE: Objection.

22 BY MR. BERNSTEIN:

23 Q. -- of January -- excuse me -- petition that I
24 served on you exposing a fraud of what happened with
25 Christine Yates after you admitted that to the police.

1 MR. ROSE: Objection. Relevance.

2 THE COURT: Sustained.

3 BY MR. BERNSTEIN:

4 Q. Okay. How many times have you spoken with
5 Alan Rose in the last three months?

6 A. Twice.

7 Q. Did you prepare for this hearing in any way
8 with Alan Rose?

9 A. I did.

10 Q. Okay. Was that the two times you spoke to
11 him?

12 A. Yes.

13 Q. Do you see any other of the parties that would
14 be necessary to validate these trust documents in the
15 court today?

16 MR. ROSE: Objection. Cumulative.

17 THE COURT: Sustained.

18 BY MR. BERNSTEIN:

19 Q. And you gave testimony to the total net worth
20 of Simon today, when you were asked by Mr. Rose; is that
21 correct?

22 A. Yes.

23 Q. How long did you serve as the co-trustee and
24 co-personal representative?

25 A. Of your father's estate? Since the date of

1 his death.

2 Q. And his trust?

3 A. Same.

4 Q. Okay. Did you produce an accounting to
5 support those claims you made today?

6 MR. ROSE: Objection. Relevancy.

7 THE COURT: Sustained.

8 MR. BERNSTEIN: Well, can I argue that or --

9 THE COURT: No.

10 MR. BERNSTEIN: Not even close. Does that
11 mean I have to ask it a different way?

12 THE COURT: Well, I can't answer questions.
13 I'm not allowed to give anybody legal advice.

14 MR. BERNSTEIN: Okay. That was procedural, I
15 thought. But okay.

16 THE COURT: Well, that's legal advice.

17 Procedure is a legal issue.

18 BY MR. BERNSTEIN:

19 Q. As a fiduciary of the estate of Simon and the
20 trust of Simon, did your law firm produce a accounting?

21 MR. ROSE: Objection. Relevance.

22 MR. BERNSTEIN: Well, it's relevant to, if
23 he's a fiduciary, his conduct. I mean, there's --

24 THE COURT: Here's the way I handle
25 objections --

1 MR. BERNSTEIN: Okay.

2 THE COURT: -- somebody asks a question, and
3 somebody in the courtroom says objection, and then
4 I have them state the legal objection and stop.
5 The other side doesn't say anything, unless I say,
6 Is there any argument one side or the other?
7 Because usually I can figure this stuff out without
8 having to waste time with arguments.

9 I didn't ask for any argument, right? Okay.
10 Sustained. Next question.

11 BY MR. BERNSTEIN:

12 Q. Mr. Rose asked you about Shirley's Bentley.

13 Are you aware -- you became aware of Shirley's
14 Bentley, correct?

15 A. Yes.

16 Q. When you became aware of Shirley's Bentley,
17 did you put in an amended inventory to account for it?

18 THE COURT: What's this going to help me
19 decide on the validity of the wills or trusts?

20 MR. BERNSTEIN: I'm just responding to the
21 statements that were brought up.

22 THE COURT: I wish you would have objected to
23 the relevancy then, but you didn't.

24 MR. BERNSTEIN: I did.

25 THE COURT: I don't think so.

1 MR. BERNSTEIN: No?

2 THE COURT: I'm a car guy, so I pay attention
3 if somebody's asking questions about Bentleys just
4 because it's interesting.

5 MR. BERNSTEIN: Well, it's so important, Your
6 Honor, because --

7 THE COURT: No, it's not. Right now what is
8 tied is, are the wills and trusts bound?

9 MR. BERNSTEIN: We have to question his
10 competency.

11 THE COURT: And so what's in the estate or
12 what's in the trust is not of any interest to me
13 right now. So if that Bentley should have been in
14 the estate or should not have been in the estate,
15 it should have been accounted for, not accounted
16 for, I'm not going to figure out today. But I want
17 to get all the evidence I possibly can to see
18 whether these wills and trusts that are in front of
19 me are valid or not valid. And I'm hoping that
20 you'll ask some questions that'll help me figure
21 that out.

22 MR. BERNSTEIN: Are those originals that you
23 have?

24 THE COURT: See, I'm not the witness. I'm the
25 judge. So I'm not sworn in and I have no knowledge

1 of the facts of this case, other than what the
2 witnesses tell me.

3 MR. BERNSTEIN: I'm winding down. I'll check
4 my list.

5 THE COURT: All right.

6 BY MR. BERNSTEIN:

7 Q. Are you familiar with a document the Bernstein
8 Family Realty LLC agreement?

9 A. Yes, I am.

10 Q. Did you draft that document?

11 A. Yes, I did.

12 Q. Was it part of Simon's estate planning?

13 A. It was part of his estate planning -- well,
14 yes --

15 Q. And what was --

16 A. -- in a roundabout way.

17 Q. What was it designed to do?

18 A. It was designed to hold title to the home that
19 you and your family live in.

20 Q. Oh, okay. And so it was -- who's the owners
21 of that?

22 A. The three kids -- your three kids, Josh,
23 Daniel -- your three kids' trusts that your father
24 created -- and Jake -- that he created in -- I believe
25 he created those trusts in 2006.

1 Q. And the prior testimony was, there were no
2 special documents under Simon's estate plan for my
3 family; is that correct?

4 A. Right. None that we prepared. Those were not
5 documents that we prepared.

6 Q. Okay. I think he asked you if you knew of
7 any.

8 So you knew of these, correct?

9 A. You're making me recall them. Yes.

10 Q. Oh, okay. Because you answered pretty
11 affirmatively no before, that you weren't aware of any
12 special --

13 THE COURT: Do you have any questions for the
14 witness?

15 MR. BERNSTEIN: Okay. I get it.

16 BY MR. BERNSTEIN:

17 Q. You referenced an insurance policy.

18 MR. BERNSTEIN: Can I -- well, I can't ask him
19 anything.

20 BY MR. BERNSTEIN:

21 Q. You referenced an insurance policy earlier,
22 life insurance policy, that you said you never saw; is
23 that correct?

24 A. Yes.

25 Q. And was that part of the estate plans?

1 A. We never did any planning with that. That was
2 an insurance policy that your father had taken out
3 30 years before. He had created a trust in 1995 for
4 that. That was not a part of any of the planning that
5 we did for him.

6 Q. Did you file a death benefit claim on behalf
7 of that policy?

8 MR. ROSE: Objection. Relevancy.

9 THE COURT: Sustained.

10 BY MR. BERNSTEIN:

11 Q. Is Christine Yates, who you sent the
12 fraudulently altered Shirley trust document that's not
13 valid, a layman?

14 MR. ROSE: Objection. Argumentative.

15 MR. BERNSTEIN: Excuse me.

16 BY MR. BERNSTEIN:

17 Q. Is she an attorney at law?

18 THE COURT: Now you're asking a different
19 question.

20 MR. BERNSTEIN: Okay.

21 THE COURT: Thanks.

22 BY MR. BERNSTEIN:

23 Q. Is she a layman, as you described prior?

24 A. She's an attorney.

25 Q. Okay. So you were sending that document that

1 you said you altered to make a layman understand the
2 language in the trust better?

3 MR. ROSE: Objection. Cumulative.

4 THE COURT: Let me have you finish your
5 questioning.

6 BY MR. BERNSTEIN:

7 Q. But you sent it to Christine Yates, an
8 attorney, who's not a layman?

9 A. We did.

10 Q. Okay. So it could be that you sent that
11 document to an attorney to commit a fraud upon her
12 clients, my children, minor children, correct?

13 A. The intent was not to commit a fraud.

14 Q. Okay.

15 A. Again, the intent was to carry out your dad's
16 wishes.

17 Q. By fraudulently altering documents?

18 MR. ROSE: Objection. Argumentative.

19 THE COURT: Sustained.

20 If you ask one more argumentative question, I
21 will stop you from asking the other things, because
22 I'll figure that you're done. Is that clear?

23 MR. BERNSTEIN: Yes.

24 THE COURT: I'm done warning you. I think
25 that's just too much to have to keep saying over

1 and over again.

2 BY MR. BERNSTEIN:

3 Q. When Shirley died, were her wishes upheld?

4 A. Your dad was the sole survivor of her
5 estate -- he was the sole beneficiary of her estate and
6 her trust.

7 Q. So her wishes of her trusts when Simon died
8 were to make who the beneficiaries?

9 MR. ROSE: Objection. Cumulative.

10 THE COURT: Sustained.

11 BY MR. BERNSTEIN:

12 Q. Who did Shirley make -- are you familiar with
13 the Eliot Bernstein Family Trust?

14 A. I am.

15 Q. And is that trust under the Shirley trust?

16 A. No, it's not.

17 Q. It's a separate trust?

18 A. It is.

19 Q. Is it mentioned in the Shirley trust?

20 A. It may be.

21 Q. As what?

22 A. As a receptacle for Shirley's estate.

23 Q. Her trust?

24 A. A potential receptacle for Shirley's trust.

25 Q. So there were three, the Eliot Bernstein

1 Family Trust, Lisa Friedstein and Jill Iantoni Family
2 Trust, that are mentioned as receptacles. I would
3 assume that's the word, beneficiary --

4 MR. ROSE: Objection.

5 BY MR. BERNSTEIN:

6 Q. -- of the Shirley trust, correct?

7 MR. ROSE: Objection. Cumulative.

8 THE COURT: Sustained.

9 BY MR. BERNSTEIN:

10 Q. Okay. On Simon's medical state eight weeks
11 before he died, when these documents of the Simon trust
12 are alleged by you to have been signed, are you aware of
13 any conditions of Simon's at that time medically?

14 A. I was not.

15 Q. Were you aware of any medicines he was on?

16 A. I was not.

17 Q. Were you aware he was seeing a psychiatrist?

18 A. I was not.

19 Q. Were you aware that he was going for a brain
20 scan?

21 A. I was not.

22 Q. Were you aware that he was brought in to
23 multiple doctors during that time for brain problems;
24 that they ended up doing a brain biopsy at Delray
25 Medical right around that time that he's said to sign

1 these documents?

2 A. He did not make us aware of any medical issues
3 that he had.

4 Q. Okay. Did you ask him at the time you were
5 signing those amended documents if he was under any
6 medical stress?

7 A. No, I did not.

8 Q. Okay.

9 A. He --

10 MR. BERNSTEIN: Can I ask him to read that?

11 BY MR. BERNSTEIN:

12 Q. Can you look at that document and --

13 MR. BERNSTEIN: Judge, would you like a look
14 at this?

15 THE COURT: I don't look at anything that's
16 not an exhibit.

17 MR. BERNSTEIN: I'm exhibiting it to him.

18 THE COURT: Okay. Well, that's fine, but I
19 want you to go ahead and ask your question. I
20 don't look at things that aren't exhibits in
21 evidence --

22 MR. BERNSTEIN: Okay.

23 THE COURT: -- unless I have to mark them.
24 But no, I don't have a curiosity to look at pieces
25 of paper.

1 MR. BERNSTEIN: Should I exhibit it as
2 evidence -- can I exhibit it as --

3 THE COURT: If it comes into evidence, I'll
4 look at it.

5 MR. BERNSTEIN: Okay. Can I submit it as
6 evidence?

7 THE COURT: Well, have you asked any questions
8 to establish what it is?

9 BY MR. BERNSTEIN:

10 Q. Is this a letter from your law firm -- prior
11 law firm?

12 A. I did not prepare this letter --

13 Q. Okay.

14 A. -- but it appears to be, yes.

15 Q. Prepared by?

16 A. Donald Tescher.

17 MR. BERNSTEIN: Okay. Now can I submit it?

18 THE COURT: So you're offering it as an
19 exhibit --

20 MR. BERNSTEIN: Please.

21 THE COURT: -- as Defendant's 2.

22 Is there any objection?

23 MR. ROSE: No objection.

24 THE COURT: All right. I'll take a look at
25 it. And that'll be in evidence as Defendant's 2.

1 Thank you.

2 (Defendant's Exhibit No. 2 was received into
3 evidence.)

4 BY MR. BERNSTEIN:

5 Q. Can you just read into the record
6 paragraph 2 --

7 THE COURT: Well, I'm reading it. The
8 document is in the record.

9 MR. BERNSTEIN: Oh, okay.

10 THE COURT: I'm reading paragraph 2 even as we
11 speak, so I don't need the witness to read it for
12 me. But if you want to ask him a question, you can
13 go ahead with that.

14 BY MR. BERNSTEIN:

15 Q. Okay. That letter states that Si's power of
16 appointment for Simon could not be used in favor of Pam,
17 Ted and their respective children; is that correct?

18 A. Yes. Don appears to have written that.

19 Q. Did you get a copy of this letter?

20 A. I don't recall getting a copy of it, but
21 doesn't mean that I didn't.

22 Q. But you are partners in that firm?

23 A. Yes, we were partners in that firm.

24 Q. Now, that -- this document --

25 MR. ROSE: Your Honor, can I just -- I don't

1 want to go out of order, but this is only relevant
2 if the documents are valid. And if he's -- the
3 whole point is the documents are valid. And he
4 wants to argue the second part, of what they mean,
5 then we should not have wasted a whole day arguing
6 over the validity of these five documents.

7 THE COURT: Well, waste of time is what I do
8 for a living sometimes. Saying we shouldn't be
9 here doesn't help me decide anything.

10 I thought I was supposed to decide the
11 validity of the five documents that have been
12 pointed out; some of them might be valid and some
13 of them might be invalid. And I'm struggling to
14 decide what's relevant or not relevant based upon
15 the possibility that one of them might be invalid
16 or one of them might not. And so I'm letting in a
17 little bit more stuff than I normally think I
18 would.

19 MR. ROSE: I'm concerned we're arguing the
20 second -- the second part of this trial is going to
21 be to determine what the documents mean and what
22 Simon's power of attorney could or couldn't do.
23 And this document goes to trial two and not trial
24 one, although I didn't object to its admissibility.

25 THE COURT: Well, since it's in evidence,

1 we'll leave it there and see what happens next.

2 Do you have any other questions of the
3 witness?

4 MR. BERNSTEIN: Yeah.

5 BY MR. BERNSTEIN:

6 Q. It says that the document that you
7 fraudulently altered creating the invalid copy of the
8 Shirley trust had some kind of paragraph 2 that was
9 missing from the original document --

10 MR. ROSE: Objection. Argumentative.

11 BY MR. BERNSTEIN:

12 Q. -- from my understanding.

13 THE COURT: You may finish your question. And
14 make sure it's a question and not an argument.
15 Because you know what happens if this is an
16 argument.

17 MR. BERNSTEIN: I'm not arguing. I'm just
18 asking --

19 THE COURT: I want you to ask your question.

20 BY MR. BERNSTEIN:

21 Q. It says here that there was a blank spot that
22 you -- a Paragraph No. 2 which modified the definitional
23 language by deleting words.

24 According to this document, the power of
25 appointment by Simon could not alter the Shirley trust

1 agreement, correct?

2 A. Don seems to be suggesting that in the second
3 paragraph. I don't necessarily believe that that's the
4 case.

5 Q. Did you review this document with Don?

6 MR. ROSE: Objection. Cumulative.

7 THE COURT: The question is, Did you go over
8 this document with Don?

9 MR. BERNSTEIN: Correct.

10 THE COURT: Overruled.

11 You can answer.

12 THE WITNESS: No.

13 BY MR. BERNSTEIN:

14 Q. So he's -- Don, in this letter, is describing
15 your actions, correct?

16 A. Yes.

17 Q. Okay. Did you write a letter to anybody
18 describing your actions?

19 A. I did not.

20 Q. You did not.

21 And what have you done to correct the damages
22 caused by that to my family?

23 MR. ROSE: Objection. Relevance.

24 THE COURT: Sustained.

25 MR. BERNSTEIN: Okay.

1 BY MR. BERNSTEIN:

2 Q. And are you aware of an autopsy that was done
3 on my father the day -- or ordered the day he died?

4 MR. ROSE: Objection. Relevance.

5 THE COURT: Sustained.

6 BY MR. BERNSTEIN:

7 Q. Are you aware -- well, are you aware of a
8 heavy metal poison test that was done by the Palm Beach
9 County coroner?

10 MR. ROSE: Objection. Relevance.

11 THE COURT: Sustained.

12 MR. BERNSTEIN: Well, it's --

13 THE COURT: Next question.

14 MR. BERNSTEIN: I'm trying to figure that out.

15 Your Honor, is -- I can't ask you that question.

16 BY MR. BERNSTEIN:

17 Q. Competency. Based on everything you know
18 about Simon, when he signed those documents, he was
19 competent?

20 A. To my knowledge, he was of sound mind and
21 body.

22 Q. Now, are you a medical expert?

23 A. I'm not.

24 Q. Are you aware of any other fraudulent activity
25 that took place in anything in the estate and trusts of

1 Simon Bernstein by yourself or your employees?

2 A. Are you referring back to the closing of your
3 mother's estate?

4 Q. I'm referring to any other --

5 A. -- we've talked about.

6 Q. So can you list those and then just say that's
7 all that you're aware of?

8 MR. ROSE: Objection. Cumulative.

9 THE COURT: Sustained.

10 BY MR. BERNSTEIN:

11 Q. Other than the fraud that you've admitted to
12 in the documents of Shirley, the Moran forged and
13 fraudulent waivers, the April 9th waiver that you and Si
14 signed stating he had all the waivers when he couldn't
15 have, are there any other frauds that you're aware of
16 that took place with these estate and trust documents?

17 A. Not to my knowledge.

18 Q. When you were first interviewed by the Palm
19 Beach County Sheriff with Kimberly Moran, did you notify
20 them at that first interview that you had fraudulently
21 altered a document?

22 MR. ROSE: Objection. Relevance.

23 THE COURT: Sustained.

24 BY MR. BERNSTEIN:

25 Q. When did you notify the sheriff that you

1 fraudulently altered a document?

2 MR. ROSE: Objection. Relevance.

3 THE COURT: Sustained.

4 BY MR. BERNSTEIN:

5 Q. You have these exhibits. This will says
6 "conformed copy" on Exhibit 1 of their exhibits; is that
7 correct?

8 A. Yes, it does.

9 Q. Does a conformed copy have to have the clerk
10 of the court's signature on it?

11 A. Conformed copy would not be sent to the clerk
12 of the courts.

13 Q. Conformed copy -- okay.

14 Is that your signature on the document? This
15 is Exhibit 2, Shirley trust agreement, of the
16 plaintiff's exhibit book, 2, page 27.

17 A. Yes, it appears to be.

18 Q. It appears to be?

19 A. Yes.

20 Q. All right. And is that Traci Kratish's
21 signature?

22 A. She was there. I can't speak to her
23 signature.

24 Q. Did you witness her sign it?

25 A. I did.

1 Q. Okay. Is that my mom's signature on page 28?

2 A. Yes, it is.

3 Q. On this first amendment to Shirley's trust --

4 MR. BERNSTEIN: Exhibit 3, Your Honor, page 1
5 of 3, I guess. It's the first page in that
6 exhibit.

7 BY MR. BERNSTEIN:

8 Q. Is that document -- do you recall that
9 document?

10 A. Yes.

11 Q. Okay. And you recall the day it's signed and
12 notarized, allegedly?

13 A. November 18th, 2008.

14 Q. On the front page of that document, what day
15 is the document dated?

16 A. It's not dated.

17 Q. Is that typical and customary in your office?

18 A. Sometimes clients forget to put the date at
19 the top.

20 Q. You forget?

21 A. I said, sometimes clients forget to put the
22 date at the top.

23 Q. Well, did you check the document before making
24 it a part of a will and trust?

25 A. It was notarized as a self-proving document.

1 Q. Are you aware that Kimberly Moran's
2 notarization of the Simon trust has been found by the
3 Governor Rick Scott's notary public division to be
4 deficient?

5 MR. ROSE: Objection. Hearsay.

6 THE COURT: Sustained.

7 BY MR. BERNSTEIN:

8 Q. Are you aware of Kimberly Moran of your office
9 being contacted by the governor's office in relation to
10 these wills and trusts?

11 MR. ROSE: Objection. Hearsay.

12 THE COURT: Sustained.

13 What do I care if he's aware of that or not?
14 How does that help me decide the validity of these
15 documents?

16 MR. BERNSTEIN: Well, the governor's already
17 made a claim that --

18 THE COURT: But you're asking the witness if
19 he's aware of. Are you aware the sky is blue right
20 now? It doesn't matter to me if he's aware of it
21 or not. Are you aware Rick Scott has started an
22 investigation of a moon landing? It doesn't matter
23 to me if he knows that or not. You asked him are
24 you aware of somebody from Rick Scott's office
25 doing something. It doesn't matter to me if he's

1 aware of that or not. I've got to figure out the
2 validity of these documents, so I need to know
3 facts about that, please. Any other questions of
4 the witness on that?

5 MR. BERNSTEIN: Yes.

6 BY MR. BERNSTEIN:

7 Q. Is that my father's signature?

8 A. I'm not an expert on your father's signature.
9 But if it's on his will, at the bottom of his will, that
10 must have been a copy that was obtained from the clerk
11 of the courts, because that will was filed, and we would
12 have conformed copies in our file, which would not have
13 his signature at the bottom. Apparently, it is.

14 Q. But it does say on the document that the
15 original will's in your safe, correct?

16 A. For your mother's document, it showed that.

17 Q. Oh, for my father's -- where are the originals
18 of my father's?

19 A. Your father's original will was deposited in
20 the court. As was your mother's.

21 Q. How many copies of it were there that were
22 original?

23 A. Only one original. I think Mr. Rose had
24 stated on the record that he requested a copy from the
25 clerk of the court of your father's original will, to

1 make a copy of it.

2 Q. Certified?

3 A. I'm not sure if he said it was certified or
4 not.

5 Q. Is that your signature on my father's will?

6 MR. BERNSTEIN: This is Exhibit 4, Your Honor,
7 Page 7.

8 THE WITNESS: Yes, it is.

9 BY MR. BERNSTEIN:

10 Q. Okay. Is that my father's signature?

11 A. Appears to be.

12 Q. Whose signature is that?

13 A. That's my signature.

14 Q. Oh, okay. So the only two witnesses you see
15 on this document are you and Kimberly Moran; is that
16 correct?

17 A. On that page.

18 Q. And both you and Kimberly Moran have had
19 misconduct in these cases?

20 MR. ROSE: Objection. Relevance.

21 THE COURT: Overruled. But it's cumulative.

22 MR. ROSE: It's cumulative.

23 THE COURT: How many times do I need to know
24 this?

25 MR. BERNSTEIN: What does that mean exactly,

1 cumulative? I don't get that. I'm sorry.

2 THE COURT: Let's say you hit me over the head
3 with a two-by-four. That's one time. If you do it
4 twice, that's cumulative. Cumulative's not
5 allowed.

6 MR. BERNSTEIN: That's an objection, is that
7 I've asked it --

8 THE COURT: Yes.

9 MR. BERNSTEIN: -- and it was answered? Is
10 that what it's kind of saying?

11 THE COURT: Yes, asked and answered. That's
12 another way of saying it.

13 MR. BERNSTEIN: Now I got it.

14 THE COURT: Asked and answered is a similar
15 way to say it.

16 MR. BERNSTEIN: Okay. Sorry.

17 BY MR. BERNSTEIN:

18 Q. Is that my father's signature, to the best of
19 your knowledge?

20 A. Appears to be, yes.

21 Q. And is that your signature?

22 A. Yes, it is.

23 Q. And here, did Kimberly Moran properly notarize
24 this document?

25 A. Kimberly did not notarize the document.

1 Q. Or Lindsay Baxley, did she check one -- either
2 the person was personally known or produced
3 identification?

4 A. No. This is what Mr. Rose had gone over
5 earlier.

6 Q. No, those, I believe, are in other documents
7 we'll get to.

8 So this notarization, as far as you can tell,
9 is incomplete?

10 MR. ROSE: Objection. Are we on Exhibit 2?

11 MR. BERNSTEIN: No.

12 THE COURT: We're on Exhibit 4, as far as I
13 recall.

14 MR. BERNSTEIN: He does not miss a thing.

15 Your Honor, page 8.

16 THE WITNESS: This is Si's documents.

17 MR. ROSE: Got it.

18 BY MR. BERNSTEIN:

19 Q. Okay. So on Simon's trust, weeks before he
20 dies, the notarization's improper?

21 A. This was the same document we spoke about
22 before. Yes, she did not circle "known to me,"
23 although...

24 Q. So she didn't know you or Simon?

25 A. No, she knew all of us. She just neglected to

1 circle "known to me."

2 Q. And that's one of the three functions of a
3 notary, to the best of your knowledge, to determine the
4 person is in the presence that day by some form of I
5 either know you or you gave me a license; is that
6 correct?

7 A. Yes.

8 Q. So your firm -- have you done anything since
9 knowing this document's improperly notarized to correct
10 it with the courts?

11 MR. ROSE: Objection. It misstates facts. He
12 didn't say it was improperly notarized.

13 THE COURT: Just state the objection, please.

14 MR. ROSE: Well, calls for a legal conclusion.

15 THE COURT: Sustained.

16 MR. MORRISSEY: Another objection. It
17 misstates the law.

18 THE COURT: Sustained.

19 BY MR. BERNSTEIN:

20 Q. Is that Lindsay -- oh, you can't answer that.

21 So, to the best of your ability, regarding
22 your signature, Kimberly or Lindsay Baxley has failed to
23 state that you either were known to her or produced
24 identification?

25 MR. ROSE: Objection. Cumulative.

1 THE COURT: Sustained.

2 MR. BERNSTEIN: Okay. We'll go on to
3 document 5.

4 BY MR. BERNSTEIN:

5 Q. Is that my father's initials, to the best of
6 your knowledge?

7 A. Appears to be, yes.

8 Q. Do these initials look similar to you, this
9 one on page 2, next to this one on page 3, next to that
10 thing on page 4?

11 A. Initials typically don't look perfect page to
12 page, and they don't necessarily look similar page to
13 page. I have seen clients execute a lot of documents,
14 and by the time they get to, you know, the second and
15 third document, their signatures and their initials do
16 not necessarily look --

17 Q. Look at page 13, for example. I mean, this is
18 almost -- if we go through page by page, tell me if you
19 see any that are even similar. On page -- let's start
20 back at the beginning, if that'll help you.

21 That? Do those look similar to you as you're
22 flipping through those?

23 A. Yeah, they have a lot of the same -- similar
24 ending marks. Your father's ending mark was that line.
25 I mean, it's on every single solitary page.

1 Q. Okay. So your testimony today is those are my
2 father's initials?

3 A. That they were.

4 Q. Okay.

5 A. I was there when he was...

6 Q. And you've looked at all of these, page 19,
7 page 20? Those look similar to what you're saying -- or
8 why don't you just look at them. If you go through them
9 all, they all look different. But okay.

10 A. They all look different, and they all look
11 consistent at the same time.

12 Q. Okay. Is that -- on page 24, is that my
13 father's signature?

14 A. Appears to be.

15 Q. Is that your signature?

16 A. Yes, it is.

17 Q. Okay. Now, this is another trust document
18 that Lindsay Baxley did that's supposed to be notarized,
19 a will and trust, I believe, and the amended and
20 restated.

21 Can you tell that Simon Bernstein was present
22 or produced -- or present that day by the notarization?

23 A. She again failed to mark that he was
24 personally known, but she worked for him.

25 Q. So these dispositive documents are improperly

1 notarized?

2 MR. ROSE: Objection. Cumulative. Legal
3 conclusion.

4 THE COURT: Sustained.

5 BY MR. BERNSTEIN:

6 Q. Okay. And then let's go to the first
7 amendment to Shirley Bernstein's trust. Is this a
8 document prepared --

9 MR. BERNSTEIN: Your Honor, that would be 6.

10 THE COURT: All right.

11 BY MR. BERNSTEIN:

12 Q. Is that a document prepared by your law firm?

13 A. Yes, it is.

14 Q. And do you see where it's, "Now therefore by
15 executing this instrument I hereby amend the trust
16 agreement as following"? And what is it -- what are the
17 numbering sequences there?

18 A. It says, I hereby delete a paragraph of
19 article --

20 Q. What number is that?

21 A. Paragraph B -- it's number 1.

22 Q. Okay. And what's Number 2?

23 MR. ROSE: Objection. Best evidence. It's in
24 evidence. And it's cumulative.

25 THE COURT: Two is in evidence, as is

1 paragraph one and paragraph three. And I've
2 read --

3 MR. BERNSTEIN: Oh, no. But Number 1, Your
4 Honor, take a look real quick. Number 1; there's
5 no Number 2.

6 THE COURT: The objection came on your next
7 question, and that was dealing with paragraph 2,
8 which says it's already in evidence. And it is.

9 MR. BERNSTEIN: No, no, not paragraph 2. Look
10 at down below. Under the "now therefore," there's
11 a Number 1, and I was asking him what Number 2
12 reads.

13 THE COURT: I know you were.

14 MR. BERNSTEIN: And there is no Number 2.

15 THE COURT: You've asked me to look at
16 Exhibit No. 6, right? Plaintiff's Exhibit 6 has,
17 under the therefore clause, a one, a two and a
18 three. Are you asking me to look at a different
19 document?

20 MR. BERNSTEIN: Can I approach?

21 THE COURT: Sure. All right. So that's a
22 different Number 6 than I have. So let's see your
23 Number 6.

24 MR. BERNSTEIN: What do I do on that?

25 THE COURT: That's not my decision.

1 MR. BERNSTEIN: That's his book, not my book,
2 just so you know.

3 THE COURT: Well, that Tab 6 is different than
4 my Tab 6. So there you go.

5 MR. BERNSTEIN: Okay. Well, which -- what do
6 I go off there?

7 THE COURT: I have no --

8 MR. BERNSTEIN: Can I submit that into
9 evidence?

10 THE COURT: I have no preference.

11 MR. BERNSTEIN: Okay. I'd like to submit
12 this, because I'm not sure if the other one is in
13 evidence wrong.

14 THE COURT: All right. Any objection?

15 MR. ROSE: Could I just see the book? Would
16 you mind?

17 THE COURT: Here, I'll show you my book. You
18 can look at that book and see what's going on.

19 And this will be a good time for us to take a
20 short break, and let you all straighten it out. So
21 we'll be back in session in 15 minutes. And then
22 we'll go to the bitter end. Each of you has about
23 60 minutes remaining.

24 MR. BERNSTEIN: Your Honor, when you say
25 "60 minutes remaining," we haven't got through all

1 the witnesses yet.

2 THE COURT: Well, we will have by the end of
3 60 minutes on each side.

4 This trial is over at five o'clock. I told
5 you when we started each of you has half of the
6 time; please use it wisely; use it as you wish.
7 I've tried to encourage both sides to be efficient.
8 When your time is gone, that's the end of the trial
9 for you.

10 MR. BERNSTEIN: Well, the case manager --

11 THE COURT: When their trial is gone --

12 MR. BERNSTEIN: At the case management, they
13 said it would take a day. I argued and said to you
14 it would take days. I mean, they've got
15 10 witnesses. I need to have all the people who
16 witnessed these documents here.

17 THE COURT: Remember when I said a moment ago
18 we're in recess? I was serious. Thanks. We'll go
19 back in session 15 minutes from now.

20 (A break was taken.)

21 THE COURT: We're ready to resume. Are there
22 any further questions for the witness on cross?

23 MR. BERNSTEIN: Okay. We were just working
24 out that 1, 2, 3, Exhibit No. 6, so that we get the
25 record straight.

1 THE COURT: Okay.

2 MR. BERNSTEIN: Shall I get a copy of yours,
3 you get a copy of mine? Or how do you want to do
4 that?

5 MR. ROSE: Your Honor, I tried to work it out.

6 THE COURT: Listen, I don't have any
7 preference as to how we do anything. You all tell
8 me how you've worked it out, and if I agree with
9 it, I'll accept it.

10 MR. ROSE: The copy that's been marked for the
11 witness, the copy in my book and the copy in your
12 book are all identical. I don't know what's in his
13 book, and he wouldn't show me his book on the
14 break.

15 THE COURT: Okay.

16 MR. ROSE: But I'm fine. It's a three-page
17 document. And if he wants to put it in evidence,
18 even though it's not operative, I have no
19 objection.

20 THE COURT: Okay. So are you putting
21 something into evidence?

22 MR. BERNSTEIN: Yeah. The one that I --

23 THE COURT: Have you showed it to the other
24 side yet? You can't put secret documents into
25 evidence, only after they've been seen by everyone.

1 Let's at least show it to the other side so they
2 know the document that's being proffered as an
3 exhibit. If they still have no objection, I'll
4 receive it as Defendant's 3.

5 MR. ROSE: This is in evidence already as
6 Exhibit No. -- as Plaintiff's No. 3.

7 MR. BERNSTEIN: So what's 6? So now I don't
8 even have the right 6 document.

9 MR. ROSE: The 6 that the witness has is three
10 pages. It's the same 6 that's in your book and
11 it's in my book. It's three consecutive pages of
12 the production from Tescher & Spallina law firm.
13 It has the inoperative first amendment as page 1,
14 then it has the operative first amendment as
15 page 2, and the signature page as page 3. It's the
16 same document in everybody's book. That's all I
17 can tell you.

18 THE COURT: Okay.

19 MR. BERNSTEIN: Your Honor, in my book, 3 and
20 6 are the identical documents --

21 THE COURT: Okay.

22 MR. BERNSTEIN: -- so I would need --

23 THE COURT: Are there any other questions of
24 the witness?

25 MR. BERNSTEIN: Well, I was going to ask him

1 questions on this document.

2 THE COURT: All right. Well, then, let's go.

3 MR. BERNSTEIN: Okay. I need a -- I don't
4 have the 6 that everybody else is referring to. My
5 sinks is the same as --

6 THE COURT: There you go. Take whatever you
7 need.

8 MR. BERNSTEIN: Okay. Thank you. I think we
9 missed 6. It's just short on 6.

10 THE COURT: All right. Then here's my Tab 6.

11 MR. BERNSTEIN: Thank you, sir.

12 THE COURT: The idea is to keep moving.

13 MR. BERNSTEIN: Okay. I'll move on. I'm
14 almost done here.

15 BY MR. BERNSTEIN:

16 Q. Okay. So on Exhibit 3, can you list the
17 numbers there?

18 MR. ROSE: Objection. Best evidence.
19 Cumulative.

20 THE COURT: Sustained.

21 You need to refer to which page. That's a
22 multi-page document, and both pages have numbered
23 paragraphs on them.

24 MR. BERNSTEIN: Page 1 of 2.
25

1 BY MR. BERNSTEIN:

2 Q. The Roman Numeral -- or the numerals, can you
3 give the sequence of those numbers?

4 A. One and three. It's skipping two.

5 Q. And this is a document you allege to be part
6 of the Shirley trust that you're claiming is valid?

7 A. That's the amendment that Shirley executed in
8 November of 2008.

9 Q. And would there be a reason why your law firm
10 numbers one, three?

11 MR. ROSE: Objection. Cumulative.

12 THE COURT: Overruled.

13 You can answer.

14 THE WITNESS: Human error.

15 BY MR. BERNSTEIN:

16 Q. Okay. But it is an error in the document that
17 you're claiming is valid Shirley trust?

18 A. It's a numbering error.

19 Q. In the document, you're claiming this is a
20 valid amendment, correct?

21 A. Correct.

22 Q. Okay. And then in number 6 from the judge,
23 what's the numbering sequence?

24 A. One, two, three.

25 Q. Okay. So you added in a number two?

1 A. Yes.

2 Q. Okay. How did you go about doing that?

3 A. There was a paragraph two inserted between one
4 and three.

5 Q. Well, the paragraph that's inserted between
6 one and three wouldn't fit there.

7 So what did you do?

8 A. The document was opened up and a paragraph was
9 inserted.

10 Q. Okay. So you increased the spacing on the
11 document, correct, by adding a number three, correct?

12 A. Adding number two, yes.

13 Q. By adding number two, correct.

14 Okay. So you actually had to alter the
15 chronology as it was placed on the document? You didn't
16 just put a number two there in between one and three?
17 You actually went and expanded the document with words
18 that were inserted by you fraudulently, right?

19 MR. ROSE: Objection. Argumentative.

20 Cumulative.

21 THE COURT: Sustained.

22 MR. BERNSTEIN: Okay.

23 MR. ROSE: Your Honor, the witness does have
24 the exhibits in front of him. If Mr. Bernstein
25 could be at the podium.

1 MR. BERNSTEIN: I don't know if he has all the
2 exhibits.

3 THE COURT: Well, do you have the exhibit that
4 I gave you from the Court's?

5 MR. BERNSTEIN: Oh, jeez.

6 THE COURT: Because I'd like to have it back
7 so that that doesn't get lost.

8 MR. BERNSTEIN: Okay. You gave me the one
9 with one, two, three.

10 Can I get a copy of this from the clerk?

11 THE BAILIFF: There is no clerk.

12 THE COURT: Can I have the document back,
13 please? He's not a clerk.

14 MR. BERNSTEIN: Marshall, sheriff, officer,
15 sir. Sorry about that.

16 THE COURT: He does not make copies.

17 MR. BERNSTEIN: Okay.

18 THE COURT: Thanks. Any other questions of
19 the witness? Your time is rapidly disappearing.

20 MR. BERNSTEIN: Just going through that.

21 THE COURT: And I think you said earlier you
22 have no objection to Plaintiff's 6 being received
23 as an exhibit?

24 MR. ROSE: Correct.

25 THE COURT: Okay.

1 MR. ROSE: Thank you.

2 THE COURT: Then it's in evidence as
3 Plaintiff's 6. I'm making it Plaintiff's 6, rather
4 than Defendant's 3, because it's already marked and
5 it's been referred to by that number.

6 (Plaintiff's Exhibit No. 6 was received into
7 evidence.)

8 BY MR. BERNSTEIN:

9 Q. Are these your notes?

10 A. No, they're not. Those are Don's.

11 Q. Do you know the date on that note?

12 A. 3/12/08.

13 Q. Did you take any notes in the meeting?

14 A. Those are my notes there.

15 Q. These are? Oh, so this is a compilation of
16 Don's and your notes?

17 A. Those are my notes, yes.

18 Q. And those were taken on that day?

19 A. Correct.

20 Q. Whose notes are those?

21 A. I just saw those for the first time today. I
22 believe they're your father's notes.

23 Q. How would you know those are my father's
24 notes?

25 A. Mr. Rose introduced that document earlier.

1 Q. Document 12, did it come from your offices?

2 A. I don't know where it came from.

3 Q. Did you Bates stamp this document as part of
4 your documents?

5 A. I don't recall ever seeing that document.

6 Q. And it doesn't have your Bates stamp from your
7 production, right?

8 A. Correct.

9 Q. You were supposed to turn over all your
10 records, correct?

11 MR. ROSE: Objection. He's testified it
12 wasn't in his --

13 THE COURT: What's the objection to the
14 question?

15 MR. ROSE: Cumulative.

16 THE COURT: Sustained.

17 MR. BERNSTEIN: All right. Your Honor, I'm
18 done.

19 THE COURT: All right. Thank you.

20 Is there any redirect?

21 MR. ROSE: Brief, Your Honor.

22 REDIRECT (ROBERT SPALLINA)

23 BY MR. ROSE:

24 Q. Assuming the documents are valid, they'll have
25 to be a later trial to determine the effect of Simon's

1 exercise of his power of appointment?

2 A. Yes.

3 Q. It doesn't have any direct bearing on whether
4 these five documents are valid?

5 A. No.

6 Q. And I take it you don't necessarily agree with
7 Mr. Tescher's view as expressed in his letter of
8 January 14th, 2014?

9 A. Again, I'm seeing that here. Surprised to see
10 that.

11 Q. The original documents, the wills, you
12 retained at all times of Shirley and Simon in your firm?

13 A. Prior to their death, yes.

14 Q. And that's consistent practice for a trust and
15 estate lawyer, to keep it in your will vault or in your
16 safe deposit box?

17 A. Yes. I would say most attorneys do that just
18 because there's only one original of the will, and very
19 often documents can get lost if clients take documents
20 home. So, typically, they're kept in a safe deposit box
21 or a safe or something like that, and left with the
22 attorney.

23 Q. I want to make sure I understand and the Court
24 understands what happened with the waiver forms.

25 While Simon was alive, he signed a petition

1 for discharge; is that correct?

2 A. Correct. April of '08.

3 Q. And --

4 MR. BERNSTEIN: What exhibit? Excuse me.

5 What number are we looking at?

6 MR. ROSE: None -- well, actually, it's in my

7 book. If you want to follow along, it's Tab 28.

8 But it's not in evidence.

9 BY MR. ROSE:

10 Q. And Simon also then filed a waiver of
11 accounting himself?

12 A. Correct.

13 Q. And is it necessary for Simon, even though
14 he's the personal representative, to sign a waiver of
15 accounting because he's a beneficiary?

16 A. I mean, we do it as a matter of course.

17 Q. And the signature of Simon Bernstein on
18 April 9th, that's genuinely his signature?

19 A. Can I see?

20 Q. Exhibit 28 is a petition that was filed with
21 the court. I'm going to just show you the exhibits.

22 Exhibit A says "Petition for discharge full waiver."

23 Is this a document you would have prepared for
24 Simon Bernstein to sign?

25 A. Yeah, our firm would prepare that.

1 Q. Okay. And it's a three-page document.

2 Is that Simon Bernstein's signature --

3 A. Yes, it is.

4 Q. -- April 9th, 2012?

5 A. Yes, he signed the document.

6 Q. And he was alive when he signed the document?

7 A. Yes, he was.

8 Q. Okay. Then he had to sign a waiver of
9 accounting, which he signed on the same day?

10 A. Correct.

11 Q. And you have a document waiver of accounting
12 on the next page signed by Eliot Bernstein on May 15th?

13 A. Correct.

14 Q. And there's no doubt that's Eliot's signature
15 because he's the one who emailed you the document,
16 correct?

17 A. And sent us the original by mail.

18 Q. Right. And we already have an exhibit which
19 is his email that sent you his waiver form?

20 A. Correct.

21 Q. And the waiver forms of Ted, Pam, Lisa and
22 Jill are all valid, signed by them on the date that they
23 indicated they signed it?

24 A. To the best of my knowledge, yes.

25 Q. So then these got submitted to the court.

1 Is there anything wrong with submitting waiver
2 forms to the court signed by Simon while he's alive
3 after he had passed away?

4 A. Maybe we should have made a motion to, you
5 know, have a successor PR appointed and file the
6 documents through the successor PR.

7 Q. Were you trying to just save expenses because
8 there was nothing in the estate?

9 A. Correct.

10 Q. And if Judge Colin had not rejected -- or his
11 assistant had not rejected the documents, and the estate
12 was closed, it would have been closed based on
13 legitimate, properly signed documents of Simon and his
14 five children?

15 A. Correct.

16 Q. So then they get kicked back to your law firm,
17 and you could file a motion and undertake some expense,
18 instead --

19 MR. BERNSTEIN: Object. This has been asked
20 and answered.

21 THE COURT: Sustained.

22 BY MR. ROSE:

23 Q. Now, does the fact that -- well, strike that.

24 At the time that Simon signed his 2012 will
25 and 2012 trust, had there been ever anyone question a

1 signature or a notarization of any document that had
2 been prepared by your law firm?

3 A. No, there was not.

4 Q. You didn't see anything or observe anything or
5 any behavior of Simon Bernstein during the course of any
6 meeting you had with him that would call into question
7 his competence or his ability to properly execute a
8 testamentary document?

9 A. We did not.

10 MR. ROSE: Nothing further, Your Honor.

11 THE COURT: All right. Thanks.

12 Thank you, sir. You can step down.

13 MR. ROSE: At this time, we would rest our
14 case.

15 THE COURT: Okay. Thank you.

16 Any evidence from the defendant's side?

17 MR. BERNSTEIN: Well, I'd like -- can I call
18 back Spallina?

19 THE COURT: If you want to call him as a
20 witness on your behalf, sure.

21 MR. BERNSTEIN: Yeah, sure.

22 THE COURT: All right. Mr. Spallina, you're
23 still under oath, and you're being called as a
24 defense witness now.

25 DIRECT EXAMINATION

1 BY MR. BERNSTEIN:

2 Q. Mr. Spallina, when Simon died on
3 September 12th -- or September 13th -- sorry -- 2012,
4 and you were responsible as his attorney to appoint Ted
5 as the successor, correct, you were in charge of his
6 wills and trusts?

7 THE COURT: You just asked three questions in
8 a row.

9 MR. BERNSTEIN: Oh, sorry.

10 THE COURT: Which question would you like the
11 witness to answer?

12 BY MR. BERNSTEIN:

13 Q. Okay. When Simon died, was Shirley's estate
14 closed?

15 A. No, it was not.

16 Q. Okay. Did you appoint a successor to Simon
17 who was the personal representative of Shirley on the
18 day he died?

19 A. I don't understand the question.

20 Q. Well, on the day Simon died, there was a
21 successor to him in the will, correct?

22 A. That's correct. Ted.

23 Q. Okay. Did you appoint Ted?

24 A. I did not appoint Ted. Si did.

25 Q. Si appointed Ted?

1 A. Si appointed Ted as a successor trustee under
2 the document -- I mean, Shirley appointed Ted as the
3 successor trustee to Si under the document.

4 Q. So Simon didn't appoint Ted?

5 A. Simon did not appoint Ted.

6 Q. Okay.

7 A. He was the named successor under your mother's
8 document.

9 Q. Okay. So when Simon died -- just so I get all
10 this clear, when Simon died, your law firm knew Ted was
11 the successor, correct?

12 A. That's correct.

13 Q. According to your story. Okay.

14 A. Under Shirley's documents, you're talking
15 about.

16 Q. Under the alleged Shirley document.

17 Okay. But yet did Simon then -- after he
18 died, did he not close the estate of Shirley while he
19 was dead?

20 MR. ROSE: Objection. Argumentative. It's
21 cumulative.

22 THE COURT: Sustained.

23 MR. ROSE: And I believe this whole line of
24 questioning's been covered ad nauseam in the first
25 cross-examination.

1 THE COURT: Well, it's important not to ask
2 the same thing over and over again. You have
3 finite time to work with.

4 MR. BERNSTEIN: Okay.

5 BY MR. BERNSTEIN:

6 Q. The estate of Shirley was closed in January,
7 correct, of 2013?

8 A. I don't recall, but it sounds -- it has to be
9 sometime after November.

10 Q. Okay. So it was closed by Simon, who was dead
11 at that time, correct?

12 MR. ROSE: Objection. Relevance.

13 THE COURT: Sustained.

14 BY MR. BERNSTEIN:

15 Q. Did Ted Bernstein close the Estate of Shirley
16 Bernstein as the successor personal representative?

17 A. No.

18 Q. Who closed the Estate of Shirley Bernstein?

19 A. The documents were filed with the court based
20 on the original petition that your father signed.

21 Q. Did you close the estate?

22 MR. ROSE: Objection. Relevance.

23 THE COURT: What's the relevance?

24 MR. BERNSTEIN: Well, I'm trying to figure out
25 who closed my mom's estate.

1 THE COURT: What's the relevance I've got to
2 figure out?

3 MR. BERNSTEIN: Okay. The documents, they
4 were bringing up these waivers. There's relevance
5 to this.

6 THE COURT: Well, I'll sustain the objection.

7 MR. BERNSTEIN: Okay.

8 BY MR. BERNSTEIN:

9 Q. On this petition for discharge that Mr. Rose
10 brought up on his cross -- and I can't remember where I
11 just pulled that -- I'm going to take a look. That
12 would be 28.

13 MR. BERNSTEIN: Can I admit this into
14 evidence, Your Honor, since I believe Mr. Rose
15 stated it wasn't?

16 THE COURT: You're just picking up a piece of
17 paper and walking up to me and saying, can I admit
18 this into evidence?

19 MR. BERNSTEIN: Well, they didn't admit it.

20 THE COURT: Is there a foundation laid for its
21 admissibility?

22 MR. BERNSTEIN: Yes.

23 THE COURT: Do I know what it is so that I can
24 make a ruling?

25 MR. BERNSTEIN: Oh. It's a petition for

1 discharge.

2 THE COURT: Did anybody testify to that, or
3 are you just --

4 MR. BERNSTEIN: Yeah, he just did.

5 THE COURT: If you have a piece of paper you
6 want to have me consider as an exhibit, the other
7 side has to have seen it and the witness has to
8 have seen it so I'll know what it is.

9 MR. BERNSTEIN: Okay. They were just talking
10 about it.

11 MR. ROSE: Your Honor, just to speed things
12 along, we have no objection to this document coming
13 into evidence. It is part of our Exhibit 28. The
14 whole 28 could come in evidence. That's fine with
15 me. Then it would all be in evidence. Or however
16 you wish to do it.

17 THE COURT: I'm letting this party take charge
18 of his own case.

19 Are you asking that to be received as an
20 exhibit? There's no objection. So that'll be
21 Defendant's 3. Hand that up, and I'll mark it.

22 MR. BERNSTEIN: Thank you.

23 (Defendant's Exhibit No. 3 was received into
24 evidence.)

25

1 THE COURT: So are you done with it?

2 MR. BERNSTEIN: No. Can I use it still?

3 THE COURT: Anything that's supposed to be an
4 exhibit in evidence has to come back to me.

5 MR. BERNSTEIN: Gotcha.

6 BY MR. BERNSTEIN:

7 Q. Okay. On this document, it's a petition for a
8 discharge, a "full waiver," it says.

9 Was this document sent back to your firm as
10 not notarized by Judge Colin's office?

11 A. I'm not sure. I didn't get the documents
12 back.

13 Q. Is it notarized?

14 A. No, it's not.

15 Q. Did you sign as the notary?

16 MR. ROSE: Objection. Cumulative.

17 THE COURT: Overruled.

18 The question was, is it notarized? The answer
19 was no. Then you asked if -- somebody else, if
20 they'd sign, and then the witness if he signed as a
21 notary.

22 THE WITNESS: I signed it as the attorney for
23 the estate.

24 BY MR. BERNSTEIN:

25 Q. Okay. On April 9th with Simon Bernstein?

1 A. Yeah, it appears that way.

2 Q. Could it be another way?

3 A. It didn't -- this document did not require
4 that I witness Si's signature. So I believe that that
5 document was sent to Si, and he signed it, sent it back,
6 we signed it and filed it.

7 Q. So you sent it to Si, he signed it, then sent
8 it back, and you signed it all on April 9th?

9 A. It doesn't -- it's what day he signed it
10 that's relevant. He signed it on April 9th.

11 Q. And what day did you sign it?

12 A. I could have signed it April 11th.

13 Q. Well, where does it say April 11th?

14 A. My signature doesn't require a date. His
15 does.

16 Q. Why?

17 A. Just doesn't.

18 Q. Well, the date that the document says this
19 document's being signed on April 9th.

20 A. I did not sign that exhibit.

21 Q. Next question. On September 13, 2013, the
22 year after my father died, in Judge Martin Colin's
23 court, when he discovered this document, did he threaten
24 to read you your Miranda Rights, stating he had enough
25 evidence to read you Mirandas?

1 MR. ROSE: Objection. Relevance.

2 THE COURT: Sustained.

3 BY MR. BERNSTEIN:

4 Q. Did you deposit this document, this April 9th
5 full discharge, with the court?

6 A. Did I personally do it?

7 Q. Did your law firm?

8 A. No, the law firm did, yes.

9 Q. Okay. And on whose behalf?

10 MR. ROSE: Objection. Cumulative.

11 THE COURT: Sustained.

12 MR. ROSE: And relevance.

13 THE COURT: Sustained.

14 BY MR. BERNSTEIN:

15 Q. Simon was dead when this document was
16 deposited with the court, correct?

17 MR. ROSE: Objection. Cumulative. Relevance.

18 THE COURT: I've got that he is dead written
19 down here several times. It's clear in my mind.

20 You're not moving in a positive direction.

21 MR. BERNSTEIN: I understand that part.

22 THE COURT: All right. New question, please.

23 MR. BERNSTEIN: Okay.

24 BY MR. BERNSTEIN:

25 Q. Is this document sworn to and attested by my

1 father? Is it a sworn statement? Does it say "under
2 penalties of perjury"?

3 A. It does.

4 Q. Okay. So under penalties of perjury, on
5 April 9th, my father and you signed a document, it
6 appears, that states that Simon has fully administered
7 the estate.

8 Was that done?

9 A. Yes, it was.

10 Q. He had settled the estate, made dispositions
11 of all claims of Shirley's estate?

12 A. He was the only beneficiary of the estate.
13 The creditor period had passed.

14 Q. He was the only beneficiary of the will?

15 A. He was the only beneficiary of the will if
16 he -- that's if he survived your mother.

17 Q. Did you say earlier that the five children
18 were tangible personal property devisees or
19 beneficiaries under the will?

20 A. I did not. I said your father was the sole
21 beneficiary of your mother's estate by virtue of
22 surviving her.

23 Q. I thought you mentioned -- can I take a look
24 at the will?

25 Okay. On Simon's will, which is Exhibit 4

1 here --

2 A. This is your mother's will we're talking
3 about.

4 Q. Well, hold on. Well, you did state there were
5 mirror documents, correct, at one point? That's okay.
6 I'll proceed. That part seems to be in error.

7 Does the document say, "I, Shirley Bernstein,
8 of Palm Beach County, Florida hereby revoke all of my
9 prior wills and codicils and make this will my spouse's
10 assignment. My children are Ted, Pam -- Pamela Simon,
11 Eliot Bernstein, Jill Iantoni and Lisa Friedstein"?

12 MR. ROSE: Objection. Best evidence and
13 cumulative.

14 THE COURT: Sustained.

15 MR. BERNSTEIN: Okay.

16 BY MR. BERNSTEIN:

17 Q. Was there a separate written memorandum
18 prepared for this will?

19 A. No, there was not.

20 Q. And if Simon didn't survive, the property
21 would be going to the children, correct?

22 MR. ROSE: Objection.

23 THE WITNESS: Correct.

24 MR. ROSE: Best evidence and cumulative.

25 THE COURT: Sustained.

1 MR. BERNSTEIN: What was -- I missed that.

2 Can I not ask him that question I just asked?

3 THE COURT: I sustained the objection. You
4 can ask a new question of him.

5 MR. BERNSTEIN: Okay.

6 BY MR. BERNSTEIN:

7 Q. Is there any chance that the children could be
8 beneficiaries of anything under this will?

9 A. Not at the time of your mother's death. Your
10 father survived.

11 Q. So at the time of her death, you're saying
12 that -- if they both died together, would the
13 children --

14 MR. ROSE: Objection. Relevancy.

15 BY MR. BERNSTEIN:

16 Q. -- be beneficiaries?

17 THE COURT: Sustained.

18 MR. BERNSTEIN: Okay. I'm done with him.

19 MR. ROSE: No questions.

20 THE COURT: Okay. Thank you. You can step
21 down now.

22 Next witness, please.

23 MR. BERNSTEIN: My next witness, are you
24 saying?

25 THE COURT: If you have another witness, now's

1 the time to call him or her.

2 MR. BERNSTEIN: Okay. Ted Bernstein -- well,
3 one second.

4 Is Kimberly Moran, your witness, here? Is
5 Kimberly Moran, an exhibited witness, here,
6 Mr. Rose?

7 THE COURT: Listen, it's your case. I've
8 asked if you have any other witnesses. Do you have
9 any other witnesses?

10 MR. BERNSTEIN: No, I don't. I was going to
11 call some of their witnesses, but they're not here.

12 THE COURT: Okay. So you aren't going to call
13 anybody?

14 MR. BERNSTEIN: Yes, I'm going to call Ted
15 Bernstein.

16 THE COURT: Well, that's a witness, right?

17 MR. BERNSTEIN: Yeah, yeah. I just was
18 looking for the other ones on the witness list. I
19 didn't know if they were sitting outside.

20 Thereupon,

21 (TED BERNSTEIN)

22 having been first duly sworn or affirmed, was examined
23 and testified as follows:

24 THE WITNESS: I do.

25 DIRECT EXAMINATION

1 BY MR. BERNSTEIN:

2 Q. Ted --

3 THE COURT: You've got to ask the witness his
4 name. The record needs to reflect who's
5 testifying.

6 MR. ROSE: And could I just ask that he stay
7 at the podium?

8 THE COURT: Okay. You need to stay near the
9 microphone so that I can hear and the court
10 reporter can accurately hear you. And then if you
11 need to go up to the witness stand for some reason,
12 you're allowed to do that.

13 BY MR. BERNSTEIN:

14 Q. State your name for the record.

15 A. Ted Bernstein.

16 Q. Is that your full formal name?

17 A. That is.

18 Q. Do you go by Theodore Stuart Bernstein ever?

19 A. I do not.

20 Q. Okay. Is that your name on your birth
21 certificate?

22 A. Which one?

23 Q. Theodore Stuart Bernstein?

24 A. It is not.

25 Q. Okay. Ted, you were made aware of Robert

1 Spallina's fraudulent alteration of a trust document of
2 your mother's when?

3 A. I believe that was in the early 2013 or '14.

4 Q. Okay. And when you found out, you were the
5 fiduciary of Shirley's trust, allegedly?

6 A. I'm not sure I understand the question.

7 Q. When you found out that there was a fraudulent
8 altercation [sic] of a trust document, were you the
9 fiduciary in charge of Shirley's trust?

10 A. I was trustee, yes. I am trustee, yes.

11 Q. And your attorneys, Tescher and Spallina, and
12 their law firm are the one who committed that fraud,
13 correct, who altered that document?

14 A. That's what's been admitted to by them,
15 correct.

16 Q. Okay. So you became aware that your counsel
17 that you retained as trustee had committed a fraud,
18 correct?

19 A. Correct.

20 Q. What did you do immediately after that?

21 A. The same day that I found out, I contacted
22 counsel. I met with counsel on that very day. I met
23 with counsel the next day. I met with counsel the day
24 after that.

25 Q. Which counsel?

1 A. Alan Rose.

2 Q. Oh. Okay. So he was -- so Tescher and
3 Spallina were your counsel as trustee, but Alan Rose
4 became that day?

5 A. I'm not sure when, but I consulted him
6 immediately. You asked me when.

7 MR. ROSE: Can I caution the witness that it's
8 fine to say who he consulted with. I think the
9 advice was the attorney-client privilege I would
10 instruct him on.

11 THE COURT: All right. The attorney-client
12 privilege is available, and your client is on the
13 stand. Counsel's reminding him that it exists.

14 Are there any other questions? What is the
15 time period that you're asking about here?

16 MR. BERNSTEIN: Right after he discovered that
17 there had been a fraudulent, invalid will created.

18 THE COURT: Right. And you're asking him what
19 he did afterwards?

20 MR. BERNSTEIN: Right afterwards.

21 THE COURT: Okay. Have your mother and father
22 both passed away at the time you're asking him
23 that?

24 MR. BERNSTEIN: Correct.

25 THE COURT: So the validity of the documents

1 that I've got to figure out won't have anything to
2 do with the questions you're asking him now about
3 his actions at trustee, will they?

4 MR. BERNSTEIN: Yes.

5 THE COURT: Tell me how.

6 MR. BERNSTEIN: Okay. Because, Your Honor,
7 when he found out that there was fraud by his
8 attorneys that he retained, the question is, what
9 did they do with those documents? Did he come to
10 the court to correct --

11 THE COURT: The question you're asking him is
12 what did he do.

13 MR. BERNSTEIN: Yeah.

14 THE COURT: Well, that doesn't tell me
15 anything about what the attorneys did. So I'll
16 sustain my own objection. I want to keep you on
17 track here. You're running out of time, and I want
18 you to stay focused on what I've got to figure out.
19 You've got a lot more on your mind than I do. I
20 explained that to you earlier. Do you have any
21 other questions on the issues that I've got to
22 resolve at this point?

23 MR. BERNSTEIN: Yeah.

24 BY MR. BERNSTEIN:

25 Q. Have you seen the original will and trust of

1 your mother's?

2 A. Can you define original for me?

3 Q. The original.

4 A. The one that's filed in the court?

5 Q. Original will or the trust.

6 A. I've seen copies of the trusts.

7 Q. Have you done anything to have any of the
8 documents authenticated since learning that your
9 attorneys had committed fraud in altering dispositive
10 documents that you were in custody of?

11 MR. ROSE: Objection. Relevance.

12 THE COURT: Overruled.

13 THE WITNESS: I have not.

14 BY MR. BERNSTEIN:

15 Q. So you as the trustee have taken no steps to
16 validate these documents; is that correct?

17 A. Correct.

18 Q. Why is that?

19 A. I'm not an expert on the validity of
20 documents.

21 Q. Did you contract a forensic analyst?

22 A. I'm retained by counsel, and I've got counsel
23 retained for all of this. So I'm not an expert on the
24 validity of the documents.

25 Q. You're the fiduciary. You're the trustee.

1 You're the guy in charge. You're the guy who hires your
2 counsel. You tell them what to do.

3 So you found out that your former attorneys
4 committed fraud. And my question is simple. Did you do
5 anything, Ted Bernstein, to validate these documents,
6 the originals?

7 THE COURT: That's already been answered in
8 the negative. I wrote it down. Let's keep going.

9 MR. BERNSTEIN: Okay.

10 BY MR. BERNSTEIN:

11 Q. As you sit here today, if the documents in
12 your mother's -- in the estates aren't validated and
13 certain documents are thrown out if the judge rules them
14 not valid, will you or your family gain or lose any
15 benefit in any scenario?

16 A. Can you repeat that for me, please? I'm not
17 sure I'm understanding.

18 Q. If the judge invalidates some of the documents
19 here today, will you personally lose money, interest in
20 the estates and trusts as the trustee, your family, you?

21 A. I will not.

22 Q. Your family?

23 A. My -- my children will.

24 Q. So that's your family?

25 A. Yes.

1 Q. Okay. So do you find that as a fiduciary to
2 be a conflict?

3 MR. ROSE: Objection.

4 THE WITNESS: No.

5 MR. ROSE: I think it calls for a legal
6 conclusion.

7 THE COURT: Sustained.

8 BY MR. BERNSTEIN:

9 Q. Well, would it matter to you one way or the
10 other how these documents are validated?

11 A. What would matter to me would be to follow the
12 documents that are deemed to be valid and follow the
13 court orders that suggest and deem that they are valid.
14 That would be what I would be charged to do.

15 Q. So you can sit here today and tell me that the
16 validity of these documents, even though your family
17 will lose 40 percent, has no effect on you?

18 A. It has no effect on me.

19 Q. Okay. And you don't find that to be adverse
20 to certain beneficiaries as the trustee?

21 MR. ROSE: Objection. Calls for a legal
22 conclusion.

23 THE COURT: Well, what difference does it make
24 to me? I mean, what he thinks about his role is
25 just not relevant to me.

1 MR. BERNSTEIN: Well, Your Honor --

2 THE COURT: So the next question, please.

3 That's not relevant.

4 BY MR. BERNSTEIN:

5 Q. So in no way have you tried to authenticate
6 these documents as the trustee?

7 THE COURT: He has already said that. That's
8 the third time you've asked it, at least. And I've
9 written it down. It's on my papers.

10 MR. BERNSTEIN: Okay. I'll let it go. I'll
11 let him go today.

12 THE COURT: Okay. You have no further
13 questions of the witness.

14 Is there any cross?

15 MR. ROSE: Briefly.

16 CROSS (TED BERNSTEIN)

17 BY MR. ROSE:

18 Q. You did a few things to authenticate the
19 documents, didn't you? You filed a lawsuit?

20 A. Yes.

21 Q. In fact, we're here today because you filed a
22 lawsuit to ask this judge to determine if these five
23 documents are valid, correct?

24 A. That's correct.

25 Q. And you fired Mr. Tescher and Spallina on the

1 spot?

2 A. Correct.

3 Q. Called the bar association?

4 A. The next business day.

5 Q. You consulted with counsel, and we retained
6 additional probate counsel over the weekend?

7 A. We did.

8 Q. So as far as authenticating the documents, you
9 personally believe these are genuine and valid
10 documents, right?

11 A. I do.

12 Q. And you, in fact, were in your office the day
13 your father signed them?

14 A. That's correct.

15 Q. And witnessed Mr. Spallina and the notary
16 coming to the office to sign the documents?

17 A. Yes, that's right.

18 Q. And you had been on a conference call with
19 your father, your brother and your three sisters where
20 your father told you exactly what he was going to do?

21 A. That is also correct.

22 Q. And the documents that we're looking at today
23 do exactly what your father told everybody, including
24 your brother, Eliot, he was going to do on the
25 conference call in May of 2012?

1 A. Yes, that is correct also.

2 Q. Now, I think you were asked a good question.

3 Do you care one way or the other how these
4 documents are decided by the Court?

5 A. Absolutely not.

6 Q. Did you care when your father or mother made a
7 document that did not specifically leave any money to
8 you?

9 A. I did not.

10 Q. Now, did you care for anybody other than
11 yourself?

12 A. I cared for the -- for the sake of my
13 children.

14 Q. And why did you care for the sake of your
15 children?

16 A. My parents had a very good relationship with
17 my children, and I did not want my children to
18 misinterpret what the intentions of their grandparents
19 were and would have been. And for that reason, I felt
20 that it would have been difficult for my children.

21 Q. Did you ever have access to the original will
22 of your father or mother that were in the Tescher &
23 Spallina vaults?

24 A. I have no access, no.

25 Q. Did you ever have access to the original

1 copies of the trusts that Mr. Spallina testified were
2 sitting in their firm's file cabinets or vaults?

3 A. I did not.

4 Q. Now, did you find in your father's possessions
5 the duplicate originals of the trusts of him and your
6 mother that we've talked about?

7 A. I did.

8 Q. And do you have any reason to believe that
9 they aren't valid, genuine and signed by your father on
10 the day that he -- your father and your mother on the
11 days that it says they signed them?

12 A. None whatsoever.

13 Q. You need to get a ruling on whether these five
14 documents are valid in order for you to do your job as
15 the trustee, correct?

16 A. Yes, that is correct.

17 Q. Whichever way the Court rules, will you follow
18 the final judgment of the Court and exactly consistent
19 with what the documents say, and follow the advice of
20 your counsel in living up to the documents as the Court
21 construes them?

22 A. Always. A hundred percent.

23 MR. ROSE: Nothing further, sir.

24 THE COURT: All right. Thank you.

25 Is there any redirect?

1 REDIRECT (TED BERNSTEIN)

2 BY MR. BERNSTEIN:

3 Q. You just stated that you came to the court and
4 validated the documents in this hearing today; is that
5 correct?

6 MR. ROSE: Objection. It mis --

7 BY MR. BERNSTEIN:

8 Q. You filed a motion to validate the documents
9 today?

10 THE COURT: Wait. You've got to let me rule
11 on the objection.

12 MR. BERNSTEIN: Oh, sorry. I don't hear any
13 objection.

14 THE COURT: I'll sustain the objection.

15 BY MR. BERNSTEIN:

16 Q. Okay. Since -- did you file a motion that
17 we're here for today for validity?

18 A. Explain motion.

19 Q. A motion with the court for a validity hearing
20 that we're here at right now.

21 A. Do you mean the lawsuit?

22 Q. Well, yeah.

23 A. Yes, we did file a lawsuit, yes.

24 Q. Okay. Do you know when you filed that?

25 A. No. I don't know, Eliot. I don't know when I

1 filed it. I don't have it committed to memory.

2 Q. Do you have an idea?

3 MR. ROSE: Objection. I think the court file
4 will reflect when the case was filed.

5 THE COURT: Overruled.

6 The question was answered, I don't know. Next
7 question.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. Prior to filing this lawsuit, Mr. Rose said
11 you couldn't do anything because you didn't know if the
12 documents were valid.

13 My question is, did you do anything from the
14 time you found out the documents might not be valid and
15 needed a validity hearing to today at this validity
16 hearing?

17 MR. ROSE: Objection. Relevance.

18 THE COURT: What's the relevance?

19 MR. BERNSTEIN: Well, he knew about these
20 documents being fraudulent for X months.

21 THE COURT: What will that help me decide on
22 the validity of the five documents?

23 MR. BERNSTEIN: Why, Your Honor, they didn't
24 come to the court knowing that they needed a
25 validity hearing, and instead disposed and

1 disbursed of assets while they've known all this
2 time --

3 THE COURT: I'll sustain the objection.

4 I'm not called to rule upon that stuff. I'm
5 called to rule upon the validity of these five
6 paper documents. That's what I'm going to figure
7 out at the end of the day.

8 BY MR. BERNSTEIN:

9 Q. Mr. Rose asked you if you found documents and
10 they all looked valid to you, and you responded yes.

11 Are you an expert?

12 A. I am not.

13 Q. Can you describe what you did to make that
14 analysis?

15 A. They looked like they were their signatures on
16 the documents. I had no reason whatsoever to think
17 those weren't the documents that were their planning
18 documents. I had no reason at all to think that.

19 Q. Even after your hired attorneys that were
20 representing you admitted fraud, you didn't think there
21 was any reason to validate the documents?

22 MR. ROSE: Objection. Argumentative.

23 THE COURT: Sustained.

24 BY MR. BERNSTEIN:

25 Q. Did you find any reason to validate these

1 documents forensically?

2 A. I think I answered that by saying that we
3 filed a lawsuit.

4 Q. No, I'm asking you to have a
5 forensic -- you're the trustee. And as a beneficiary --
6 to protect the beneficiaries, do you think you should
7 validate these documents with a handwriting expert due
8 to the fact that we have multiple instances of fraud by
9 your counsel who were acting on your behalf?

10 MR. ROSE: Objection. Cumulative and
11 argument.

12 THE COURT: The question is, does he think
13 something. I've already told you when you ask a
14 question do you think, I stop listening. It's not
15 relevant what the witness thinks.

16 So I'll sustain the objection.

17 BY MR. BERNSTEIN:

18 Q. As a trustee, would you find it to be your
19 fiduciary duty upon learning of document forgeries and
20 frauds by your counsel to have the dispositive documents
21 you're operating under validated by a professional
22 handwriting expert, forensic expert, et cetera?

23 MR. ROSE: Objection. Cumulative.

24 THE COURT: Sustained.

25

1 BY MR. BERNSTEIN:

2 Q. Do you think these documents should be
3 validated -- you're the trustee.

4 Do you think these documents should be
5 validated by a professional firm forensically?

6 MR. ROSE: Objection. Cumulative.

7 THE COURT: It's not relevant. You just asked
8 him if he thinks he should have had them validated.
9 I don't care what he thinks. In making my
10 decisions today, what he thinks he should have done
11 or not done isn't relevant. I'm looking for facts.
12 So I really wish you would address your questions
13 to facts.

14 BY MR. BERNSTEIN:

15 Q. So, to the best of your knowledge, have these
16 documents been forensically analyzed by any expert?

17 MR. ROSE: Objection. Cumulative.

18 THE COURT: No, they are not. I already know
19 that. I wrote it down. He's already said they've
20 not been.

21 MR. BERNSTEIN: Okay.

22 BY MR. BERNSTEIN:

23 Q. Ted, when your father signed, allegedly, his
24 2012 documents in July, were you aware of any medical
25 problems with your father?

1 A. I don't think so.

2 Q. Were you aware that I took him for a biopsy of
3 his brain?

4 A. I'm not aware of that, no.

5 Q. Were you aware of the headaches he was
6 suffering that caused him to go for a biopsy of his
7 brain?

8 A. I don't believe he had a biopsy of his brain.
9 But if he did, then I'm not aware of it.

10 Q. Oh, okay. Were you aware of headaches your
11 father was suffering?

12 A. I recall he was having some headaches.

13 Q. Were you aware that he was seeing a
14 psychiatrist?

15 A. Yes.

16 Q. Were you aware of the reasons he was seeing a
17 psychiatrist?

18 A. Absolutely not.

19 Q. Were you ever in the psychiatrist's office
20 with him?

21 A. Yes.

22 Q. For what reason?

23 A. I wanted to have a conversation with him.

24 Q. About?

25 A. About some personal issues that I wanted to

1 discuss with him.

2 Q. Personal issues such as?

3 MR. ROSE: Can I get clarification? Are you
4 talking about you wanted to -- he may have a
5 privilege.

6 You were discussing Simon's issues or your own
7 personal issues?

8 THE WITNESS: They were both intertwined
9 together.

10 MR. ROSE: I think it's subject to a
11 privilege.

12 THE COURT: All right. Well, you've been
13 warned by your attorney you've got a
14 psychologist-client privilege, so use it as you
15 will.

16 MR. BERNSTEIN: He's not a client of the
17 psychiatrist, I don't think.

18 THE COURT: I beg to differ with you.

19 MR. BERNSTEIN: Oh, he is?

20 THE COURT: Because the answer just clarified
21 that he was in part seeking to be a client. Did
22 you listen to his clarification of his answer?

23 MR. BERNSTEIN: No.

24 THE COURT: Well, I did very closely.

25 MR. BERNSTEIN: What was it?

1 THE COURT: Next question, please.

2 MR. BERNSTEIN: Okay. I'll just see it on the
3 transcript.

4 BY MR. BERNSTEIN:

5 Q. Were you aware of any medical conditions,
6 depression, anything like that your father was
7 experiencing prior to his death?

8 A. I never found our father to suffer from any
9 kind of depression or anything like that during his
10 lifetime.

11 Q. So after your mother died, he wasn't
12 depressed?

13 A. No.

14 MR. ROSE: Could I again ask Mr. Bernstein to
15 step to the podium and not be so close to my
16 client?

17 THE COURT: If you speak into the microphone,
18 it'll be even more easy to hear your questions.

19 Thank you.

20 BY MR. BERNSTEIN:

21 Q. So, according to you, your father's state of
22 mind was perfectly fine after his wife died of -- a
23 number of years --

24 A. I didn't say that.

25 Q. Okay. He wasn't depressed?

1 A. That's what I said.

2 Q. Were you aware of any medications he was on?

3 A. I was, yes.

4 Q. Such as?

5 A. From time to time, he would take something for
6 your heart when you would have angina pains. But that
7 he was doing for 30 years, for a good 30 years, that I
8 knew dad was taking, whatever that medicine is when you
9 have some chest pain.

10 Q. Did you have any problems with your father
11 prior to his death?

12 MR. ROSE: Objection. Relevance.

13 THE COURT: The question is, did you have any
14 problems with your dad before he died?

15 I'll sustain the objection.

16 BY MR. BERNSTEIN:

17 Q. Are you aware of any problems between you and
18 your father that were causing him stress?

19 MR. ROSE: Objection. Relevance.

20 THE COURT: Sustained.

21 BY MR. BERNSTEIN:

22 Q. Were you aware that your father was changing
23 his documents allegedly due to stress caused by certain
24 of his children?

25 A. No.

1 Q. Were you on a May 10th phone call?

2 A. Yes.

3 Q. In that phone call, did your father --

4 MR. ROSE: Objection. It's beyond the
5 scope -- well --

6 MR. BERNSTEIN: It has to do with the changes
7 of the documents and the state of mind.

8 THE COURT: Do you have a question you want to
9 ask? He's withdrawn whatever he was saying, so you
10 can finish your question.

11 BY MR. BERNSTEIN:

12 Q. Okay. So on May 10th, at that meeting, your
13 father stated that he was having trouble with certain of
14 his children, and this would solve those problems.

15 Are you aware of that?

16 A. No, I don't -- not from the way you're
17 characterizing that phone call.

18 Q. Well, how do you characterize that?

19 A. He wanted to have a conversation with his five
20 children about some changes he was making to his
21 documents.

22 Q. And you had never talked to him about the
23 changes, that your family was disinherited?

24 A. No.

25 Q. Prior to that call?

1 A. No.

2 Q. When did you learn that you were disinherited?

3 A. I think when I first saw documents with --
4 maybe after dad -- once dad passed away.

5 Q. Were you aware of the contact with your sister
6 Pam regarding her anger at your father for cutting both
7 of you out of the will?

8 A. I'm aware of that.

9 Q. So that was before your father passed?

10 A. Excuse me. Can you ask -- say the end of that
11 sentence again.

12 MR. BERNSTEIN: Can you read that back?

13 (A portion of the record was read by the
14 reporter.)

15 THE WITNESS: I'm sorry. You asked me a
16 question, and I had answered too quickly. What was
17 the end of the question prior to that?

18 (A portion of the record was read by the
19 reporter.)

20 THE WITNESS: I'm aware that she was angry
21 with him about how -- that he -- she was not in his
22 documents.

23 BY MR. BERNSTEIN:

24 Q. You didn't learn right there that you weren't
25 in the documents?

1 A. I can't remember if it was then or if it was
2 when dad died.

3 Q. Well, this is very important so can you think
4 back to that time.

5 While your father was alive, did I invite you
6 to a Passover holiday at my home?

7 MR. ROSE: Objection. Relevance.

8 THE WITNESS: I don't recall.

9 MR. BERNSTEIN: Okay.

10 THE COURT: What's the relevance?

11 MR. BERNSTEIN: Well, it's relevance to the
12 state of mind my dad was in while --

13 THE COURT: Well, you're asking did this guy
14 get invited to your home. You didn't ask about
15 your dad, so I'll sustain the objection.

16 BY MR. BERNSTEIN:

17 Q. Okay. Did you get invited to a Passover
18 dinner at my home that your father was attending?

19 A. I don't recall the circumstances of
20 what -- whatever it is you're referring to.

21 Q. Do you recall saying you wouldn't come to the
22 Passover dinner?

23 MR. ROSE: Objection. Relevance.

24 THE COURT: Sustained.

25

1 BY MR. BERNSTEIN:

2 Q. Do you recall writing me a email that stated
3 that your family was dead for all intensive [sic]
4 purposes?

5 MR. ROSE: Objection. Relevance.

6 THE COURT: What's the relevance to the
7 validity of these documents?

8 MR. BERNSTEIN: If Si was in the right state
9 of mind or if he was being, you know, forced at a
10 gun to make these changes by children who had --

11 THE COURT: Your question asked this witness
12 if he wrote you a letter that said his family was
13 dead for all intents and purposes. What's that got
14 to do with the validity of these documents?

15 MR. BERNSTEIN: Well, it establishes Simon's
16 state of mind.

17 THE COURT: Okay. I'll sustain the objection.

18 MR. BERNSTEIN: Okay. All right. Well, then,
19 I'm all done then.

20 THE COURT: All right.

21 Is there any cross?

22 MR. ROSE: I already crossed.

23 THE COURT: Oh, that's true. So you're all
24 set. You're done. Thank you.

25 Next witness, please.

1 MR. BERNSTEIN: Alan Rose.

2 MR. ROSE: I object. Improper.

3 THE COURT: You've got 11 minutes yet.

4 MR. BERNSTEIN: Well, he's a witness to the
5 chain of custody in these documents.

6 THE COURT: Well, you can call anybody you
7 want. I just wanted you to know how much time you
8 had left.

9 MR. BERNSTEIN: Oh, okay.

10 MR. ROSE: He wants to call me, and I object
11 to being called as a witness.

12 THE COURT: Okay.

13 MR. ROSE: I don't think that's proper.

14 THE COURT: I don't think that's proper to
15 call an attorney from the other side as your
16 witness. So I accept the objection. Anybody else?

17 MR. BERNSTEIN: Your Honor, I would agree with
18 that normally --

19 THE COURT: Well, thanks.

20 MR. BERNSTEIN: -- but there's a small
21 problem. The chain of custody we're trying to
22 follow in these documents for other reasons, other
23 criminal reasons, is Mr. Rose has pertinent
24 information to; meaning, he claims to have
25 discovered some of these documents and taken them

1 off the property.

2 THE COURT: I thought you said you wanted a
3 chain of custody?

4 MR. BERNSTEIN: Right. Meaning --

5 THE COURT: Well, the chain of custody to me
6 means the chain of custody after the time they were
7 executed.

8 MR. BERNSTEIN: Right.

9 THE COURT: All right. He wasn't around when
10 they were executed.

11 MR. BERNSTEIN: No, but he found documents
12 that are being inserted into this court case as
13 originals, second originals that he found
14 personally, and wrote a letter stating, I just
15 happened to find these documents in Simon's home --

16 THE COURT: Well, I'm going to sustain the
17 objection to you calling him as a surprise witness.
18 He's a representative of your own. Do you have any
19 other witnesses?

20 MR. BERNSTEIN: No. I'm good.

21 THE COURT: Okay. So you rest?

22 MR. BERNSTEIN: I rest.

23 THE COURT: Okay. Is there any rebuttal
24 evidence from the plaintiff's side?

25 MR. ROSE: No, sir.

1 THE COURT: Okay. So the evidence is closed.
2 We'll have time for brief closing arguments. And
3 I'll take those now. Let me hear first from the
4 plaintiff's side.

5 MR. ROSE: I'm sorry. Did you say it was time
6 for me to speak?

7 THE COURT: Yes. I'm taking closing arguments
8 now.

9 MR. ROSE: Okay. Thank you. May it please
10 the Court.

11 We're here on a very narrow issue. And
12 we -- you know, I apologize to the extent I put on
13 a little bit of background. We've had an extensive
14 litigation before Judge Colin. This is our first
15 time here. And if any of my background bored you,
16 I apologize.

17 There are five documents that are at issue,
18 which we talked about before we started; the 2008
19 will and trust of Shirley Bernstein, as well as the
20 amendment that she signed, and then the 2012 will
21 and trust of Simon Bernstein.

22 So the uncontroverted evidence that you've
23 heard was from Robert Spallina, who is an attesting
24 witness to the documents and he was a draftsman of
25 the documents.

1 I don't believe it's directly relevant to your
2 inquiry, but you certainly heard evidence that what
3 Simon Bernstein intended and what he communicated
4 were his wishes; the exercise of a power of
5 appointment through a will, the changing of the
6 beneficiaries of his trust document by way of an
7 amended and restated 2012 document, to give his
8 money -- leave his wealth to his ten grandchildren.
9 The final documents as drafted and signed are
10 consistent with what.

11 But what we're here to decide is, are these
12 documents valid and enforceable? And there are
13 self-proving affidavits attached to the documents.
14 And by themselves, if you find the self-proving
15 affidavits to be valid, then the wills themselves
16 are valid and enforceable.

17 Now, the only question that's been raised as
18 to the self-proving affidavit is an issue with
19 notarization. And we have two cases to cite to the
20 Court on the notarization issue. One is from the
21 Florida Supreme Court called The House of Lyons,
22 and one is from a sister court in the State of
23 North Carolina.

24 THE COURT: Just a second.

25 Sir, would you just have a seat. You're

1 making me nervous.

2 MR. BERNSTEIN: Sure.

3 THE COURT: Thanks.

4 MR. BERNSTEIN: Just aching.

5 THE COURT: Well, I understand. But just have
6 a seat. That'll be better. Thanks.

7 And I'm sorry for the interruption.

8 MR. ROSE: No, that's all right.

9 If I may I approach with the two cases we
10 would rely on.

11 THE COURT: All right.

12 MR. ROSE: The House of Lyons. The second is
13 a case from Georgia. The House of Lyons case is
14 from the Florida Supreme Court. It deals in a
15 slightly different context, but it deals with
16 notarization. And so what you have here is, we've
17 put on evidence. The documents that are in
18 evidence, that these documents were signed
19 properly. The witnesses were in the presence of
20 each other, and the testator and the notary
21 notarized them.

22 Shirley's documents from 2008, there's no
23 question that all the boxes were checked. There is
24 a question that's been raised with regard to
25 Simon's 2012 will and his 2012 trust; that the

1 notary -- rather than the law firm employee
2 notarizing them, these were notarized by Simon's --
3 the testimony is by an employee of Simon's company,
4 not a legal expert. And if on the face of the two
5 documents -- and for the record, these would be
6 Exhibits 4, which is Simon's will, and Exhibit 5,
7 which is Simon's trust.

8 On Exhibit 4, there's no box to check. The
9 whole information is written out. And I don't
10 believe there's any requirement that someone
11 circled the word -- if you just read it as an
12 English sentence, the notary confirmed that it was
13 sworn to and ascribed before me the witness is
14 Robert L. Spallina, who is personally known to me
15 or who has produced no identification.

16 So I think the natural inference from that
17 sentence is that person was known to him, Kimberly
18 Moran, who was personally known to me, and Simon
19 Bernstein, who was personally known to me. So on
20 its face, I think it -- the only inference you
21 could draw from this is that the person knew them.

22 Now, we've established from testimony that she
23 in fact knew the three of them, and we've
24 established by way of Exhibit 16, which was signed
25 on the same day and notarized by the same person.

1 And Exhibit 16, unlike Exhibit 4, which doesn't
2 have a little check mark, Exhibit 16 has a check
3 mark, and the notary properly checks personally
4 known to the people that she was notarizing.

5 So I believe -- and the In Re Lyon case stands
6 for substantial compliance with a notary is
7 sufficient. And the North Carolina case is
8 actually more directly on point. The Florida
9 Supreme Court case, Lyons -- and we've highlighted
10 it for the Court, but it says, clerical errors will
11 not be permitted to defeat acknowledges --
12 acknowledgments when they, considered either alone
13 or in connection with the instrument acknowledged
14 and viewed in light of the statute controlling
15 them, fairly show a substantial compliance with the
16 statute.

17 The North Carolina case is a will case, In Re
18 Will of Durham. And there it's exactly our case.
19 The notary affidavit was silent as to whether the
20 person was personally known or not. And the Court
21 held the caveat was self-proving. The fact that
22 the notary's affidavit is silent as to whether
23 decedent was personally known to the notary or
24 produced satisfactory evidence of his identity does
25 not show a lack of compliance with the notary

1 statute, given the issues of personal knowledge or
2 satisfactory evidence are simply not addressed in
3 that affidavit.

4 So we have a Florida case and we have the
5 North Carolina case, which I think is -- it's
6 obviously not binding, but it is sort of
7 persuasive. If they're self-proved, we would win
8 without any further inquiry. The reason we had a
9 trial and the reason we had to file a complaint was
10 everything in this case -- you've slogged through
11 the mud with us for a day, but we've been slogging
12 through the mud for -- basically, I got directly
13 involved in January of 2014, after the Tescher
14 Spallina firm -- after the issues with the firm
15 came to light. So we've been slogging through
16 this.

17 But we did file a complaint. We went the next
18 step. So the next step says to you, assume the
19 notaries are invalid, which they aren't invalid;
20 but if they were, all we need to establish these
21 documents is the testimony of any attesting
22 witness. So we put on the testimony of an
23 attesting witness, Mr. Spallina. He testified to
24 the preparation of the documents. And I do think
25 it's relevant and it will give the Court comfort in

1 making findings of fact that there was an extensive
2 set of meetings between Mr. Spallina and his
3 clients when they did the documents.

4 I mean, we documented for the first set of
5 documents, you know, four meetings, a letter with
6 some drafts, then a meeting to sign the documents,
7 some phone calls and some amending the documents.
8 And in 2012, we've documented at least one meeting
9 with notes involving Simon; telephone conferences
10 between Simon and his client; eventually, when a
11 decision was made, a conference call of all the
12 children; drafts of the documents sent; the
13 document being executed.

14 And so I think if you look at the evidence,
15 the totality of the evidence, there's nothing to
16 suggest that these five documents do not reflect
17 the true intent of Simon and Shirley Bernstein.
18 There's nothing to suggest that they weren't
19 prepared by the law firm; that they weren't signed
20 by the people that purport to sign them; that
21 undisputed testimony from an attesting witness was
22 that all three people were present, and it was
23 signed by the testator and the two witnesses in the
24 presence of each other.

25 So under either scenario, you get the document

1 admitted. In fact, the documents are in evidence.
2 They've been admitted to probate. But the
3 testimony under 732.502, 503, the testimony of the
4 drafting attorney, who attested -- who was an
5 attesting witness, is sufficient for these
6 documents.

7 There's absolutely no evidence put on the
8 Court that Simon Bernstein lacked mental capacity.
9 In fact, the evidence is directly to the contrary.
10 Every witness testified that he was mentally sharp;
11 making intelligent decisions; having a conference
12 call with his children to explain his wishes. And
13 there's simply no evidence in the record to
14 determine that he lacked testamentary capacity.

15 So if I have Mr. Bernstein, Simon Bernstein,
16 with testamentary capacity signing documents in the
17 presence of two subscribing witnesses, the 2012
18 documents should be upheld. I don't know if
19 there's a question at all even about Shirley
20 Bernstein's 2008 document, but the testimony is
21 undisputed that the documents were consistent with
22 her wishes. You saw a draft letter that explained
23 to her exactly what was happening. She signed the
24 documents. The self-proving affidavits for the
25 Shirley documents are all checked perfectly. And

1 even if they weren't, we have an attesting witness
2 here.

3 And, frankly, I think Eliot Bernstein likes
4 these documents. And all he wants to do is argue
5 what they mean and how much money you get from
6 them. And we didn't really need to spend a day
7 arguing this, but we have and we're here. And we
8 believe that the evidence conclusively demonstrates
9 that these documents are valid.

10 Now, you've heard some nonsense and some
11 shenanigans. There were a couple of problems in
12 the case; one with the notarization of documents.
13 And it's sort of a sad and tortured story, but
14 it's -- it was clearly wrong for someone to send
15 documents into Judge Colin's courtroom that had
16 been altered. The correct documents were submitted
17 and the estate should have been closed.

18 And when the documents were returned, someone
19 should have gone and filed a motion with Judge
20 Colin to accept the un-notarized documents, since
21 there was no dispute they were signed. And we
22 wouldn't be here. But for whatever reason, that
23 happened. And it's unfortunate that happened, but
24 there's no evidence that Ted Bernstein, either of
25 his sisters, or Eliot Bernstein, or any of the

1 grandchildren played any role in the fabrication of
2 that document -- the false notarization.

3 The fabricated amendment to Shirley's trust
4 document is a very disturbing fact, and we took
5 immediate action to correct it. No one's purported
6 to validate that document. We filed an action to
7 have the Court construe the documents, tell us
8 which are valid, tell us what they mean. And
9 that's where we should be focusing our time on.
10 And this is, in my view, step one toward that.

11 But if you look at the evidence we've
12 presented, if you -- I understand you've got to
13 deal with the witnesses that you're handed. And I
14 think Mr. Spallina's testimony, notwithstanding the
15 two issues that we addressed, was persuasive, it
16 was un rebutted.

17 And we would ask that you uphold the five
18 documents and determine, as we have pled, that the
19 five testamentary documents that are in evidence, I
20 believe, as 1, 2, 3, 4, and 5 be upheld and
21 determined to be the valid and final testamentary
22 documents of Simon and Shirley Bernstein. To the
23 extent there's any question the document that has
24 been admitted to be not genuine be determined to be
25 an inoperative and un genuine document, we would ask

1 that you enter judgment for us on Count II and
2 reserve jurisdiction to deal with the rest of the
3 issues as swiftly as we can.

4 THE COURT: All right. Thank you.

5 Any closing argument from the other side?

6 Okay.

7 I keep forgetting that you've got a right to
8 be heard, so please forgive me.

9 MR. MORRISSEY: Judge, if I may approach, I
10 have some case law and statutes that I may refer
11 to. And I'll try to be brief and not cumulative.

12 MR. BERNSTEIN: Could I get the other case law
13 that was submitted? Do you have a copy of that?

14 MR. ROSE: Sure.

15 MR. MORRISSEY: Judge, the relevant statute
16 with respect to the execution of wills is 732.502.
17 It says that every will must be in writing and
18 executed as follows. And I'll just recite from the
19 relevant parts, that is to say relevant with
20 respect to our case.

21 The testator must sign at the end of the will
22 and it must be in the presence of at least two
23 attesting witnesses. And if we drop down to
24 Subsection C, the attesting witnesses must sign the
25 will in the presence of the testator and in the

1 presence of each other.

2 Judge, that was established and uncontroverted
3 in connection with Mr. Spallina's testimony. So
4 732.502 was complied with.

5 Now, I think that we -- there was kind of a
6 distraction with respect to the self-proving
7 affidavits at the end. As Your Honor's aware, a
8 self-proving affidavit is of no consequence in
9 connection with the execution of a will. Execution
10 of a will as dealt with in 732.502 merely requires
11 execution at the end by the testator or the
12 testatrix, and then two witnesses who go ahead and
13 attest as to the testator's signature.

14 Now, the self-proving affidavit at the end is
15 in addition to. So the fact that there may or may
16 not have been a proper notarization is of no
17 consequence in connection with a determination of
18 the validity of any of these documents. So that's
19 number one.

20 Number two, I've also provided Your Honor with
21 another -- a statutory section, 733.107, and it's
22 titled "The Burden of Proof in Contest." And it
23 says there, in Subsection 1, "In all proceedings
24 contesting the validity of a will, the burden shall
25 be upon the proponent of the will to establish,

1 prima facie, its formal execution and attestation."

2 I would submit to the Court that that was done
3 today. We had Mr. Spallina's testimony, which was
4 uncontroverted, that indicated that 732.502 was
5 complied with. The statute goes on to state, "A
6 self-proving affidavit executed in accordance with
7 733.502 or an oath of an attesting witness executed
8 as required under the statutes is admissible and
9 establishes, prima facie, the formal execution and
10 attestation of the will."

11 So, once again, I would submit to the Court
12 that there were self-proving affidavits with
13 respect to all of these testamentary documents.
14 They were proper in form, and therefore comply or
15 comport with the second sentence of the statute.
16 But even if not, we had Mr. Spallina testify today
17 so as to comply with this second sentence of
18 Subsection 1.

19 So if we drop down to the third sentence of
20 this Subsection 1, it says that, "Thereafter, the
21 contestant shall have the burden of establishing
22 the grounds on which probate of the will is opposed
23 or revocation is sought."

24 That was not done today by Mr. Eliot
25 Bernstein. He did not present any evidence or meet

1 any burden to overturn these valid wills.

2 Judge, there is the competency argument. The
3 testamentary competency, I'm now going to quote
4 from In Re Wilmott's Estate, 66 So.2d 465. "A
5 testamentary competency means the ability to
6 understand generally the nature and extent of one's
7 property, the relationship of those who would be
8 the natural objects of the testator's bounty, and
9 the practical effect of the will."

10 The only testimony, I elicited that from
11 Mr. Spallina. His is the only testimony that we
12 have in this regard. And it's uncontroverted that
13 both of these decedents met those very specific
14 criteria which -- with respect to each and every
15 one of the five documents that are submitted for
16 your Court's validation today.

17 There's also case law, In Re Estate of Weihe,
18 W-E-I-H-E. That's 268 So.2d 446. That's a Fourth
19 DCA case that says, "Competency is generally
20 presumed and the burden of proving incompetency is
21 on the contestant." So even if we didn't have
22 Mr. Spallina's testimony today, which I elicited,
23 competency on the part of both Shirley and Si
24 Bernstein would be presumed. And it would be the
25 contestant, Mr. Eliot Bernstein, who would have to

1 come up with the -- or would have the burden of
2 showing that they were incompetent. He presented
3 no evidence today in that regard or in that
4 respect.

5 Lastly, there's the In Re Carnegie's estate,
6 153 Florida 7. It's a 1943 case. That says that
7 testamentary capacity refers to competency at the
8 time that the will was executed, so on that date.

9 The only testimony we have with respect to any
10 issues of competency on the date -- on the specific
11 dates that these testamentary documents were signed
12 was from Mr. Spallina. And on all such dates and
13 times, Mr. Spallina testified that these requisites
14 with respect to competency -- or testamentary
15 competency were met.

16 Finally, Judge, undue influence, that would be
17 a reason for invalidating a will. Mr. Bernstein,
18 once again, did not present any evidence to go
19 ahead and suggest that these wills or trusts
20 documents should be overturned on the grounds of
21 undue influence. And in that regard, I provided
22 Your Honor with the Estate of Carpenter, 253 So.2d
23 697. To prove undue influence, one must
24 demonstrate that a beneficiary had a confidential
25 relationship with the decedent and actively

1 procured the will or trust.

2 Mr. Eliot Bernstein did not even suggest today
3 that any of the beneficiaries actively procured the
4 document. Why? Beneficiaries are essentially --
5 are ultimately the ten grandchildren.

6 Mr. Bernstein, Eliot Bernstein, did not suggest
7 today that any one of the ten grandchildren, who
8 are ultimately beneficiaries, were active in
9 procuring any of the five documents, nor did
10 Mr. Bernstein submit to the Court any evidence of
11 confidential relationship by anyone in connection
12 with the various criteria to raise the presumption
13 of undue influence, nor did Eliot Bernstein raise
14 the presumption by satisfying any or enough of the
15 criteria under the Carpenter case to go ahead and
16 raise the presumption that anyone, any substantial
17 beneficiary, had committed undue influence with
18 respect to any of these documents.

19 For those various, multifarious reasons,
20 Judge, I would submit to the Court that these
21 documents are valid and should be held as such.

22 THE COURT: All right. Thank you.

23 Any closing from the defendant's side?

24 MR. BERNSTEIN: Oh, yeah.

25 THE COURT: You've got eight minutes

1 remaining.

2 MR. BERNSTEIN: Okay. Your Honor, we're
3 really here today because of a complex fraud on the
4 court and on beneficiaries like myself and my
5 children. The only witness they procured to
6 validate these documents has consented to the SEC
7 and felony charges recently with his partner for
8 insider trading. He came up on the stand and
9 admitted that he committed fraud, and that his law
10 firm forged documents and frauded documents, and
11 then submitted them not only to the court, but
12 beneficiaries' attorneys as part of a very complex
13 fraud to not only change beneficiaries, but to
14 seize dominion and control of the estates through
15 these very contestable documents.

16 They've been shown by the governor's office to
17 not be properly notarized. The two people who are
18 going -- well, one is --

19 MR. ROSE: I don't want to object to --

20 MR. BERNSTEIN: -- has no --

21 MR. ROSE: Can I object? He's so far talking
22 about things that aren't in evidence.

23 THE COURT: Sustained.

24 You can only argue those things that were
25 received in evidence.

1 MR. ROSE: And I realize Your Honor has a good
2 memory of the evidence --

3 MR. BERNSTEIN: I put in evidence that
4 Mr. Spallina was SEC --

5 THE COURT: No, I sustained objections to
6 those questions.

7 MR. BERNSTEIN: Oh, okay.

8 THE COURT: You can only argue those things
9 that came into evidence.

10 MR. BERNSTEIN: Okay. They didn't bring in
11 any of the necessary parties to validate these
12 documents, other than Mr. Spallina, who admitted to
13 the Court today that he fraudulently altered the
14 trust document. Can I now say that?

15 THE COURT: It's not good for you to ask me
16 questions. I've got to rule on objections, and I'm
17 trying to give you some guidance so that you don't
18 screw up. But I can't answer your legal questions.

19 MR. BERNSTEIN: Okay. So the only witness has
20 admitted in this very case that his law firm
21 submitted forged and fraudulent documents to the
22 Court already in this case; that he himself did
23 those frauds. And we're relying on his sole
24 testimony.

25 None of the other people who signed these

1 documents are here today to validate or even
2 confirm his statements. So it's a highly
3 uncredible [sic] witness to the documents,
4 especially when Mr. Spallina drafted, signed as a
5 witness, gained interest in the documents himself
6 personally as a trustee, and seems to clearly have
7 then taken it upon himself to mislead beneficiaries
8 as to the actual documents.

9 I have asked for production of these
10 documents. Today there were no originals produced
11 to this Court for you to examine.

12 And more importantly, there's a few last
13 things I wanted to state to the Court. My children
14 are not represented here today as beneficiaries.
15 They were supposed to be represented by a trustee
16 of a trust that does not exist in our possession.
17 So they were -- I was sued as a trustee of a trust
18 I've never been given to represent my children, who
19 are alleged beneficiaries by these guys. And the
20 estate's done nothing to provide counsel to three
21 minor children, and left them here today without
22 counsel, and me as a trustee of a trust that
23 doesn't exist, as far as we know. I've never
24 signed it. They haven't submitted it to the Court,
25 to anybody.

1 I want to bring up Rule 1.20, pretrial
2 procedure, case management conference process
3 provides, "The matter to be considered shall be
4 specified in the order of notice setting the
5 conference."

6 So I just want to say that we had a status
7 conference in Simon Bernstein's estate, and only
8 Simon Bernstein's estate, and that this trial was
9 scheduled in Simon's status conference, which
10 violates that very rule. So this trial, in my
11 view, was conducted improperly.

12 Like I said, if you look at the hearing
13 transcript of that day, you'll see that Mr. Rose
14 misleads the Court to think that all these cases
15 were noticed up that day. But Mr. O'Connell, the
16 PR, had only noticed it up for Simon's estate. So
17 what I'm doing here at a trial in Shirley's trust
18 violates Rule 1.20.

19 There are some other things that are violated
20 and not -- I believe we didn't get to discuss
21 the -- at the case management, the fact that, you
22 know -- and I did try to get this out -- that we
23 would need a lot more time for a competency
24 hearing, for a removal of Ted process, which should
25 have come first before doing this and letting them

1 argue, where it's been alleged that there's some
2 serious problems with Ted Bernstein's
3 representation, including the fact that the PR of
4 the estate of Simon has filed with this Court
5 notice that he's not a valid trustee.

6 MR. ROSE: Objection. Outside -- not in
7 evidence.

8 THE COURT: Okay. If you're not going to
9 argue the facts that are in evidence in this trial,
10 then I'm going to ask you to stop.

11 MR. BERNSTEIN: Okay. Well, I'll keep going
12 on my -- see, that's what's confusing. What trial?
13 We had a case management. I was prepared for a
14 Simon, where I have Simon trust construction, all
15 those things ready, and I didn't come with any
16 notes about Shirley. And I've tried to notice the
17 Court that under 1.200, this trial was scheduled
18 improperly in the estate of Simon, and should have
19 been reheard or rescheduled or something.

20 But that seems not to matter. It doesn't
21 matter that we follow the rules. I follow the
22 rules, but it seems that the other side doesn't
23 follow any of the rules; doesn't submit documents
24 properly to courts; commits frauds on courts; and
25 then wants you to believe the validity of these

1 documents based on a felony statement to the Court,
2 who's under a consent with the SEC.

3 THE COURT: You've got two minutes remaining.

4 MR. BERNSTEIN: There were outstanding
5 discovery requests. I was denied all these
6 documents. I was denied the trust that I'm sued
7 under representing my children. So I can't get any
8 of those documents. We would have brought all that
9 up at a real status conference had it been a real
10 status conference and not a corralling or, as you
11 called it, a wrangling of octopuses.

12 THE COURT: That's vivid imagery. Isn't it?
13 I pride myself on that one.

14 MR. BERNSTEIN: Oh, yeah. Well, I was
15 wrangled, technically, into the wrong case here
16 today, in a status conference that you should have
17 corrected upon learning about this. And Mr. Rose
18 has been aware of his mistake in misleading the
19 Court that all these cases were noticed up, when
20 they weren't. And he didn't come to the Court to
21 correct it. Kind of like they didn't come to the
22 Court to correct the validity of these documents
23 before acting under them, knowing they needed to be
24 not only challenged on validity, but on
25 construction of terms, which will come next, which

1 is going to just go right back into the same circle
2 of fraud.

3 So their star witness is a felon. Their star
4 witness has committed fraud upon this Court in this
5 case. That's who they're relying on, and hoping
6 you bank on his words to validate documents.

7 I, Your Honor, am asking that you don't
8 validate the documents; that we move forward to
9 have the documents properly forensically analyzed.
10 They were the subject of ongoing criminal
11 investigations, which are just getting kicked off.
12 In fact, I got 7200 documents from Mr. Spallina,
13 where almost, I think, 7200 are fraud.

14 THE COURT: Your time is more than elapsed. I
15 was letting you finish up as a courtesy, but you're
16 getting off into things that aren't in evidence --

17 MR. BERNSTEIN: Okay. Well, I don't think the
18 trial was conducted fairly. I think that my due
19 process rights have been denied under the law.

20 THE COURT: Your time is more than up. Thank
21 you.

22 MR. BERNSTEIN: Okay.

23 THE COURT: Is there any rebuttal?

24 MR. BERNSTEIN: And I still would like to move
25 for your disqualification, on the record.

1 THE COURT: On the record doesn't count.

2 You've got to put it in writing.

3 MR. BERNSTEIN: Are you sure? I thought I saw
4 in the rules --

5 THE COURT: I'll tell you what. You proceed
6 under your understanding of the law and the rules.
7 That's fine.

8 MR. BERNSTEIN: Okay.

9 THE COURT: Before I take this --

10 MR. BERNSTEIN: I rest.

11 THE COURT: -- before I take this rebuttal
12 argument, I'll let you put your request for recusal
13 in writing. We'll be out of session five minutes.

14 Is that something you want me to read?

15 MR. ROSE: I just want to make my final --

16 THE COURT: I just want to make sure that
17 there's been no possibility that this gentleman
18 won't have his moment to shine.

19 So go ahead and go put that in writing, sir.
20 Be back in five minutes.

21 (A break was taken.)

22 THE COURT: Did you get that written down?

23 MR. BERNSTEIN: Can I approach?

24 THE COURT: Sure. All approaches are okay.

25 MR. BERNSTEIN: Do you want to wait for

1 everybody?

2 THE COURT: Do you have something that you
3 wanted to file, a written motion to recuse?

4 MR. BERNSTEIN: Yeah. In freestyle.

5 THE COURT: All right. I'll take a look at
6 it. Thank you.

7 MR. BERNSTEIN: Can I ask a question?

8 THE COURT: I'll be in recess. I'll take a
9 look at this written motion. Thank you. It'll
10 take me just a minute. Don't anybody go away.

11 (A break was taken.)

12 THE COURT: The stack of documents handed up
13 to me by the defendant are duplicates of documents
14 that he filed, it looks like, twice with the clerk
15 on December 4th, and they've already been ruled
16 upon by me. But I am also ruling today by
17 handwritten order on the face of one of the
18 documents that the disqualification motion is
19 denied as legally insufficient; already ruled upon
20 in the order of 12/8/15, at Docket Entry No. 98;
21 identical to motions filed by defendant on
22 12/4/2015 at Docket Entries Nos. 94 and 98; done in
23 order of John Phillips, 12/15/15. And since I have
24 skills, I made copies of my handwritten order for
25 everybody.

1 Gary, if you could, just hand these out.

2 That'll take care of all that.

3 Now we can go back to talking about the case.

4 I was going to take the rebuttal argument from
5 Plaintiff's side. I'd take that now.

6 MR. ROSE: I have just the exhibits that we
7 put in evidence on the plaintiff's side, if that's
8 easier for the Court.

9 THE COURT: That would be much easier. Thank
10 you.

11 MR. ROSE: And I have a proposed final
12 judgment. And I wanted to talk about one paragraph
13 of the final judgment in particular.

14 MR. BERNSTEIN: I haven't had time to review
15 any final judgment or anything.

16 THE COURT: You're interrupting the argument.
17 Thank you.

18 MR. ROSE: So the complaint alleges -- and I
19 realize we didn't cover every issue in the entire
20 case, but we do it within the four corners of Count
21 II of the complaint. Count II of the complaint was
22 stated in paragraph 79 through 88 of the complaint.

23 And the answer that's filed in this case on
24 Count II at paragraph 80 alleges that there's been
25 a fraud on the court by Ted Bernstein, including,

1 but not limited to, proven forgery, fraudulent
2 notarizations, fraud on the court, altercation
3 [sic] of trust documents, et cetera, et cetera.

4 And in paragraph 82, the answer says that Ted
5 should be removed for his ongoing involvement in
6 fraud which is dealing with these documents.

7 Ted Bernstein is serving as a fiduciary.
8 You've heard -- that was the defense to this case.
9 That's stated in the complaint. You heard no
10 evidence that Ted Bernstein was involved in the
11 preparation or creation of any fraudulent
12 documents. In fact, the evidence from Mr. Spallina
13 was to the contrary.

14 So our final judgment in paragraph 5 asks the
15 Court to make a ruling on the issues that are pled
16 in the answer, specifically that there was no
17 evidence that Ted was involved and that the
18 evidence was to the contrary.

19 So we have no rebuttal. We believe we've
20 established our case, and we proposed a final
21 judgment for Your Honor's consideration that
22 discusses that this is an action to adjudicate five
23 documents to be the testamentary documents. Based
24 on the evidence presented, they're genuine,
25 authentic, valid and enforceable; has the requisite

1 findings. Paragraph 5, which I've explained, the
2 reason we believe it's appropriate in the final
3 judgment, given the pleadings that were made and
4 the lack of evidence on those pleadings. And we
5 didn't get into it today, but --

6 THE COURT: Well, if we didn't get into it
7 today, then it's not proper for argument.

8 MR. ROSE: Well, it's alleged in the complaint
9 and not proven, so I think it's appropriate to make
10 a finding on it. You didn't actually hear
11 testimony that was relevant to those issues about
12 Ted Bernstein. And I would ask you to consider
13 that 5 is supported by the evidence and the
14 pleadings.

15 And 6, we would like you to declare the
16 unauthorized one invalid, because it does change
17 potentially something, and we want to know what
18 we're doing going forward. And I don't think
19 anyone disputes that Exhibit 6 that's in evidence
20 was not valid. And then it just states this is
21 intended to be a final order under the rules of
22 probate code.

23 So that's our order. We would ask you to
24 enter our judgment or a judgment similar to it;
25 find in favor of the plaintiff; reserve

1 jurisdiction for numerous other matters that we
2 need to deal with as quickly as we can. But,
3 hopefully, with the guidance we get today, we'll be
4 able to do it more quickly and more efficiently.
5 So thank you.

6 THE COURT: All right. Thanks.

7 We'll be in recess. It was fun spending time
8 with you all.

9 Sir, do you have any proposed final judgment
10 you want me to consider? I've received one from
11 the plaintiff's side. Is there some from the
12 defendant's side?

13 MR. BERNSTEIN: No. I haven't received one
14 from them. And seeing theirs --

15 THE COURT: Okay. Thank you.

16 Then we'll be in recess. Thank you all very
17 much. I'll get this order out as quickly as I can.

18 (At 4:48 p.m. the trial was concluded.)
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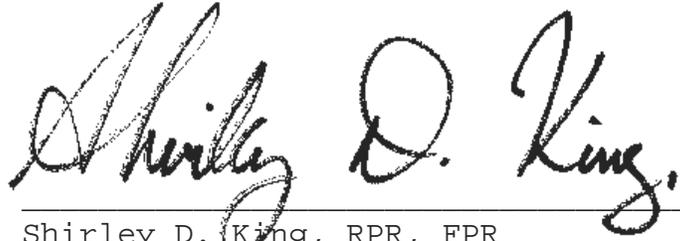
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C E R T I F I C A T E

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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<p>wait 217:10 255:25 waiver 130:8 166:13 189:24 190:10,14,22 191:8,11,19,21 192:1 199:8 waivers 166:13, 14 197:4 walk 120:16 walking 197:17 wanted 121:13 222:23,25 223:4 226:19 230:7 231:2 250:13 256:3 warned 223:13 warning 156:24 waste 151:8 162:7 wasted 162:5 wealth 233:8 weekend 214:6 weeks 158:10 173:19 Weihe 245:17 whatsoever 216:12 219:16 Whichever 216:17 wife 126:8 224:22 will's 170:15 wills 131:13 146:8 151:19 152:8,18 169:10 189:11 194:6 203:9 233:15 242:16 245:1 246:19 Wilmott's 245:4 win 237:7 winding 153:3 wisely 180:6 wishes 144:14 156:16 157:3,7 233:4 239:12, 22 withdrawn 226:9 withdrew 121:2</p>	<p>witnessed 180:16 214:15 witnesses 153:2 171:14 180:1, 15 205:8,9,11 231:19 234:19 238:23 239:17 241:13 242:23, 24 243:12 word 158:3 235:11 words 163:23 185:17 254:6 work 141:13 143:4 181:5 196:3 worked 176:24 181:8 working 180:23 worth 149:19 wrangled 253:15 wrangling 253:11 write 137:25 138:7 164:17 writing 138:1,4 229:2 242:17 255:2,13,19 written 161:18 201:18 203:17 213:9 235:9 255:22 256:3,9 wrong 179:13 192:1 240:14 253:15 wrote 130:8 211:8 221:19 229:12 231:14</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>Yates 136:24 137:8 139:13, 15,17,18 140:1,19 144:6 148:25 155:11 156:7 year 200:22 years 125:7 143:1 155:3 224:23 225:7</p>	<hr/> <p style="text-align: center;">Z</p> <hr/> <p>zip 122:18,21</p>
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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]

FIRST AMENDMENT TO
SHIRLEY BERNSTEIN TRUST AGREEMENT

TESCHER & SPALLINA, P.A.



Δ 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 heretunder 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]

FIRST AMENDMENT TO
SHIRLEY BERNSTEIN TRUST AGREEMENT



(P3) 12-15-15

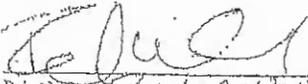
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

SETTLOR and TRUSTEE:


SHIRLEY BERNSTEIN

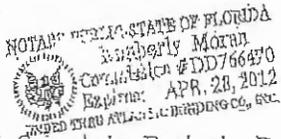
This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 18 day of Nov, 2008:

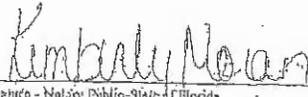

Print Name: ROBERT L. SPALLINA
Address: 7387 VICTORIA AVENUE
PARKLAND, FL 33076


Print Name: Rachel Walker
Address: 100 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 18 day of November, 2008, by SHIRLEY BERNSTEIN.




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 _____

NONPDAT\MrbBernstein, Shirley & Simon\2008 Estate Planning\First Amendment to Shirley Bernstein Trust Agreement vpd (11-09-26 14:08)

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.**

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

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>.

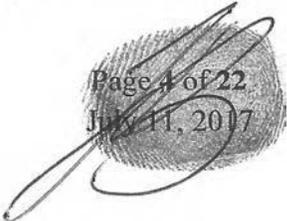
Ted Bernstein, who is my uncle by blood. and his attorney Alan Rose have at all times known my Birthdate particularly in relation to exorbitant and fraudulent legal Fees billed after the passing of my grandfather Simon Bernstein and the refusal to release my car Registration to me, which had been a birthday 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.

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July 11, 2017



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,

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

“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 Natl. 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 child**s).” **[emphasis added]**

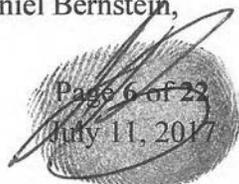
“5. ...Second, Fla. Stat. 731.303 (4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... **a minor** ... ” **[emphasis added]**

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,

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July 11, 2017



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 "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. [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 Bernsteins 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;

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

“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/guardianship_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

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

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.

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

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

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

- 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.

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

- 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

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11/11/2017



RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

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

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

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

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/NczV3oHgQuXksyXpl11Jdl>

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

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

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: 
Joshua Ennio Zander Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Dated: 7/11/17

Witness:

X: 
Name: Jacob Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Dated: 7/11/17

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

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,

Probate Division
Case No.: 502014CP003698XXXXNB

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.

**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. JRP

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 ^{and} 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 ^{when} ~~then~~ the parents' interests were adverse to the minor child).

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 ^{in fact, his actions are adverse + destructive to the children's interest} apparent Eliot Bernstein is not an adequate representative of the best interests of his children. _^

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, ^{are} ~~is~~ 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, ^{each of the parties shall submit a list of three names of potential Guardian Ad Litem's, each of whom has agreed to} 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~~ ^{acceptable} Guardian Ad Litem. ^{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.

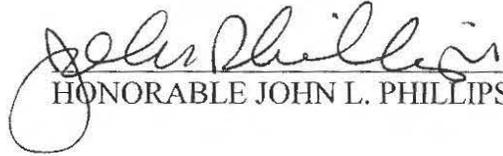
10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall ^{not} ~~make no effort to~~ contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) shall ~~make no statement of any kind about the guardian, nor post information about the guardian on the internet in any fashion; and (c) 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.

EB

** Parties shall furnish a ^{proposed} order appointing GAT 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
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Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
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

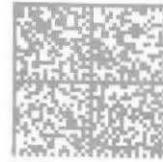
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Eliot Bernstein and Candice Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

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**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

EXHIBIT 2