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51. Trusts they must be able to produce records as NONE exist in record or have ever been produced and these are the sued parties under the Simon Bernstein Trust that does not exist dated 9/13/2012 and supposedly these are the trusts they funded with the partial payment of the Shirley condo sale proceeds from her trust. Under the Amended July 2012 Simon Trust these trusts do not exist and it refers to trusts held hereunder, which are only the Eliot, Jill and Lisa trusts from the 2008 trust. These alleged trusts also were not created on the day Simon died either, after the fact, as they would have been in TS Production. If Eliot is not trustee as Rose claims how did it transfer and why would other kids be.....	132
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1. **20150914 Filing # 32030300 E-Filed 09/14/2015 05:18:25 PM “TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE”**  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/EXHIBIT%201%20-%2020150914%20Trustees%20Omnibus%20Status%20Report%20and%20Request%20for%20Case%20Management%20Conference.pdf>
  - a. “Introduction - The overarching issue in these cases is Eliot Bernstein. He is not named as a beneficiary of anything; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel.”
    - i. Eliot is a beneficiary in ALL documents that Judge Phillips ruled valid. No Construction hearing has been held to determine anything different.
  - b. “The sole reason for the lack of progress is their disinherited son, Eliot Bernstein.”
    - i. Eliot is a beneficiary in Simon Estate and Shirley Estate and all other Trust documents of Simon and Shirley.
    - ii. Eliot was never disinherited by Shirley.
  - c. “If the Court were to appoint a guardian ad litem (“Guardian”) for Eliot's three kids, who are beneficiaries of both trusts,”
    - i.
  - d. “The surviving spouse was the sole successor trustee and beneficiary for life, and was granted a limited power of appointment. Simon, as the survivor, had the sole and absolute right to do whatever he pleased with his own assets, and also possessed a limited power to

appoint the assets remaining in the Shirley Trust to any of Shirley's lineal descendant or their spouse."

- i. Shirley's lineal descendants exclude Ted Pam and their children.
- ii. Simon's LIMITED POWER OF APPT only applies to assets in the Family Trust and Marital Trust, which according to Ted and his counsel were never created, therefore Simon had no power to change any of Shirley's IRREVOCABLE beneficiary class upon her death. Simon despite any desires of his could never change Shirley's beneficiaries and Rose's statements contradict his statements to PBSO, Spallina's statements to PBSO that Shirley's beneficiaries were Eliot, Jill and Lisa only.

- e. "When Shirley died, Simon was PR, successor Trustee, and sole beneficiary of her estate and trust."
  - i. Simon was not a beneficiary of Shirley's Trust, he was the Trustee with limited rights under a Family and Marital Trust that according to Ted's former counsel were never created and were never produced at Validity hearing.
- f. "Ted is not a beneficiary of any of these trusts and estates, and stands to gain nothing personally. Indeed, none of the five children are beneficiaries, as all of their parents' wealth was left to ten grandchildren."
  - i. Ted is a beneficiary of the Shirley Estate and Simon Estate, along with the other children.
  - ii. No Grandchildren have ever received a notice of administration for Estates and Trusts of Simon and Shirley Bernstein.
  - iii. Only 6 of 10 grandchildren can be beneficiaries of both Simon and Shirley's Estates and Trusts as Ted, Pam and their 4 children are considered PREDECEASED in all versions of the trusts.

- iv. The grandchildren are not beneficiaries of the Estates of either Simon or Shirley/
- g. "This is a tragedy of significant proportion to the ten grandchildren of Simon and Shirley Bernstein, the sole beneficiaries of their wealth."
  - i. Wholly untrue
- h. "This case involves minor grandchildren and young adult grandchildren who are the sole beneficiaries of Simon and Shirley Bernstein – there should be nothing on the internet about this private civil matter. And, if it is not stopped, a Guardian no doubt will become the next victim, as might this Court in the event it should ever rule against Eliot on a significant matter. Also, the beneficiaries believe that Eliot's threats are causing the successor PR, Brian O'Connell, to take steps which cause unnecessary expense, solely to appease Eliot."
  - i.
  - i. "When Ted became successor trustee after his father's death, there were two primary assets in the Trusts: (i) an oceanfront condo; and (ii) a single family residence which was his parents' homestead. The condo was sold in an arm's length sale, through a highly-reputable real estate broker. Eliot continues to threaten some litigation to clawback the property, and refused to accept for his children the partial interim distribution the Trustee elected to make to each of the ten beneficiaries."
    - i. There are no 10 grandchildren beneficiaries of Shirley's Trust.
    - ii. No Notice of Trust has been sent by Ted to any parties.
  - j. "To date, and despite the fact that he produced no evidence to support his assertion that the property was being sold too cheaply, and despite the fact that he is not a beneficiary of the trust,"
    - i.

k. "(There are prior Waivers signed by all potential beneficiaries, including Eliot Bernstein, and in the past five-plus years, nothing new has been found.) In particular, because Simon outlived Shirley and was thus alive at the time of her bequests to him, Eliot is not a beneficiary of Shirley's estate. The belts and suspenders of getting a waiver from him, which he admittedly signed, should not overshadow the fact that the empty estate simply should be closed."

- i. What is a Potential Beneficiary, the Waiver says BENEFICIARY, the Notice of Admin lists Eliot as Beneficiary.
- ii. Eliot is a beneficiary of Shirley's Estate

l. "It is unclear if this is real or a game to him,<sup>9</sup> but what is absolutely clear is: Eliot will not inherit any money, and his kids will not inherit enough to sustain his lifestyle."

i.

m. "Eliot lacks standing because he is not a beneficiary of either Simon's or Shirley's trusts."

- i.

**2. 20151215 TRIAL BEFORE THE HONORABLE JOHN L. PHILLIPS Tuesday, December 15, 2015 9:43 a.m. - 4:48 p.m.**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/EXHIBIT%2025%20-%2020151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

a. Rose and Spallina statements

Page 29-30

"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."

- i. Note that the LIMITED POWER OF APPOINTMENT IS ONLY FOR THE MARITAL AND FAMILY TRUSTS THAT ACCORDING TO THEM WERE NEVER CREATED AND WERE NOT PRODUCED EVER TO ANY PARTY, therefore it is WORTHLESS

- b. Rose and Spallina statements

Page 31

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.

- i. Here they confirm that Power of Appointment is only for Family Trust and Marital Trust.

Those trusts were never created and so POA is moot.

- c. Rose and Spallina statements

Page 33

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.

i. Oh, then Eliot is a beneficiary under Shirley's Trust

d. Rose and Spallina statements

Page 40

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.

i. Total BS, Ted brought them together. They were Ted's friends and business associates  
and Tescher's wife was billing for consulting to Simon and Ted's companies before this  
time.

e. Spallina statements

Page 46-47

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

Page 47

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

i.

f. Rose and Spallina statements

·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 --

- i. Inventory never adjusted by TS or TED
- g. Rose and Spallina statements

·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.

- i. If Eliot is not a beneficiary in Shirley's estate why is he signing this and not the grandchildren and why is he noticed in the notice of admin that he is a beneficiary.

h. Rose and Spallina statements

Page 64-65

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

65

· 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.

- i. Then living grandchildren in both Simon and Shirley's Trusts and the Amended Simon, only include Eliot, Jill and Lisa children as defined to hold separate trust thereunder and those would be Eliot Jill and Lisa Family Trusts. Ted, Pam and their lineal descendants are predeceased under the documents.

- ii. The LIMITED POWER OF APPOINTMENT ONLY APPLIES TO THE FAMILY TRUST AND MARITAL TRUST that they claim were never created, so MOOT.

i. Rose and Spallina Statement

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.

- i. Could not exercise except on two trusts that were never created
- ii.

j. Eliot and Spallina statement

Page 95

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.

96

1. · · · Q. ·Have you been charged with that by the Palm  
·2. ·Beach County Sheriff yet?  
·3. · · · A. ·No, I have not.

- i.

k. Eliot and Spallina statement

Page 96

·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.

i.

l. Eliot and Spallina statement

Page 97

23. . . . Q. . . Did the fraudulently altered document change  
24. . the beneficiaries that were listed in Shirley's trust?  
25. . . . A. . . They did not.

i.

m. Eliot and Spallina statement

Page 98

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.

i.

n. Eliot and Spallina statement

Page 106

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.

i.

o. Eliot Spallina Rose statements

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.

i.

p. Eliot and Spallina

Page 131

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.

i.

q. Eliot and Spallina

Page 135

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?

i.

r. Eliot and Spallina

Page 136

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

137

.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?

Page 138

.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?

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1 . . . . . THE WITNESS: It could have, yes, Your Honor.

i.

s. Eliot and Spallina

Page 144

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.

i.

t. Eliot and Spallina statement

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.

i.

u. Eliot and Spallina statement

Page 161

24. . . . Q. . Now, that -- this document --

25. . . . MR. ROSE: Your Honor, can I just -- I don't

Page 162

.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.

- i. Rose commits suicide here as he then sells Courts in state and federal that Construction was done at this hearing and the power of appt was litigated and we see clearly BIG FAT LIAR

v. Eliot and Spallina statement

Page 163

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

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· 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:

i.

w. Spallina and Rose

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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

Page 189

.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.

i.

x. Eliot and Ted statement

Page 211

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.

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.1. . . . Q. . . Okay. . So do you find that as a fiduciary to

.2. .be a conflict?

.3. . . . .MR. ROSE:. Objection.

.4. . . . .THE WITNESS:. No.

i.

y. Rose and Ted

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.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.

i.

z. Rose Closing

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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 ungenuine document, we would ask

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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.

i.

3. **20160104 Filing # 36122958 E-Filed 01/04/2016 04:32:05 PM “SUCCESSOR TRUSTEE'S MOTION FOR APPOINTMENT OF A GUARDIAN AD LITEM TO REPRESENT THE INTERESTS OF ELIOT BERNSTEIN'S CHILDREN; FOR A GAG ORDER TO PROTECT GUARDIAN AND OTHERS; AND TO STRIKE ELIOT'S FILINGS”**  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/EXHIBIT%2005%20-20160104%20Successor%20Trustees%20Motion%20For%20Appointment%20of%20Guardian%20Ad%20Litem%20and%20Gag%20Order%20-%20Pages%201%20to%2052.pdf>

a. “1. Plaintiff, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, seeks the appointment of a guardian ad litem to protect the interests of Eliot Bernstein's three children. By its ruling at the trial held on December 15th, the Court upheld the 2012 Will and Trust of Simon L. Bernstein and the 2008 Will and Trust of Shirley Bernstein. As a result of upholding these documents, the Court has determined that Eliot Bernstein, individually, is not a beneficiary of either Simon's or Shirley's Trusts or Estates. Instead, his three sons are among the beneficiaries of both Simon's and Shirley's Trusts, in amounts to be determined by further proceedings. Eliot lacks standing to continue his individual involvement in this case.”

i. The ruling did not determine any of the beneficiaries or Eliot's standing and now with Rose's and O'Connell admission of Eliot as Beneficiary in Simon Estate and Judge Scher Confirming on record Eliot is beneficiary and has standing Rose statement is false.

ii. No Construction hearing has ever been held and this is just plain BS.

b. “In light of the Final Judgment dated December 16, 2015, upholding Simon's 2012 documents, Eliot is not a beneficiary of the Shirley Trust or the Simon Trust. As such, he lacks standing to participate as an individual.

- i. Eliot has standing as both a beneficiary and interested party in the Shirley and Simon Trusts as he is named in both Trusts as a beneficiary. Despite an amended Simon Trust that claims he was disinherited he is still a beneficiary under the Original Trust with standing and since no Construction hearings have ever been held in any of the Estate and Trusts of Simon and Shirley he remains both a beneficiary and has standing.
- ii. The Dec 15 2015 hearing says NOTHING about Eliot's standing.
- iii. The Dec. 15 2015 hearing does not state who beneficiaries are either.

c. “(iii) strike and/or dismiss all of Eliot's filings in this case as described above for lack of standing;

- i.

  

4. **20160805 Filing # 44877594 E-Filed 08/05/2016 11:59:56 AM “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”**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160805%20TRUSTEE'S%20MOTION%20TO%20APPROVE%20RETENTION%20OF%20COUNSEL%20AND,%20TO%20APPOINT%20TED%20AS%20ADMIN%20AD%20LITEM%20TO%20DEFEND%20CLAIM%20AGAINST%20ESTATE.pdf>

- a. “He has conferred with the beneficiaries of The Simon Bernstein Trust, including the Guardian Ad Litem, and all are in favor of Ted Bernstein directing the defense of the claim through the Mracheck-Law firm.”
  - i. Guardian does not represent 2 children of Eliot.
- b. “9. Accordingly, and having conferred with the Trustee and the beneficiaries of the Trust, Mr. O'Connell has agreed to have Mracheck-Law retained to represent the Estate in the Stansbury litigation so long as the Court appoints Ted Bernstein as Administrator Ad Litem

to stand as the Estate's representative in defending and protecting the estate's interests in the Stansbury litigation.”

i.

c. “As indicated above, the Trustee has conferred with not only Mr. O'Connell, but each of the beneficiaries of the Trust, which is the sole beneficiary of the estate, and all are in agreement.”

i.

**5. 20160810 Motion to Ratify and Confirm Appt of Ted as Successor Trustee of Trust which is sole Beneficiary of Estate. Filing # 45062985 E-Filed 08/10/2016 03:22:14 PM**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160810%20Motion%20to%20Ratify%20and%20Confirm%20Appt%20of%20Ted%20as%20Successor%20Trustee%20of%20Trust%20which%20is%20sole%20Beneficiary%20of%20Estate.pdf>

a. “MOTION TO RATIFY AND CONFIRM APPOINTMENT OF TED S. BERNSTEIN AS SUCCESSOR TRUSTEE OF TRUST WHICH IS SOLE BENEFICIARY OF THIS ESTATE”

i. Trust is not sole Beneficiary of the Estate

b. “The Court having determined who are the qualified beneficiaries and having appointed a Guardian ad Litem to represent the interests of Eliot's children, the qualified beneficiaries of the Trust unanimously have agreed”

i. No consent from Josh and Jake two adult children where no adult guardianship hearings were held for Josh at the time a GAL was appointed and the Guardian cannot represent their interests as adults and her consent was predatorily gained through these abusive GAL orders.

- ii. No Construction hearing was held in Simon Estate or Simon Trust, Rose only had Validity Hearing in Shirley's Trust case for Estate and Trust of Simon.
- iii. The Court now determining with Alan Rose and Brian O'Connell and Peter Feaman concurring that Eliot Bernstein is a beneficiary with standing in Simon's Estate further confounds this statement as they knew they did not have Eliot Bernstein's consent and thus why they needed to Con the Court that Eliot was not a beneficiary and had no standing and therefore claim they did not need his consent.
- iv. Diana Lewis as alleged GAL of Eliot's children is not a GAL of any qualified beneficiary of the Estate of Simon Bernstein as the only beneficiaries are Simon's five children and a pour over trust, which Lewis is not a fiduciary of and thus Diana Lewis' consent is worthless other than to further show the Court how consent was falsely and fraudulently being represented by Ted Bernstein, Alan Rose and Brian O'Connell to this Court.

c. "Finally, to remove any possible doubt, the Successor Trustee and all qualified beneficiaries ask the Court to confirm the appointment and/or formally appoint Ted S. Bernstein"

- i. Again no true consent of all beneficiaries and beneficiaries consenting are falsely portrayed to the Court with scienter.

d. "Ted Bernstein is eligible to serve and, indeed, was appointed and is serving as the sole successor trustee of his mother's trust, which benefits the same ten people."

- i. There are not 10 beneficiaries of Shirley's trust. Eliot, Jill and Lisa are only beneficiaries and/or their 6 children. Simon's Power of Appt only applies to a Family Trust and Marital Trust and at this time they do not exist and have not been presented as part of the "Validated" Shirley Trust and thus the POA has no force or effect on the Shirley Trust Beneficiaries.

- ii. There has been no construction hearing to change or alter the stated Beneficiary Class that became IRREVOCABLE the day Shirley Bernstein passed away December 08, 2010.
- iii. Ted Bernstein has never been appointed as the Trustee of the Shirley Bernstein Trust.
- iv. Even if the POA could have been executed by Simon, the only grandchildren it could possibly benefit are the children of Eliot, Jill and Lisa who are IRREVOCABLE BENEFICIARIES with their children. In no way could Simon Add Beneficiaries to the already established Class of Beneficiaries.

e. “Regardless, to avoid any issue, reduce expenses and put to rest for all time any concerns raised as to Ted S. Bernstein's service as Successor Trustee, the beneficiaries of the Trust unanimously have agreed to ratify and confirm the appointment of Ted S. Bernstein.”

- i. They do not have consent of Eliot and his adult kids and no signed consent forms from anyone.

f. “The Court having determined who are the qualified beneficiaries and having appointed a Guardian ad Litem to represent the interests of Eliot's children, the qualified beneficiaries of the Trust unanimously have agreed to appoint Ted S. Bernstein as successor trustee, nunc pro tunc February 3, 2014.”

- i. There has been no Construction hearing of documents to determine who the beneficiaries are that are qualified and Orders issued regarding beneficiaries were gained through a series of pleadings filed by Ted and his counsel Rose that materially represented the facts to the Court with malice, intent and scienter.
- ii. No consent from all beneficiaries.

- g. "Finally, to remove any possible doubt, the Successor Trustee and all qualified beneficiaries ask the Court to confirm the appointment and/or formally appoint Ted S. Bernstein"
- h. "WHEREFORE, Ted requests that this Court: (a) accept and approve the qualified beneficiaries' ratification and confirm the appointment of Ted S. Bernstein; (b) accept and approve the qualified unanimous agreement that Ted S. Bernstein be appointed as successor trustee"
  - i. Due to the recent admissions before Judge Scher by both Alan Rose and Brian O'Connell that Eliot is a beneficiary and has not consented, this statement again is false and misleading made with malice, intent and scienter.

6. **20160810 Filing # 45064518 E-Filed 08/10/2016 03:33:22 PM "RENEWED PETITION TO RE-CLOSE ESTATE AND FOR DISCHARGE OF SUCCESSOR PERSONAL REPRESENTATIVE"**  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160810%20Renewed%20Petition%20For%20Discharge%20to%20ReClose%20Estate%20and%20Discharge%20of%20PR.pdf>

- a. "1. After trial held on December 15, 2015, this Court upheld Shirley's Will and determined that Eliot Bernstein is not a beneficiary of the Will and Trust of Shirley Bernstein, but Eliot's three sons were beneficiaries, among others."
  - i. No such determinations were made at the Dec 15 2015 Sham Validity Hearing
  - ii. Eliot is a beneficiary of both the Will and Trust of Shirley Bernstein.
  - iii. Eliot's children are not the direct beneficiaries of either the Will or IRREVOCABLE Trust of Shirley.
- b. "3. On September 2, 2014, Successor Personal Representative petitioned to Re-Close Shirley's estate based on signed waivers, which was denied solely because Eliot rescinded his waiver and challenged Shirley's inventory.

- i. Big Fat Lie, there is no proper accounting and accountings and inventories are challenged on solid ground. Eliot never resigned a waiver etc. and Simon never did either.
- c. “4. Eliot now lacks standing to challenge Shirley's inventory or challenge any aspect of Shirley's estate because he is not a beneficiary and is not a guardian for a beneficiary's interests.”
  - i. Eliot is a named beneficiary with standing as we learned in Simon the same holds true here.
  - ii. The grandchildren are not beneficiaries of Shirley's Will.
  - iii. Eliot was served Notice of Admin as a Beneficiary – see our response to this filed.
- d. “5. The initial Personal Representative, Simon L. Bernstein, fully administered this estate and Petitioned for a discharge, with signed (but un-notarized) waivers by all interested persons. §731.301, Fla. Stat. (See Exhibit "A")
  - i. Simon petitioned for discharge AFTER he was dead. Simon did not have all the Waivers before he died as Jill Iantoni for example did not send one in until after he deceased.
  - ii. Simon was dead when Estate of Shirley was closed, see Dec 15 2015 admission by Spallina that the Estate was closed through fraud with a dead PR, at a time Ted and his attorneys Spallina Tescher claimed Ted was PR and Ted allowed this to occur as a fiduciary and even after he learned of the fraud did nothing to correct it as it benefited his family with a 30% interest that they did not have since they were considered predeceased.
  - iii. The Waivers submitted by Ted's counsel as Fiduciary, Spallina and Tescher, were FORGED and FRAUDULENTLY NOTARIZED for six separate parties, including POST MORTEM FORGERY and NOTARIZATION for Simon.
- e. “Simon was the sole beneficiary of the Shirley Trust while he was alive.”

- i. Simon was not a beneficiary of her Trust he was the Trustee and he could take payments from Marital and Family Trusts but they were never created according to their story.
- f. 7. Shirley died on December 8, 2010. Sometime thereafter, Simon directly took possession and control of all assets of her estate, and indirectly took control of the Shirley Bernstein Trust's assets as the initial Successor Trustee and sole beneficiary during his lifetime.
  - i. Again Simon was not a beneficiary of Shirley's Trust. Same lie they told at Validity hearing.
- g. “8. On April 9, 2012, Simon signed a Petition for Discharge and his own Waiver form. By that time, Simon had completed the administration of Shirley's Estate and he wanted the Estate to be closed.
  - i. On April 09, 2012 form Simon claimed he had all waivers and consent of beneficiaries, which was a false statement signed under oath as Simon did not have Jill Iantoni's Waiver and Consent of Beneficiary until after he was dead. There are other multiple false statements on this document at that time.
- h. “10. The Successor Personal Representative has completed the necessary inventory and accounting of the re-opened Estate. While Simon was alive, he disposed of all assets (believed to be tangible personal property only) and resolved all claims (if any) which were presented. No assets were discovered by the Successor Personal Representative in the re-opened Estate.”
  - i. Big Fat Lie as Ted and Spallina and Tescher both became aware of many assets after the inventory was done and not distributed to any beneficiaries.

- ii. See Dec 15, 2015 hearing where Spallina is asked by Rose about Shirley's Bentley and he says he knows about it and there Ted at minimum learned of it and neither of them amended her inventory.
- iii. Jewelry was discovered that was not on the inventory for close to a million.
- iv. Home furnishings were discovered that were Shirley's that were not on her inventory.
- i. "12. Although this Court reopened the Estate, the Successor Personal Representative has possession of no assets and never has, and is aware of no liabilities. This was confirmed when the Successor Personal Representative conducted the final accounting and inventory of the estate."
  - i. Ted was in possession of her jewelry and her home furnishings that he allegedly sold without even consent from the beneficiaries regarding their properties.
- j. "The Successor Personal Representative will never have any assets to distribute because there are no assets and anything which conceivably could have existed on the date of Shirley's death would have been transferred to Simon as her surviving spouse under the terms of her Will. Any such assets Simon retained as of his death would now be in Simon's estate."
  - i. Not true. Any assets Shirley had like her jewelry and home furnishings could not have "transferred" to Simon without first being listed on Shirley's inventory and then transferred. So how did Shirley's assets NOT LISTED ON HER INVENTORY transfer to Simon if Shirley's assets were listed on her inventory to be only 25k with no accounting of what that was composed of by Tescher and Spallina and on Ted's inventory he claimed Shirley's assets were \$0.00. So only 25k of assets could have transferred and the fully paid for in cash Bentley and her million or more of jewelry and her furnishings of two properties, including a beach front condo with its own floor and

elevator and a mansion home in Saint Andrews Country Club with 10 bathrooms and an elevator, are nowhere found on her inventory and thus could not have been properly accounted for on her inventory and THEN TRANSFERRED.

- k. “At that time, this Court had not yet determined the validity of the Will or the Trust, which is the sole beneficiary of the Estate under the Will. Therefore, at that time, Eliot, as a surviving child of the Decedent, arguably had standing to object. Eliot did object, and this Court (at a time when Judge Colin was presiding) denied the Petition to Re-Close without prejudice.”
  - i. No the five children are beneficiaries of the Estate under the Will that was validated improperly through a sham hearing.
- l. “The Court later confirmed that ruling on February 1, 2016, in an Order determining that Eliot lacked standing to participate in this matter.”
  - i. FACT CHECK THE ORDER
  - ii. Even if Order claims something like that it is wrong and NO CONSTRUCTION HEARING HAS EVER BEEN HELD in the Estate or Trust.
- m. “Simon Bernstein alone was entitled to possession and ownership of the tangible personal property, and he alone was entitled to control the Trust assets and was the sole beneficiary of the Trust, all during his lifetime.”
  - i. He was not a beneficiary of the Shirley Trust, just a trustee.
- n. “17. Although none of them are individually beneficiaries, each of his children likewise signed waivers, although Eliot has since withdrawn his.”
  - i. The Waivers also have a Beneficiary Consent in them and Eliot is a named Beneficiary on the Notice of Administration.

- o. "Notwithstanding the "belts and suspenders" approach in seeking waivers from Shirley's adult children, now that the Will and Trust have been construed, it is obvious that none of the children are beneficiaries, directly or indirectly, of the Estate of Shirley Bernstein or her Trust."
  - i. Big Fat Lie as there has been NO CONSTRUCTION HEARING HELD to construe anything in the Simon and Shirley Estates and Trusts.
- p. "Moreover, the persons who are the ultimate beneficiaries of The Shirley Bernstein Trust, a Trust created for the benefit of each of her ten grandchildren, are controlled by four of her children and the Guardian Ad Litem appointed to represent Eliot's children. All of those parties support and have agreed to the immediate re-closure of this Estate."
  - i. Totally untrue. The Shirley beneficiaries are Eliot, Jill and Lisa and their lineal. No trusts were ever created for her 10 grandchildren in fact four of them are considered PREDECASED for ALL PURPOSES OF DISPOSITIONS of the Trust with two of her children, Ted and Pam all completely disinherited.
  - ii. There are no 10 Grandchildren Trusts produced in the record or elsewhere.
  - iii. There are three trusts created under Shirley's Trust that were created simultaneously with creation of the trust, the Eliot Bernstein Family Trust, the Jill Iantoni Family Trust and the Lisa Friedstein Family Trust. These family trusts were created to receive the benefits of the trust for the 3 living children and six living children as Ted, Pam and their lineals were considered predeceased.
  - iv. Diana Lewis has NO TRUSTS for Eliot's children created under Shirley's Trust and thus this is a predatory guardianship gained on trusts that do not exist.

- v. Diana Lewis has no right to consent to the Estate reclosing as she represents no parties in the Shirley Estate case and in the Shirley Trust it is fraudulent representation since the trusts she is alleged to be guardian for the kids under DOES NOT LEGALLY EXIST.
- q. "18. The Estate now seeks an order of this Court closing this Estate based upon the accounting and inventory completed by the Successor Personal Representative and the genuineness of the Waivers signed while Simon was alive, coupled with Eliot's lack of standing."
  - i. Eliot does not lack standing legally as standing was removed at a UMC hearing and only because Eliot did not know the exact statutes that gave him standing as a named beneficiary in the document.
- r. "In addition, the Successor Personal Representative now has the full knowledge, consent, and approval of the direct beneficiary of the Estate (Ted S. Bernstein, as Successor Trustee of The Shirley Bernstein Trust), and all of the indirect beneficiaries (representatives of Shirley's ten grandchildren), the Personal Representative requests the Court immediately re-close the Estate, discharge the Personal Representative, and grant such other relief as is just."
  - i. Ted does not have Eliot consent and Eliot is a beneficiary.
  - ii. Diana Lewis should be charged with FRAUD for consenting fraudulently for parties she represents through NON EXISTENT trusts.
  - iii. There are objections to inventories still not heard.
  - iv. Two of Eliot's kids are adults and Lewis knows this and knows she does not have their consent. She is not a Trustee of the NON EXISTENT TRUST that Rose states was "CREATED."

**7. 20160901 TRANSCRIPT OF PROCEEDINGS BEFORE HONORABLE JOHN L. PHILLIPS DATE: September 1, 2016 TIME: 8:44 a.m. - 8:50 a.m.**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160901%20Phillips%20Hearing%20Transcript%20re%20TPP%20COPY%20CLEANED.pdf>

“25 Mr. O’Connell and all the beneficiaries want it to

1. be as we’ve put it in the motion”
- i. All beneficiaries have not consented.

**8. 20161006 Case: 1:13-cv-03643 Document #: 265 Filed: 10/06/16 Page 1 of 8 PageID #:13213**  
**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF**  
**ILLINOIS EASTERN DIVISION “COUNTER-DEFENDANTS, CROSS-DEFENDANTS,**  
**AND THIRD-PARTY DEFENDANTS’ REPLY TO ELIOT BERNSTEIN’S RESPONSE**  
**T0 MOTION FOR SUMMARY JUDGMENT**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20161006%20Counter%20Defendants%20Reply%20to%20Eliot%20Response%20for%20Summary%20Judgment%20Blakey%20Il%20Ins%20Doc265%20Case%2013cv3643%2016642279-0--26835.pdf>

- a. “II. THE FLORIDA PROBATE COURT HAS RULED, AFTER TRIAL AND HEARINGS, THAT ELIOT HAS NO INTEREST OR STANDING AS A BENEFICIARY OF THE ESTATE EITHER ON HIS OWN BEHALF OR AS PARENT/GUARDIAN FOR HIS MINOR CHILDREN. THESE PROBATE ORDERS RESOLVE ISSUES THAT ARE GERMANE TO THE ISSUE OF ELIOT’S STANDING IN THE INSTANT LITIGATION.”
  - i. Now that Scher confirmed I am bene and Rose admitted and I have standing this was false pleading to fed court that must be reversed and corrected and in his Order
- b. “(iv) Eliot Bernstein is not a beneficiary of the Estate,”
  - i.
- c. “Also, this court can and should apply the doctrine of collateral estoppel to preclude any re-litigation of one very pertinent issue that was previously determined in the Probate Actions -- that Eliot has no interest in the Estate.”

i.

d. "Since the Florida Probate Court already determined that Eliot is not a beneficiary in the Estate, and no longer has any authority to represents the interests of his own children, the Probate Orders are preclusive as to any relief Eliot seeks here based on an interest in the Estate."

i.

**9. 20161122 "HEARING BEFORE THE HONORABLE JUDGE ROSEMARIE SCHER  
Volume 1 of 1 Pages 1 through 19 Tuesday, November 22, 2016"**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20161208%20TRANSCRIPT%20Bernstein%20vs.%20Bernstein%20Hearing%20Shirley%20Trust%20Case%20112216%20FULL%20Vol%201.pdf>

a. "On Behalf of Eliot Bernstein's minor children:

ADA & MEDIATION SERVICES, LLC 2765 TECUMSEH  
DRIVE  
2765 Tecumseh Drive  
West Palm Beach, Florida 33409  
dzlewis@aol.com

BY: DIANA LEWIS, ESQ.

i. Diana Lewis does not represent ANY beneficiaries of the Estate of Simon and only represents 1 minor child at this time and no consent has been gained from other two adults.

b. "MS. LEWIS: And I'm Diana Lewis. I'm the guardian ad litem for the Eliot and Candace Bernstein children, Joshua, Jake, and Daniel."

i. Only two at this time. Jake on 1/1/17 no longer

c. Rose statement to Court Page 4

11. . . . MR. ROSE: This is Alan Rose. I

12. .represent -- we're here really in the --

13. ·there's two or three related matters that  
14. ·involve Simon and Shirley Bernstein, but we are  
15. ·here on the Simon Bernstein estate and Shirley  
16. ·Bernstein matter to approve a settlement.· It's  
17. ·essentially uncontested."

d. Rose statement to Court Pages 7-8

“6 So this is the first time we've been  
7 before Your Honor. This case has been in front  
8 of four judges previously. French, Colin,  
9 Coates, Judge Phillips. We finally started  
10 making progress with Judge Phillips. He  
11 conducted a trial last December and determined  
12 who the beneficiaries are of the estate. He  
13 then entered two further orders, which I  
14 provided to you, that state that Eliot  
15 Bernstein, the gentleman on the phone, lacks  
16 standing and is no longer able to participate  
17 in these proceedings, is not allowed to file  
18 any papers.  
19 So I expected this motion -- we're trying  
20 to approve a settlement. It was entered into  
21 at mediation. There's a guardian that  
22 represents three of the children. And we're --  
23 it's uncontested, the settlement, with anyone

24 that has standing to contest it.

25 So we expected this to be an unopposed

Page 8

1 motion to approve the settlement and then to

2 address the status conference. If Your Honor

3 had any concerns over the settlement, we can

4 set it for a hearing. But, again, there's --

5 nobody with standing has opposed the

6 settlement. It's signed off by all of the

7 parties and by the guardian who represents the

8 interests of three children.

9 And, again, when I set these for motion

10 calendar I did not anticipate there being any

11 objection to it.

12 Obviously, Mr. Bernstein, the gentleman on

13 the phone, has appeals pending and he can

14 pursue his appellate rights.

15 THE COURT: There's an order issued that

16 he lacks standing on February 1st.

17 MR. ROSE: Correct."

i. No Construction hearing was held determining beneficiaries

ii. In Feb 16, 2017 hearing and in March 02, 2017 hearing Scher confirms I am a beneficiary of the Estate of Simon with Standing. This contradicts what Rose states Phillips order state.

e. Rose statement to Court

20 to approve a settlement. It was entered into  
21 at mediation. There's a guardian that  
22 represents three of the children. And we're --  
23 it's uncontested, the settlement, with anyone  
24 that has standing to contest it.

- i. Eliot has standing and contests it.
- ii. Lewis at time has guardianship for 1 minor only and her guardianship is under  
Grandchildren Trusts that DO NOT EXIST.
- iii. Guardianship was pled for on MINOR CHILDREN only and no adult guardianship  
hearings were held despite one child being an adult at the time of the GAL hearing, yet  
the pleadings were knowingly factually incorrect as the Trustee and his counsel knew that  
one of the children was already an adult.

f. Rose statement to Court

15 THE COURT: There's an order issued that  
16 he lacks standing on February 1st.  
17 MR. ROSE: Correct.

- i. In what capacities, individually or as a beneficiary??

g. Scher statement

9 THE COURT: Okay. So we'll see you  
10 November 29th at 9:30.  
11 Mr. Bernstein, keep in mind I have an  
12 order that says you have no standing. So  
13 you've got two minutes.

h. Scher statement

16 THE COURT: I'm only having a scheduling  
17 conference on November 29th. You appeared  
18 today. You can appear -- I am unsure at this

19 exact moment what your status is. So I'm going  
20 forward with the November 29th hearing at 9:30.

- i. Now she is not sure of my status

**10. 20161128 November 28, 2016 Alan Rose Letter to Scher “Bernstein Status Report for 11-29 Status Conference**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20161128%20Judge%20Scher%20%20Bernstein%20Status%20Report%20for%2011-29%20Status%20Conference.pdf>

- a. “Judge Phillips brought order to chaos; determined after a trial who are the rightful beneficiaries of these estates and trusts;”
  - i. No determination was made after trial and the Order does not determine who the rightful beneficiaries are as it was not a Construction hearing it was a validity hearing an no Construction has been done to date.
  - ii. The Power of Appt has never been construed to be valid or binding and it is a moot point since it only relates to a Limited Power over a Family Trust and the Marital Trust which at this time do not exist and where never made part of the Shirley Trust at the Validity Hearing, thus even if executed it would be over trusts that were never created.
- b. “Judge Phillips first set a trial to determine the validity of the Wills and Trusts, which determined the proper beneficiaries.”
  - i. Not true, there was no construction to determine beneficiaries just hearing to validate.
  - ii. The Estate of Simon was abandoned at validity hearing by O’Connell and O’Connell under oath admits that he is unaware of any construction hearing being held, SEE **O’CONNELL STATEMENTS.**
  - iii. The sham “Validity Hearing” was limited by Judge Phillips and Alan Rose to be confined only to the Validity of the documents and the construction Count of the Amended

Complaint was stayed prior to the hearing and during the hearing. SEE ROSE AND PHILLIPS STATEMENTS REGARDING SEVERING THE CONSTRUCTION COUNT FROM VALIDITY HEARING.

- iv. The Order does not determine who the beneficiaries are and NO CONSTRUCTION HEARING has been held for any Will or Trust of Simon and Shirley Bernstein.
- c. "However, Stansbury and Eliot continue to disrupt and delay the orderly administration of Simon's Estate; are trying to influence the Simon Trust even though neither has standing on those issues..."
  - i. Not true both have standing in the Simon Estate and Simon Trust.
- d. "Moreover, Eliot expected to be rich once his parents died. According to Eliot's court filings and testimony, he believed his parents' net worth was more than \$100 million, and he would inherit \$30 million more. Instead, he gets nothing. His children are beneficiaries, and do get 10% each, but Eliot has done all he can to destroy what little (perhaps \$3 million total) his parents left behind."
  - i. Not true as it will be shown that Eliot is to inherit 1/3 of Shirley's Trust with two of his sisters as named beneficiaries with their lineal descendants through three funded trusts in their families names that were established with the creation of Simon and Shirley's trusts in 2008 and factually Ted and his sister Pam and their lineal descendants will inherit NOTHING in Shirley's Trust as they and their lineal descendants are both considered PREDECASED and at the time of Shirley's death the trust became IRREVOCABLE and the Permissible Class of Beneficiaries was set in stone.

ii. Eliot is a beneficiary of Shirley's Estate and will inherit through this Will monies in the Estate, once proper accounting and inventories are determined valid by the Court and if monies are found to exist that should be in the Estate.

e. "The only other players who need specific mention are Simon's prior counsel. Those lawyers took some improper actions after Simon's death, but have been replaced and have suffered severe consequences. Indeed, there is a pending settlement between those lawyers and everyone else -Mr. O'Connell, as Simon's PR; Ted as Shirley's PR and Trustee of both trusts; the GAL and all beneficiaries.."

i. Mr. Rose again attempts very cleverly to mislead the Court as NOT ONLY WERE Simon's Prior Counsel, Robert Spallina, Esq. and Donald Tescher, Esq. acting as Simon's counsel, the crimes they committed were done in fact while they were acting as Ted Bernstein's counsel in his capacity as Fiduciary of Shirley's Estate and Trust. The crimes were all designed to benefit Ted Bernstein's family by removing the Predeceased language in the Shirley Trust to include Ted's family for 30% of the Shirley Trust and this fraudulent trust that was created and disseminated to parties that fraudulently inserted Ted and his sister Pam's families into the Shirley Trust for 40% of the total value if the crime were successful. This crime has been PROVEN through admission by Robert Spallina, Esq. at a December 15, 2015 hearing before this Court, to the Palm Beach County Sheriff and by his partner Donald Tescher; Esq. in his resignation letter caused by the Fraud on Beneficiaries<sup>1</sup> and their counsel that they forged a fraudulent Shirley Trust document. Tescher and Spallina were doing insurance business with Ted and consulting business for him and were his close personal friends who Ted then brought into the Bernstein Family Affairs.

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<sup>1</sup>

- ii. The crimes were committed in Shirley's Estate and Shirley's Trust that are PROVEN AND ADMITTED.
- iii. To date, Ted has never filed criminal charges for the crimes he is aware of that were committed while he was a fiduciary and committed on his behalf by and through his retained counsel. While the attempt to feloniously plead to the Court that it was Simon's counsel, at the time the crimes were committed Simon Bernstein was already deceased, including crimes of forging Simon's name POST MORTEM on documents submitted to the Court and the Beneficiaries and Interested Parties and FORGING SHIRLEY'S TRUST and sending it to Eliot Bernstein's minor children's counsel, Christine Yates of Tripp Scott law firm in Fort Lauderdale, FL.

f. "The Final Judgment (on appeal) resolved that the beneficiaries are ten grandchildren and that Eliot has no standing"

- i. Untrue the final judgment did not determine Eliot did not have standing and no construction hearing has ever been held to resolve who the beneficiaries are of any of the Wills and Trusts of Simon and Shirley Bernstein. This again is false and misleading.

g. "When Stansbury did not settle at the July mediation, the beneficiaries agreed to get the case tried quickly and by the Mrachek Firm,"

- i. Beneficiaries did not agree this is mass fraud as Eliot and his adult children have not agreed or consented to anything and again the grandchildren are not beneficiaries of Simon's Estate and any consent by Diana Lewis on their behalf is predatorily gained through further fraud on the court.

h. "On behalf of the Trustee, who now speaks with a singular and clear voice on behalf of all of beneficiaries, the Court should not allow Stansbury or Eliot to cause further disruption."

- i. Untrue does not have consent of all beneficiaries, Josh and Jake Bernstein, two of Eliot's children who are over the age of capacity, have never been contacted by any parties to gain their consent, including never being noticed by any fiduciaries that they are beneficiaries as called for under Probate Rules and Statutes and Trust Rules and Statutes
- i. "Eliot has been barred from participation in the Shirley matters, but may have some limited rights in Simon's estate because he filed a personal claim against Simon's Estate."
- i.
- j. "For example, the Final Judgment ruling that Eliot lacked standing would have ended the nonsense in a normal case, but this one is not normal."
- i.

**11. 20161228 December 28, 2016 Ted Bernstein filing "AMENDED MOTION FOR SANCTIONS PURSUANT TO FLORIDA STATUTE §57.105 AGAINST WILLIAM STANSBURY AND PETER FEAMAN, ESQ. FOR FILING MOTION TO VACATE IN PART ORDER PERMITTING RETENTION OF MRACHEK FIRM [DE 497] AND MOTION TO DISQUALIFY [filed 11-28-16]; AND FOR STANSBURY'S FILING RESPONSE IN OPPOSITION TO MOTIONS TO APPOINT ADMINISTRATOR AS LITEM [DE 471] AND TO RATIFY AND CONFIRM APPOINTMENT OF TED S. BERNSTEIN AS SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN AMENDED AND RESTATED TRUST [DE 495 ]"**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20161228%20Trustee%20Ted%20Bernstein%20Amended%20Motion%20for%20Sanctions%20Against%20Feaman%20Pursuant%20to%2057.105%20Simon%20Estate%20Case%20CLEANED%20COPY.pdf>

- a. "In addition, Stansbury opposes the Trustee's Motion to ratify his appointment or to have the Court appoint Trustee based upon the unanimous agreement of the beneficiaries."
- i.

b. “Footnote 3 - See Motion to Ratify and Confirm Appointment of Ted S. Bernstein as Successor Trustee of Trust Which Is Sole Beneficiary of the Estate, filed August 10, 2016 [DE 473]”

i.

c. “The Trust beneficiaries all agree the Trustee should continue to serve...”

- i. Where are signed consents from all beneficiaries
- ii. Diana Lewis is acting as GAL under Trusts that do not exist and have not been produced and Grandchildren never noticed they were beneficiaries by Fiduciaries.
- iii. Lewis got guardianship over an adult with no proper hearings.
- iv. Lewis does not have guardianship over Josh at time and now Jake both over age of consent, 18.

d. “Because no funds can flow from the Estate to the Trust unless and until Stansbury's claim has been resolved, any claims by Stansbury that he has standing or may be prejudiced by Ted Bernstein serving as Trustee are nonsensical.”

- i. Stansbury DOES HAVE STANDING, his standing was only limited in his ability to file a Removal of Trustee on Colin BS order, which Stansbury should move to vacate now.

e. “Stansbury has never expressed concern over one of the largest assets in this Estate, a mortgage on Eliot's home.”

- i. Stansbury is suing Entity that owns Eliot home in his lawsuit v. Ted and Simon.

f. “Now that Eliot had been ruled to lack standing...”

- i. Now that has been OVERRULED by Judge Scher who says Eliot as Beneficiary has standing in Simon and on record confirmed by Rose and O'Connell.

g. "Against the backdrop of increased expense and delay, the beneficiaries agreed in a Mediation Settlement Agreement to ratify the appointment of Ted S. Bernstein ("Ted" or "Trustee"), as Trustee of Simon's Trust, and to have the Trustee and the Mrachek Firm (which has been directly involved in Stansbury's litigation for several years) assume representation of the Estate in the independent action.

i. No full consent, no written consents. Eliot and his adult children have not consented to anything and Estate beneficiaries have not consented. Estate beneficiaries of Simon are 5 children, including Ted and Pam.

h. "Ted also is the only person willing to stand up and defend the Estate against Stansbury's claim."

i. Is O'Connell unable to stand up as PR, this makes him unfit. He should be standing up and alleging that Ted is the primary party responsible for damages to Stansbury and should pay damages.

i. "GROUNDS FOR SANCTIONS - As grounds for sanctions, Trustee states: 1. On July 30, 2012, Stansbury filed suit against Simon Bernstein, his companies (LIC and AIM), his son (Ted S. Bernstein), a trust under his control (Shirley Trust), and others. Initially, all defendants including Simon retained the same counsel."

i. Simon never retained Greenberg Traurig

j. "At a mediation held on June 9, 2014, Stansbury settled with LIC, AIM, Ted and the Shirley Trust. Because no one was truly representing the Estate, and its only representative was Mr. Brown as the then-Curator, the Estate was unable to settle its claims. The Trustee, as sole beneficiary of the Estate, did everything he could to attempt to achieve a settlement for the Estate, but to no avail.

- i. Trustee is not the Sole Beneficiary of the Estate.
- k. "However, the beneficiaries of the Estate (including the Guardian) and the Trustee all agreed to a global settlement of all disputes between and among the beneficiaries. The Trustee and beneficiaries included in their Mediation Settlement Agreement a provision confirming their agreement as to how to move the Stansbury claim to a prompt resolution:"
  - i. **THE GUARDIAN IS NOT A BENEFICIARY OF THE ESTATE OR GUARDIAN FOR ANY BENEFICIARY OF THE ESTATE**
  - ii. Eliot is a Beneficiary of the Estate and thus he has not consented and if grandchildren are included his two adult children are believed not to consent. However his children have never been served notice they are beneficiaries of the trusts or estates of Simon and Shirley Bernstein.
- l. "On December 22, 2016, Mr. O'Connell signed a Statement of Its Position There Is No Conflict and His Waiver of Any Potential Conflict (Exhibit "1"), confirming there is no conflict in his view; supporting the retention and appointment of counsel and the administrator to handle the Stansbury litigation; and waiving any potential waivable conflict."
  - i. Do not believe this is what he stated, FACT CHECK.
- m. "5. Merely because Ted S. Bernstein is the Trustee of the Simon Trust, the sole beneficiary of the Estate..."
  - i. The Trust is not Sole Beneficiary of the Estate, Ted is a beneficiary of the Estate as well as Eliot.

- n. "Each of those requirements is met. In particular, Mr. O'Connell as Personal Representative agreed with beneficiaries' direction to have the Mrachek Firm defend the Estate, and to waive any "waivable" conflict."
  - i.
- o. "None of those issues is present here. The Mrachek Firm is representing the Trustee, who is the sole beneficiary of this Estate, in related trust and estate matters. The interest of the Trustee is to minimize the expenses and the exposure to Stansbury's claim, to maximize the ultimate distribution from the Estate to the Trust. All of the direct and indirect beneficiaries of the Trust favor this representation."
  - i.
- p. "The lawyer serving as PR of the Estate believes there is no conflict and has waived any potential conflict, because the Mrachek Firm's involvement will reduce expenses and because the beneficiaries favor it. The only persons complaining, Bill Stansbury and his lawyer, are far from disinterested."
  - i.
- q. Eliot and adult children are believed to be complaining and have granted no consent.
  - i.
- r. "To the contrary, all of the defendants' interests were fully aligned to defeat Stansbury's claim, and Mrachek Firm's work assisted in lowering the Estate's burden."
  - i. Not True BFR did not align against Stansbury
- s. "Likewise, if the former client was Ted S. Bernstein or the company LIC!AIM, that substantially related representation is precisely why the Personal Representative, Trustee, and

the beneficiaries (specifically including the Guardian) want Mrachek Firm to undertake this role.”

i.

**12. 20161228 RECEIVED, 12/28/2016 4:52 PM, Clerk, Fourth District Court of Appeal  
“APPELLEE'S, TED S. BERNSTEIN, AS TRUSTEE, RESPONSE TO APPELLANT'S  
UNTIMELY MOTION FOR REHEARING, CERTIFICATION AND TO VACATE  
ORDER DISMISSING APPEAL AND TO ACCEPT LATE-FILED INITIAL BRIEF**  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20161228%204th%20DCA%20Appellee%20Ted%20Bernstein%20Response%20to%20Appellant%20Motion%20for%20Rehearing,%20Cert%20and%20Vaca%20Order%204D161449.pdf>

- a. “The Bernstein Trustee brought a trust construction action as permitted under section 736.0201(4)(e-g): ascertaining beneficiaries; determining questions arising in the distribution of trust assets, including questions of construction of the trust instruments; and determining who are beneficiaries and in what percentage.”
  - i. Wholly untrue, no Trust Construction hearing was ever held and thus this is a BIG FAT LIE.
- b. Ultimately, the trial court will need to appoint a successor trustee for each of Grandchildren Trusts for which Eliot refuses to serve”
  - i. No Grandchildren Trusts exist in record or were produced at validity hearing.
  - ii. No Grandchildren were ever served Notice of Trusts or Notice of Administration.
  - iii. No Trusts exist for Eliot’s children per Rose.

**13. 20170111 RECEIVED, 1/11/2017 2:31 PM, Clerk, Fourth District Court of Appeal  
“APPELLEE'S, TED S. BERNSTEIN, AS TRUSTEE, RESPONSE TO APPELLANT'S  
AMENDED RESPONSE TO SHOW CAUSE ORDER OF DEC. 28, 2016 AND REQUEST  
FOR EXTENSION OF TIME”**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20170111%20APPELLEE%20TED%20RESPONSE%20TO%20AMENDED%20RESPONSE%20SHOW%20CAUSE%204THDCA%20DEC%2028%202016%20EVENUP%20ORDER%20SHIRLEY%20AND%20EXTENSION%20REQUEST%20ECF%20STAMPED%20COPY.pdf>

- a. “(Eliot has no standing to challenge the business judgment of the Trustee, because he is not a beneficiary of the Trust.)”
  - i. Eliot is a beneficiary of the Simon Trust in the Original Trust that was amended and has standing as both a beneficiary and interested party to challenge both the Original Trust and any Amendments made, etc.

**14. 20170130 Case: 1:13-cv-03643 Document #: 273 Filed: 01/30/17 Page 1 of 21 PageID #:13270 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION “MEMORANDUM OPINION AND ORDER” ISSUED BY HONORABLE JUDGE JOHN ROBERT BLKEY.**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20170130%20BLKEY%20MEMORANDUM%20OPINION%20AND%20ORDER%20Case%2013cv03643%20Doc%20273.pdf>

- a. “The beneficiaries of the testamentary trust identified in the Will of Simon Bernstein are “Simon Bernstein’s then living grandchildren,” while “Simon’s children – including Eliot Bernstein – are not beneficiaries.”
  - i.
- b. “First, Eliot cannot sustain cognizable damages related to the disposition of the Estate or the testamentary trust in light of the Probate Court’s rulings. The Probate Court found, *inter alia*, that Simon Bernstein’s “children – including Eliot – are not beneficiaries” of the Will of Simon Bernstein or the related testamentary trust. [240] at 11. Instead, Simon Bernstein’s grandchildren (including Eliot’s children) are the testamentary trust’s beneficiaries. *Id.* Eliot

also has no interest in the disposition of the testamentary trust vis-à-vis his own children, as the Probate Court was forced to appoint a guardian ad litem in light of Eliot's "adverse and destructive" actions relative "to his children's interest." Id. These findings have preclusive effect in this case, 4 such that Eliot cannot demonstrate cognizable damages relative to the disposition of the Estate or the testamentary trust."

i.

c. Citing from an affidavit of Robert Spallina Esq., "“In light of Simon Bernstein’s overall estate plan, including our specific discussions about the beneficiaries of the proceeds of the Policy, Simon Bernstein in fact executed new testamentary documents. Under Simon Bernstein’s new Will and his Amended and Restated Trust Agreement, both of which were formally executed on July 25, 2012, his ten grandchildren are the ultimate beneficiaries of all of his wealth other than the Policy, which I have no doubt he intended to go to his children.”"

i.

d. "The Estate, however, paints with too broad a brush. Mr. Spallina’s statements regarding his work for Simon Bernstein (including his statements regarding Simon Bernstein’s modifications to his testamentary documents) are based upon Mr. Spallina’s personal knowledge, and ostensibly are not hearsay. For example, Mr. Spallina might competently testify that: (1) Simon Bernstein modified his testamentary documents in 2012 to name his grandchildren (instead of his children) as the sole beneficiaries of his Estate;"

i.

e. IV. Conclusion "For the foregoing reasons, Plaintiffs’ motion for summary judgment on Eliot Bernstein’s claims [239] is granted, and the Estate’s motion for summary judgment [245] is denied." Dated: January 30, 2016

i.

**15. 20170216 Brian O'Connell statement Undated and Unfiled with Court, Evidenced in February 16, 2017 Hearing Judge Scher**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/EXHIBIT%2010%20-%20UNDATED%20PR%20O'Connell%20Statement%20of%20Position%20No%20Conflict%20and%20Waver%20of%20Conflict.pdf>

- a. In hearing Rose states he drafted this statement for O'Connell and he edited it.
- b. "I have been advised that Mrachek represented those defendants and the position taken is not in conflict or adverse to the Estate's position. After mediation in June 2014, LIC, AIM, Shirley Trust and Ted settled with Stansbury. The Estate, then under the control of a Curator, did not settle with Stansbury. After my appointment, to avoid unnecessary expense, settlement efforts were made. Those efforts, including through a mediation held on July 25, 2016, were unsuccessful."
  - i. Who advised, does he have personal knowledge, did he verify?
  - ii. All parties were not represented at settlement, BFR, etc.
  - iii. Settlement has been given to no beneficiaries
  - iv. O'Connell states he knows nothing of this lawsuit with Stansbury in this letter and under oath in Feb 16, 2017 hearing and March 02, 2017 hearing but then how could he have negotiated and drafted settlements and billed hours and hours of work for this lawsuit???????
- c. "Some of the direct and indirect beneficiaries of the Estate I am administering advised me, in light of the Mrachek firm's prior and extensive involvement in the Stansbury Lawsuit, the beneficiaries wanted Mrachek to represent the Estate in the Stansbury Lawsuit. I agreed to that request, and agreed that Mrachek was retained to represent the Estate..."

- i. What beneficiaries advised? Did he do his own due diligence?
- d. “(iii) I have no personal knowledge or involvement in this matter;”
  - i. If he has no personal knowledge, how did he attempt to settle as he claims????

**16. 20170216 Proceedings before the Honorable ROSEMARIE SCHER Thursday, February 16, 2017**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20170216%20HEARING%20TRANSCRIPT%20JUDGE%20SCHER%20CLEAN%20COPY.pdf>

2:38 p.m. - 4:46 p.m.- Simon Bernstein Estate

**CHECK ALL PAGE NUMBERS AND LINE NUMBERS SCREWED UP – ITALICS NOT**

**CHECKED YET**

- a. Diana Lewis

“12 JUDGE LEWIS: Diana Lewis, guardian ad  
13 litem for the Eliot Bernstein children.”

i.

- b. Rose statement to Court

P.16

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

12 week. So I think it's safe to say that she's  
13 going to be here.

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

P.17

“24 So as a result of the mediation, all the  
25 other people, everybody that's a beneficiary of  
P. 18

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

P. 26

*“21 MR. ROSE: Mr. -- originally the defendant  
22 here originally was assigned when he was alive.  
23 When he died his estate was substituted in. He  
24 hired counsel. His counsel didn't do much in  
25 the case because I did all the work because I*

P. 27

*1 was representing the companies, Ted Bernstein  
2 and another trust. And in January of 2014 the  
3 PRs of the estate resigned totally unrelated to  
4 this.”*

i.

P.19

“24. and one thing he said was that there's some people that aren't

25. here. Every single person who is a beneficiary of this estate  
wants my

P. 20

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

P. 28

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

P.29

*I facts.”*

ii.

P.21

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

P.35

*“6 Judge Lewis represents Eliot's three kids  
7 versus Eliot. The money either goes to Eliot  
8 or his three kids. She's on board with, you*

9 know, we don't want to waste estate funds on  
10 this. Our goal is to keep the money in the  
11 family. He wants the money."

iii.

P. 37

"11 But in the Chicago case the plaintiff is  
12 really not Ted Bernstein, although he probably  
13 nominally at some point was listed as a  
14 plaintiff in the case."

iv.

P. 40

"7 Now, I am rooting like crazy that the  
8 estate loses this case in one sense because  
9 that's what everybody that is a beneficiary of  
10 my trust wants."

v.

P. 40 – Rose Opening Statement to Court

"18 That's the December 15th trial. It's on appeal  
19 to the 4th District. That's what led to having  
20 Eliot determined to have no standing, to Judge  
21 Lewis being appointed as guardian for his  
22 children. That was the key. That was the only  
23 thing we have accomplished to move the thing  
24 forward was that, but we had that."

P.17 – Feaman Question Witness O'Connell

"3 Q. Correct? And Mr. Bernstein is not a  
4 monetary beneficiary of the estate, is he?  
5 A. As a trustee he is a beneficiary,  
6 residuary beneficiary of the estate. And then he

7 would be a beneficiary as to tangible personal  
8 property.”

vi.

P. 93

“1 BY MR. ROSE:  
2 Q. I think you alluded to it. But after the  
3 mediation that was held in July, there were some  
4 discussions with the beneficiaries, including Judge  
5 Lewis who's a guardian ad litem for three of the  
6 children, correct?

7 A. Yes.”

vii.

P. 33-34 – Rose Addressing the Court

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

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

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

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

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

P. 34

1 not a beneficiary of the residuary estate. He  
2 has a small interest as a one-fifth beneficiary  
3 of tangible personal property, which is –  
4 THE COURT: I understand.”

P. 96

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

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

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

25 THE COURT: Well, that would be your  
P.97

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

4 MR. ROSE: Right.

5 THE COURT: So that's an argument you can  
6 raise.”

viii.

P. 35

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

18 BY MR. ELIOT BERNSTEIN:

19 Q. Okay, so beneficiary?

20 A. Right.

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

ix.

*P. 107*

*“24 BY MR. ELIOT BERNSTEIN:*

*25 Q. Could the estate sue back a*

*P. 108*

*“1 counter-complaint to Ted Bernstein individually who  
2 is alleged to have committed most of the egregious  
3 acts against Mr. Stansbury? He is a defendant in  
4 the action. Nobody settled with him yet from the  
5 estate. Could you sue him and say that half of the  
6 liability, at least half, if not all, is on Ted  
7 Bernstein?*

*8 A. Anyone, of course, theoretically could sue  
9 anyone for anything. What that would involve would  
10 be someone presenting in this case me the facts,  
11 the circumstances, the evidence that would support  
12 a claim by the estate against Ted Bernstein. That  
13 I haven't seen or been told.”*

x.

**17. 20170302 ESTATE OF SIMON L. BERNSTEIN Proceedings before the Honorable  
ROSEMARIE SCHER Volume II Thursday, March 2, 2017 1:35 - 3:39 p.m. Transcript  
Excerpts**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20170216%20and%2020170302%20Hearing%20Transcripts%20Combined%20WITH%20EXHIBITS%20JUDGE%20SCHER%20CLEAN%20COPY.pdf>

a. “On behalf of Eliot Bernstein's minor children:

ADR & MEDIATION SERVICES, LLC  
2765 Tecumseh Drive  
West Palm Beach, Florida 33409  
BY: THE HONORABLE DIANA LEWIS  
(Dzlewis@aol.com)”

- i. Diana Lewis while making appearance is then subsequently not included in Judge Scher Order defining the parties on the record incorrectly in the Order by failing to leave Lewis out despite her appearance on the record.
- ii. She represents no parties in Simon Estate.
- iii. How does she give consent in Simon Estate or Simon Trust, is she Trustee of the G-Children trusts that DO NOT EXIST.
- iv.

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

v.

Page 127 – Eliot addressing the Court  
“9 forthcoming. And I think we'll be able to show  
13:42:51 10 that there's been fraud on this Court. The  
11 other date in that hearing if you look at the  
12 transcript Mr. Rose claimed that I had no  
13 standing, and you overruled that, or whatever  
14 you call it, you did.  
13:43:03 15 THE COURT: I did.  
16 MR. ELIOT BERNSTEIN: Okay. Meaning you  
17 allowed me to question Mr. O'Connell. Well,  
18 every other time he said that before Judge  
19 Phillips, it was whatever he said. They were  
13:43:13 20 never litigated the matters that I was a  
21 beneficiary or not, but it just got somehow  
22 accepted the more he said it to that judge.  
23 So now that completely contradicts the  
24 orders that were issued that I am not a

13:43:27 25 beneficiary of anything whatsoever. Now it's I  
vi.

Page 128 – Eliot Addressing the Court  
1 am a little, I am a TPP beneficiary. But the  
2 truth is I am a beneficiary of the will of  
3 Simon Bernstein. And Mr. O'Connell on the  
4 stand flipped his story as well that he was  
13:43:43 5 putting into this Court that he had consent of  
6 all the beneficiaries. Well, in fact they are  
7 saying that Mrs. Lewis is a beneficiary, is  
8 representing my children as parties here.  
9 THE COURT: She's appointed as the  
13:43:57 10 guardian on behalf of the children.

11 MR. ELIOT BERNSTEIN: Who are supposed to  
12 be the beneficiaries.

13 THE COURT: Yes.

14 MR. ELIOT BERNSTEIN: Okay. Except my  
13:44:04 15 children have never been notified by anybody,  
16 PR, trustees, anything, that they are  
17 beneficiaries of anything.

18 THE COURT: All right. I have to keep it  
19 narrow to you want additional time to do  
13:44:13 20 additional discovery?"

vii.

Page 136 – Eliot and Rose Addressing Court  
“9 THE COURT: I remember the exact standing  
13:50:26 10 of Mr. Eliot with regard to being a  
11 beneficiary. There is a pour over trust from  
12 the Simon estate where the children, the ten  
13 grandchildren, are the beneficiaries, correct?

14 MR. ELIOT BERNSTEIN: No.

13:50:39 15 MR. ROSE: If you said there's a --

16 THE COURT: Pour over trust from the Simon  
17 estate?

18 MR. ROSE: Pour over from the Simon trust.

19 THE COURT: Correct.

13:50:45 20 MR. ROSE: And the ten grandchildren are  
21 the beneficiaries, correct.

22 MR. ELIOT BERNSTEIN: Incorrect.

23 THE COURT: No, it is correct. Wait for  
24 me. Wait for me one second. Let me finish.

13:50:50 25 MR. ELIOT BERNSTEIN: Okay.”

viii.

Page 137 – Eliot and Rose addressing Court

“8 MR. ELIOT BERNSTEIN: That's the problem,

9 though. The ten grandchildren are not the

13:51:07 10 beneficiaries. That's never been determined.

11 There's been no construction hearings in any of

12 these cases yet. Right, Mr. Rose?

13 MR. ROSE: Totally incorrect.

14 MR. ELIOT BERNSTEIN: There have been

13:51:17 15 construction hearings? Can you give her the

16 date of those hearings?

17 THE COURT: I am not going there. I am

18 not letting you two litigate it. That's my

19 understanding from the pleadings right now.

13:51:25 20 It's not relevant for right this second.

21 MR. ELIOT BERNSTEIN: It doesn't say the

22 ten -- okay.

23 THE COURT: Okay?”

ix.

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13:51:55 10 THE COURT: You don't have to. You have  
11 standing. You are sitting there. I have  
12 allowed it. I have allowed it. You are a  
13 tangible beneficiary whatever assets remain  
14 outside of the Simon trust. I think everyone  
13:52:08 15 is on the same page. If it's a dollar or if  
16 it's ten dollars, that's where you have -- now,  
17 I have no idea the dollar figures in any of  
18 this.

19 MR. ELIOT BERNSTEIN: None of us do.

13:52:20 20 THE COURT: Go ahead, Mr. Rose.

x.

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3 MR. ROSE: Just for the record, I conceded  
4 at the last hearing that he had limited  
13:52:35 5 standing. I did not say that he did not have  
6 standing.

7 THE COURT: I agree.

xi.

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13:53:25 10 MR. ROSE: I just want -- we had a trust  
11 construction trial in the Shirley Bernstein  
12 Trust.

13 THE COURT: Yes. And I know that Judge  
14 Phillips decided in the Shirley Bernstein.

13:53:36 15 MR. ELIOT BERNSTEIN: It was only a  
16 validity hearing. The construction was  
17 severed.

18 THE COURT: Mr. Bernstein?

19 MR. ELIOT BERNSTEIN: Okay, I am sorry.

13:53:42 20 THE COURT: You keep interrupting. You  
21 can't do that.

xii.

Page 141

11 MR. ROSE: Now, as soon as Simon --

12 Shirley dies when Simon is alive and survives  
13 for 30 days, then that contingency disappears  
14 and he is no longer a tangible beneficiary in  
13:54:13 15 Shirley's estate. He was a contingent  
16 beneficiary of the Shirley trust if Simon  
17 didn't exercise a power of appointment.

18 So the trial we had on January -- the  
19 trial we had on December 15th, 2015, was to  
13:54:25 20 determine whether Simon's 2012 documents were  
21 valid and whether his exercise of his power of  
22 appointment was valid. Judge Phillips  
23 determined -- the exercise of the power of  
24 appointment was valid.

13:54:37 25 So now in the Shirley side the power of

xiii.

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1 appointment was exercised so Eliot is no longer  
2 a beneficiary. So he had some standing in that  
3 case as a potential beneficiary while we were  
4 dealing with the trial.

13:54:50 5 THE COURT: I am relying on Judge  
6 Phillips' order.

7 MR. ROSE: Then we have the trial.

8 THE COURT: I have to. That is the law.

xiv.

Page 143

8 MR. ROSE: That's the end of the story.  
9 He is clearly a beneficiary. We have never  
13:55:52 10 denied he is a beneficiary for a very narrow  
11 purpose. But based on the rulings it is  
12 exactly that which is a very narrow purpose.

xv.

Page 172

22 BY MR. FEAMAN:  
23 Q. So the lawsuit is case number 13933 in the  
24 general jurisdiction division, correct?  
14:27:11 25 A. Correct.

Page 173

1 Q. And this is not the first time you are  
2 looking at this, correct?  
3 A. Correct.  
4 Q. In fact, you have looked at it in somewhat  
14:27:20 5 detail because you and I carried on some serious  
6 settlement negotiations, did we not?  
7 A. Yeah, we have over a span of time, yes.

xvi.

Page 180

1 told you that there might be something in that  
2 release which would somehow keep the Estate of  
3 Simon Bernstein from suing Ted Bernstein out of the  
4 Stansbury lawsuit, correct?  
14:34:01 5 A. I don't know that. I understood it was a  
6 confidential settlement.  
7 Q. Okay. So then you don't know; is that

8 correct?

9 A. It is because, as I just said, I was told

14:34:10 10 it was a confidential settlement. I inquired of

11 Mr. Rose generally what the terms and conditions

12 was. I looked at the docket. I see the dismissal

13 with prejudice of the parties you referred to

14 before.

14:34:21 15 Q. And so going back to what the facts might

16 develop, you really don't know yet whether the

17 Estate of Simon Bernstein could sue Ted Bernstein

18 arising out of the conduct alleged in the Stansbury

19 lawsuit, correct?

14:34:35 20 A. Right. I think I have answered that, but

21 I will say it again. I don't have enough

22 information to apply case law. There's a Supreme

23 Court decision I can think of that deals with

24 contribution that would be relevant here, yeah, a

14:34:50 25 number of items. But I would have to start with

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1 some sort of a factual basis, looking at documents,

2 what's the nature of the tort, what's the

3 contribution, if it's a contract claim, if there's

4 no contribution, all of those items would have to

14:35:05 5 be looked at because this complaint has contractual

6 claims and it has tort claims.

7 Q. Right. And assume for me, if you would,

8 that the release would not bar an action by the

9 estate. And assume for me that the facts would

14:35:18 10 support a jury's conclusion as to the truthfulness

11 of what's alleged in paragraphs 26, 27, 28 and 29.

12 Isn't it true that in that event, and I am

13 admitting now that you don't know this yet, but  
14 that the estate could have an action against Ted  
14:35:36 15 Bernstein?

16 A. Then I would --

17 MR. ROSE: I am going to object for the  
18 record on multiple grounds, first of which is I  
19 can't believe a lawyer in this courtroom who's  
14:35:46 20 negotiated a general release --

21 MR. FEAMAN: Move to strike.

22 THE COURT: Hold on. One second, please.

23 MR. FEAMAN: He can object, Your Honor,  
24 but he can't make statements like that.

14:35:55 25 THE COURT: I indicated at the very  
Page 182

1 beginning, remember point one, that no one was  
2 to take a strike at the lawyer. If you want to  
3 put on the law, put on the law.

4 MR. ROSE: Okay.

14:36:06 5 THE COURT: I am looking at 768.81.

6 You may proceed with your objection.

7 MR. ROSE: Can I clarify the point since  
8 this is not pled and we are traveling --

9 THE COURT: Sure.

14:37:01 10 MR. ROSE: Is there a position taken in  
11 this case by the movant that there is not a  
12 mediation settlement agreement signed that  
13 includes a general release negotiated by  
14 counsel at a mediation, including Mr. Feaman  
14:37:14 15 who was the lead counsel for the plaintiff,  
16 that includes a general release of all  
17 defendants? And if that's an issue, I need to

18 know that just to be on notice of what the  
19 issues are in the case so I can be prepared to  
14:37:26 20 meet the evidence that's going to be presented  
21 today. I don't think it's too much to ask if  
22 that's actually a disputed issue of fact today.  
23 And if it is, I would submit to the Court that  
24 when we prove the opposite it should reflect on  
14:37:39 25 the credibility of the movant.

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1 MR. FEAMAN: Move to strike --

2 MR. ROSE: And I have a legal objection  
3 after I --

4 THE COURT: Mr. Feaman, it's the Court's  
14:37:47 5 understanding there was a dismissal and a  
6 settlement with regards to Ted individually  
7 from the Stansbury lawsuit; is that correct?

8 MR. FEAMAN: That is correct.

9 THE COURT: All right. Move on, Mr. Rose.

14:37:58 10 That was the basis of your issue, correct?

11 MR. ROSE: But that included a release.

12 The settlement agreement that was signed  
13 included a general release. I didn't know that  
14 was a disputed issue of fact.

14:38:08 15 THE COURT: I don't think it's been raised  
16 as a disputed issue of fact.

17 MR. ROSE: Okay. Then my legal objection  
18 is --

19 THE COURT: I did not believe there was an  
14:38:18 20 issue raised that it was a disputed issue. Was  
21 in fact I believe there was a release executed  
22 in the Stansbury litigation?

23 MR. FEAMAN: Right.

24 THE COURT: With regards to Ted Bernstein?

14:38:28 25 MR. FEAMAN: Correct. Now, there may be a  
Page 184

1 legal issue as to whether the terms of that --

2 THE COURT: I was going to say I am not  
3 going there.

4 MR. FEAMAN: Correct.

14:38:35 5 THE COURT: The question is is there a  
6 release?

7 MR. ROSE: So that's a stipulated fact for  
8 the purposes of the hearing?

9 THE COURT: There are. A release has been  
14:38:42 10 executed. The effect of that release to the  
11 Court on this day is not making any  
12 determination.

xvii.

Page 212 – Feaman questioning witness Alan Rose

“7 BY MR. FEAMAN:

8 Q. You were here when Mr. O'Connell said that  
9 Mr. Eliot is a beneficiary of the Simon Bernstein  
15:11:47 10 estate, correct?

11 A. I was here when he said it. I have said  
12 it. I don't dispute it. I have told the judge  
13 that. I don't understand. For tangible personal  
14 property.

15:11:55 15 Q. Okay.

16 THE COURT: What am I being handed?

17 BY MR. FEAMAN:

18 Q. I am handing you a pleading that you filed  
19 in September 2015 entitled Trustee's Omnibus Status

15:12:08 20 Report and Request for Case Management Conference.

21 And the very first page you said, relating to

22 Mr. Eliot, he is not a named -- he is not named as

23 a beneficiary of anything. And it's in the Estate

24 of Simon Bernstein. So my question is when did you

15:12:25 25 suddenly become aware that he is a beneficiary of

Page 213

1 the estate?

2 A. That sentence is -- I now see that

3 sentence is technically wrong. It's not -- I am

4 talking about where the money is and the money is

15:12:37 5 in the trust. He is not a beneficiary of the

6 trust. I may have made a misstatement.

7 THE COURT: Are you asking me to take this

8 into evidence?

9 MR. FEAMAN: Yes.

15:12:45 10 THE COURT: Objection?

11 MR. ROSE: No. It's in the court file.

12 THE COURT: I know. Let me just mark it.

13 MR. FEAMAN: No further questions."

xviii.

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7 You said to the Court today that Judge

8 Phillips entered an order from the validity hearing

9 stating that I was not a beneficiary and had no

15:14:37 10 standing; is that correct?

11 A. The validity trial resulted in a final

12 judgment. Thereafter there were a series of

13 hearings before Judge Phillips where he made what I

14 would call follow-on rulings that would implement

15:14:53 15 the result of the final judgment dated December 15,

16 2015.

17 Q. Well, you actually claimed to the Court  
18 repeatedly that Judge Phillips on December 15th  
19 ruled that, and you actually led the judge to  
15:15:10 20 believe that and she said, oh, I am relying on that  
21 order.

22 MR. ELIOT BERNSTEIN: I urge you, Your  
23 Honor, to look up on that order on that  
24 validity hearing --

15:15:17 25 THE COURT: We are going past -

Page 216

1 (Overspeaking.)

2 MR. ELIOT BERNSTEIN: Oh, it's very  
3 central to this, meaning that he made a  
4 statement to the Court today --

15:15:23 5 THE COURT: Please, next question. Next  
6 question.

7 BY MR. ELIOT BERNSTEIN:

8 Q. Has there been a construction hearing of  
9 who the beneficiaries are in any of these cases?

15:15:32 10 A. There was a final judgment that  
11 resolved --

12 Q. Yes or no to the question. Was there a  
13 construction hearing in any of these cases?

14 A. The construction matter that's in Count I  
15:15:45 15 has been settled by agreement of all the  
16 beneficiaries.

17 Q. And I am a beneficiary?

18 A. You are not a beneficiary of the trust,  
19 the Shirley Bernstein Trust, which was the sole  
15:15:57 20 subject of the construction proceeding. The only

21 thing relevant to the estate that was tried in this  
22 case number 3698 was the narrow issue of whether  
23 Simon Bernstein's will dated July 25, 2012, was  
24 valid and enforceable according to its terms.

15:16:13 25 Q. So there has been no formal construction

Page 217

1 hearing? You are basing it off of a validity

2 hearing?

3 A. There's nothing to construe with the will.

4 The will has never been challenged. Well, you have

15:16:25 5 challenged that the will is valid, but no one has

6 said that the will needed any construction. And

7 the only issue that needed some construction was

8 inside the Shirley Bernstein Trust. Before Judge

9 Colin would allow that issue to be heard, he wanted

15:16:38 10 a narrow issue tried, which is which documents were

11 valid so that we didn't construe a trust that he

12 later determined was invalid. And once he ruled

13 that and we had a guardian ad litem appointed to

14 protect the trust interests of all the

15:16:52 15 beneficiaries who were being represented by you,

16 then everyone entered into a mediated settlement

17 agreement that is one of the motions we are going

18 to seek approval for later today, including the

19 court-appointed guardian ad litem.

15:17:06 20 Q. Is your answer no, there was no

21 construction hearing in any of these cases?

22 A. I think I have answered your question.

23 Q. You haven't.

24 THE COURT: Okay. Let's move on because

15:17:15 25 this is about whether or not –

Page 218

1 MR. ELIOT BERNSTEIN: Well, can I get an  
2 answer to the question or show that he is  
3 nonresponsive?

4 THE COURT: He did answer.

15:17:19 5 MR. ELIOT BERNSTEIN: Well, he didn't. He  
6 answered something else.

7 THE COURT: Don't argue with me, please.

8 I understood. Certain things have been  
9 determined and certain things haven't been  
15:17:27 10 determined.

11 MR. ELIOT BERNSTEIN: Well, he is  
12 misrepresenting what was determined, and that's  
13 a serious problem.

14 THE COURT: Mr. Eliot?

15:17:31 15 MR. ELIOT BERNSTEIN: And it's exactly  
16 moved to --

17 THE COURT: Mr. Eliot? Mr. Eliot?

18 MR. ELIOT BERNSTEIN: Yes, ma'am.

19 THE COURT: Remember I said you don't have  
15:17:36 20 to like his answers?

21 MR. ELIOT BERNSTEIN: Oh, okay.

22 THE COURT: You don't have to like them.

23 MR. ELIOT BERNSTEIN: I just want the  
24 truth. Okay.

xix.

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1 BY MR. ELIOT BERNSTEIN:

2 Q. At that validity hearing was the estate  
3 represented by counsel?

4 A. As I explained earlier, Mr. O'Connell

15:17:59 5 entered into a stipulation that was, I think,  
6 approved by Judge Colin or Judge Phillips that he  
7 did not need to attend the hearing; he would abide  
8 by the ruling to conserve resources.

9 So Mr. O'Connell was not technically  
15:18:12 10 there. But what I was doing and what Ted Bernstein  
11 as trustee was doing, we were advocating the  
12 validity of the documents. So we were asserting  
13 the position that Mr. O'Connell would have wanted  
14 to assert, which is that the will was valid. So he  
15:18:25 15 wasn't -- technically the estate wasn't represented  
16 but their interests were being pushed by the  
17 movant, the complainant, the plaintiff.

18 Q. Did you have a construction hearing in  
19 Simon Bernstein's estate to determine the  
15:18:36 20 beneficiaries?

21 A. It was not necessary.

22 Q. Okay. To your knowledge has Ted Bernstein  
23 ever notified who you claim the beneficiaries are,  
24 the grandchildren, that they are beneficiaries?

15:18:51 25 A. Under the terms of Simon Bernstein's trust  
Page 220

1 and also under his power of appointment, he  
2 appointed the assets of the Shirley Bernstein Trust  
3 into his trust to be distributed on the same terms.  
4 The beneficiaries, technically ten trusts, none of  
15:19:06 5 the grandchildren are individually beneficiaries.  
6 There are ten trusts created. Each trust needs a  
7 beneficiary. And because we don't have a  
8 beneficiary for three of the trusts that Eliot  
9 refused to serve, there's a guardian ad litem

15:19:18 10 appointed. But none of the grandchildren are  
11 individually beneficiaries. They are indirect  
12 beneficiaries through trusts created under Simon's  
13 testamentary documents.

14 THE COURT: Understand.

15:19:27 15 BY MR. ELIOT BERNSTEIN:

16 Q. Okay. Under those testamentary documents  
17 do you have those trusts for each of the  
18 grandchildren?

19 THE COURT: Mr. Bernstein?

15:19:34 20 MR. ELIOT BERNSTEIN: Yes.

21 THE COURT: Mr. Eliot, I am sorry, this is  
22 about whether we remove him or not. It's not  
23 -- it's like, in other words, you are getting  
24 into bigger issues and fights that are for a  
15:19:44 25 later day.

xx.

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24 BY MR. ELIOT BERNSTEIN:

15:22:57 25 Q. Do you represent Ted Bernstein as a

Page 225

1 defendant in the Stansbury action?

2 A. I do not. I did at one point in time.

3 Q. Did you also simultaneously represent Ted  
4 Bernstein as the trustee for the Shirley Bernstein  
15:23:18 5 Trust?

6 A. I did represent Ted Bernstein as the  
7 trustee of the Shirley Bernstein Trust in the  
8 Stansbury litigation defending the interests of the  
9 trust, just as we proposed to defend the interests  
15:23:33 10 of the estate. And I represented Ted Bernstein as

11 trustee of the Shirley Bernstein Trust in  
12 proceedings in the probate court, various  
13 proceedings.

14 Q. Okay. You stated today that you had  
15:23:45 15 consent of all the beneficiaries. And Mr. Feaman  
16 adequately asked you, am I a beneficiary of the  
17 Simon estate? Yes or no? I don't need an  
18 explanation.

19 A. The question has a --

15:24:09 20 MR. FEAMAN: Objection, asked and  
21 answered.

22 MR. ELIOT BERNSTEIN: (Inaudible).

23 (Overspeaking.)

24 THE REPORTER: Excuse me.

25 MR. ELIOT BERNSTEIN: Sorry.

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1 MR. FEAMAN: Object, asked and answered.

2 THE WITNESS: I did not --

3 THE COURT: Sustained. It's been  
4 established that you are a tangible beneficiary  
15:24:16 5 of the Simon Bernstein estate.

6 MR. ELIOT BERNSTEIN: Actually I don't  
7 think there's a term tangible beneficiary. I  
8 am a beneficiary of tangible property; is that  
9 correct, for the record?

15:24:27 10 THE COURT: That is correct, you actually  
11 did correct me.

12 MR. ELIOT BERNSTEIN: Got to be careful,  
13 because that's -- there's a misinterpretation  
14 going on.

15:24:34 15 BY MR. ELIOT BERNSTEIN:

16 Q. Okay. You said you had consent of all  
17 beneficiaries to move forward on this settlement or  
18 to have Ted come into this case. Do you have my  
19 consent as a beneficiary?

15:24:48 20 A. I think what we said was they had the  
21 consent of the direct and indirect beneficiaries of  
22 the trust. I think what it actually says is that  
23 Mr. O'Connell has the consent of the beneficiary,  
24 which is Ted Bernstein as trustee, who is the  
15:25:05 25 residuary beneficiary. And then all the indirect

Page 227

1 beneficiaries who are the trustees of the ten  
2 trusts, which is there are seven trusts for  
3 grandchildren whose trustee is their parent who  
4 have consented, and there are three trusts for  
15:25:22 5 Eliot's children whose guardian has consented.

6 So the statement was intended to state  
7 that consent was obtained from the direct  
8 beneficiary -- residuary beneficiary, all of the  
9 indirect beneficiaries. And in addition -- well,  
15:25:44 10 that's....

11 Q. Were you aware at the time of the  
12 guardianship hearings that gave Diana Lewis  
13 guardianship power of my children that one of the  
14 children was an adult child over the age of 18?

15:26:00 15 A. As I have explained, Your Honor, our view  
16 of the interests and who are technically the  
17 beneficiaries being trusts, it's also that issue  
18 was appealed and the appeals have been dismissed at  
19 the Fourth and at the Supreme Court. So I don't  
15:26:14 20 think we are relitigating the issue of guardian ad

21 item.

22 THE COURT: Okay. I want you to wrap up  
23 this line of questioning because it was very  
24 limited. One more question.

15:26:21 25 MR. ELIOT BERNSTEIN: Okay.

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1 BY MR. ELIOT BERNSTEIN:

2 Q. So are you saying unequivocally that you  
3 have consent of all the beneficiaries to Ted  
4 Bernstein representing the estate of Simon, not the  
15:26:34 5 trusts, the estate of Simon?

6 A. Well, I don't have your -- of everyone,  
7 you would be the one person if we needed your --

8 Q. Yes or no, do you have consent of all?

9 THE COURT: Do not raise your voice. Do  
15:26:51 10 not raise your voice.

11 MR. ELIOT BERNSTEIN: I am sorry, it's  
12 getting difficult with these side tracks.

13 BY MR. ELIOT BERNSTEIN:

14 Q. Please, simple, do you have consent of all  
15:26:58 15 the beneficiaries of the Simon estate, yes or no?

16 MR. ELIOT BERNSTEIN: Sorry.

17 THE COURT: That's okay.

18 MR. ELIOT BERNSTEIN: I am just  
19 passionate.

15:27:07 20 THE WITNESS: To the extent that you are a  
21 beneficiary, no.

22 BY MR. ELIOT BERNSTEIN:

23 Q. Okay.

24 THE COURT: Okay?

1 BY MR. ELIOT BERNSTEIN:

2 Q. So that would be a no, correct?

3 THE COURT: He said no.

4 MR. ELIOT BERNSTEIN: Okay. Quantified it

15:27:17 5 or something.

6 THE COURT: That's it. Okay.

7 MR. ELIOT BERNSTEIN: Oh, can I ask one

8 last question?

9 THE COURT: One last question.

15:27:23 10 BY MR. ELIOT BERNSTEIN:

11 Q. Are you aware that two of my children are

12 adults and that there's never been a competency

13 hearing on either of them?

14 A. Well, I have testified to the structure of

15:27:34 15 the documents, and so I don't think I can answer

16 the question.

17 Q. So have you contacted my children --

18 THE COURT: All right.

19 BY MR. ELIOT BERNSTEIN:

15:27:44 20 Q. -- regarding settlement?

21 THE COURT: That's enough. Stop.

22 MR. ELIOT BERNSTEIN: Okay.

23 THE COURT: Do you have your own --

24 MR. ROSE: No questions.

15:27:50 25 THE COURT: You are good? Okay.

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**18. 20170303 Deposition of BRIAN O'CONNELL, March 13, 2017, commencing at 1:18 p.m.**

[http://iviewit.tv/Simon%20and%20Shirley%20Estate/20170313%20Transcript%20of%20Brian%20O'Connell%20Deposition%203-13-17\\_FullSize.pdf](http://iviewit.tv/Simon%20and%20Shirley%20Estate/20170313%20Transcript%20of%20Brian%20O'Connell%20Deposition%203-13-17_FullSize.pdf)

Page 25-26

12:18:42 25 JUDGE LEWIS: Diana Lewis, guardian ad

P26

1 litem for the Eliot Bernstein children.

Page 24 – Feaman Questioning O’Connell

6 Q. Do you recall advising Judge Colin that

7 Ted Bernstein is facially not qualified to be

8 successor trustee of the Simon Bernstein Trust by

9 the express language of the trust?

12:42:35 10 MR. ROSE: Object to the form.

11 THE WITNESS: Yes. And I have a general

12 recollection of either argument to the court or

13 discussion with the court as pointing out

14 certain paragraphs of the trust that led to

12:42:47 15 that conclusion, yes.

i.

Page 27 – Eliot Questioning O’Connell

23 BY MR. ELIOT BERNSTEIN:

24 Q. Okay. So that's not a construction

12:46:08 25 hearing where the terms of the trust were

ii.

P28

1 construed, correct?

2 MS. CRISPIN: Form.

3 THE WITNESS: I did not attend the

4 hearings, so I am basing it on knowledge that I

12:46:20 5 have from reading various and sundry, I guess,

6 orders and the appellate proceedings that have

7 emanated from that. So I don't recall there

8 being a per se construction provision. That's  
9 why I am giving the answer that there was an  
12:46:36 10 order that upheld the validity of the trust.  
11 And whether or not that encompasses the  
12 identify of the trustee, I think, is another  
13 issue probably for another day that would take  
14 me at least, I'd have to examine the testimony,  
12:46:51 15 what Judge Phillips heard, what he ruled. And  
16 that I, of course, haven't done, not for this  
17 purpose as we are sitting here now certainly.

18 BY MR. ELIOT BERNSTEIN:

19 Q. Okay. So you actually don't know is the  
12:47:05 20 answer?

iii.

P29

9 BY MR. ELIOT BERNSTEIN:

12:47:44 10 Q. Are you aware of any of the terms of the  
11 trust, of the Simon trust, that state that Ted  
12 Bernstein is considered predeceased for all  
13 purposes of the Simon trust?

14 A. Yes.

12:48:00 15 MR. ROSE: Object to the form. Give me a  
16 second.

17 THE WITNESS: So we have an objection and  
18 then a yes.

iv.

P34

11 BY MR. ELIOT BERNSTEIN:

12 Q. No, I am asking you about a deposition.  
13 Have you deposed Tescher or Spallina?

14 MS. CRISPIN: Same objection.

12:53:47 15 THE WITNESS: No.

v.

P37

23 BY MR. ELIOT BERNSTEIN:

24 Q. Are you familiar with Robert Spallina's

12:57:37 25 attempt to have life insurance proceeds paid to

P38

1 himself as trustee of the Simon Bernstein

2 irrevocable insurance trust?

3 A. I am not personally aware of that, but I

4 have seen, I think, and specifically with regard to

12:57:52 5 your pleadings that that was raised by you. But I

6 don't have any personal knowledge of him doing that

7 one way or the other.

8 Q. Were you sent those documents by me

9 showing that Robert Spallina's name was on an

12:58:09 10 insurance application ordered by Mr. Feaman?

11 A. Again, I am not sure who sent it to me.

12 But again, I have a general recollection of an

13 application for the payment of insurance proceeds.

14 But when it was, what exactly it said, I can just

12:58:27 15 give you a very generalized recollection.

16 Q. Are you aware if Ted Bernstein or Alan

17 Rose has ever deposed Tescher and Spallina about

18 missing records and the forgeries?

19 MS. CRISPIN: Same objection, but you can

12:58:51 20 answer.

21 THE WITNESS: I am not aware that they

22 have.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Are you aware that Robert Spallina  
12:59:01 25 admitted to falsifying part of the Shirley  
P39

1 Bernstein trust?

2 MS. CRISPIN: Outside the scope and form.

3 He is not going to answer that today.

vi.

P45

13:06:16 10 Q. Okay. Have you been notified of a  
11 potential conflict of interest that both Simon and  
12 Eliot Bernstein have with your law firm and your  
13 partner Gerald Beer?

14 MS. CRISPIN: Form, and if you understand  
13:06:32 15 the question. Do you understand the question?

16 THE WITNESS: Not a hundred percent.

17 MS. CRISPIN: Okay.

18 THE WITNESS: Could you rephrase it?

19 BY MR. ELIOT BERNSTEIN:

13:06:36 20 Q. Have you been notified by any party of a  
21 potential conflict of interest that both Simon and  
22 Eliot Bernstein have with your law firm in regard  
23 to your partner Gerald Beer?

24 MS. CRISPIN: Objection to form. And I am  
13:06:50 25 not sure he can answer as it relates to Simon

P46

1 Bernstein.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Okay. Eliot Bernstein?

4 A. No, I am not aware of that. But if there  
13:06:58 5 is something, send it to me.

6 Q. I have already.

7 A. We are all looking around the table at  
8 each other, the various counsels, but I don't think  
9 any of us have seen it.

13:07:10 10 Q. Okay. Are you aware that Eliot and Simon  
11 Bernstein have alleged that your partner Gerald  
12 Beer was instrumental in keeping technologies from  
13 Simon and Eliot Bernstein?

14 MS. CRISPIN: Form. If you know you can  
13:07:30 15 answer.

16 THE WITNESS: Yeah, I am not aware of  
17 that.

vii.

P 47

1 Gerald Beer is a central suspect in a RICO  
2 complaint and several ongoing state and federal  
3 investigations as one of the people who  
4 participated in RICO related crimes to steal  
13:08:05 5 technology from both me and my father.

6 A. Okay.

7 MR. ROSE: Are those the claims that were  
8 dismissed with prejudice by the federal judge  
9 in New York that you are talking about?

13:08:16 10 MR. ELIOT BERNSTEIN: Those are part of  
11 the claims, but those are also part of ongoing  
12 state and federal investigations at the moment.

13 MS. CRISPIN: Well, he has testified that  
14 he doesn't know anything about it.

13:08:25 15 THE WITNESS: I don't know anything about  
16 it, and you are going to resend it.

17 BY MR. ELIOT BERNSTEIN:

18 Q. Okay. Are you aware that Simon Bernstein

19 owned 30 percent interest in technologies that I  
13:08:35 20 developed and companies were formed around them  
21 that he also held a similar 30 percent interest in?

viii.

P50

9 BY MR. ELIOT BERNSTEIN:

13:13:10 10 Q. Are you aware of Simon Bernstein's  
11 interest in those technologies?

12 A. And as a general answer I am not. And I  
13 would have to consult my file to see if I have any  
14 information concerning them.

13:13:24 15 Q. Are you claiming that you and I have --  
16 have you and I ever spoken about those  
17 technologies?

18 A. I don't recall ever speaking with you  
19 about those technologies.

13:13:34 20 Q. Okay. Have you received correspondence  
21 from me regarding those technologies?

22 A. And I don't sitting here recall the  
23 correspondence, which is why I'd have to look at  
24 the files and determine if they exist.

13:13:45 25 MR. ROSE: Just so the record is clear,

P51

1 are these technologies that you are saying are  
2 owned by a company called Iviewit that Simon  
3 was a stockholder in, or are you saying these  
4 are technologies that exist independent of  
13:13:59 5 Iviewit Technologies?

6 MS. CRISPIN: He says himself and Simon,  
7 that was what the question was.

8 MR. ELIOT BERNSTEIN: Simon is on the

9 patent as an owner and he is also an owner of  
13:14:11 10 shares in companies that were formed around the  
11 technologies, to be clear.

ix.

P57

13:19:22 5 BY MR. ELIOT BERNSTEIN:

6 Q. Okay. Are you in possession of a Simon  
7 Bernstein Trust dated 9/13/12, the day Simon  
8 Bernstein passed away?

9 A. Again, I have copies of various documents.

13:19:34 10 That one doesn't -- that date doesn't ring a bell  
11 so to speak to me, so I'd have to have a copy of  
12 it. I'd have to see it. And I'd have to again go  
13 through our files to determine the dates of the  
14 documents that we do have. But that one, something  
13:19:50 15 as of the date of his death itself, I don't recall  
16 such a document.

17 MR. ROSE: For the record, and you have  
18 been told this numerous times, Mr. Eliot  
19 Bernstein --

13:20:00 20 MR. ELIOT BERNSTEIN: Wait. Wait. I  
21 object to you putting anything on the record.  
22 I am deposing him.

23 MR. ROSE: The ten trusts were formed and  
24 they exist and they are dated as of the date of  
13:20:08 25 death.

P58

1 MR. ELIOT BERNSTEIN: -- (inaudible) and  
2 interrupting the deposition, Mr. Rose. I know  
3 you want to fill the record with a lot of  
4 nonsense, but please let's stay focused on this

13:20:20 5 deposition.

6 BY MR. ELIOT BERNSTEIN:

7 Q. So as of today you are not in possession,  
8 to the best of your knowledge, of a trust that  
9 Simon Bernstein did on the day he died in the two  
13:20:31 10 hours that he was code blue on that day in the  
11 hospital?

12 MS. CRISPIN: Form.

13 MR. ROSE: Relevance.

14 THE WITNESS: I would have to see the  
13:20:40 15 document that you are referring to, A, to  
16 determine if I have seen it before, B, to  
17 compare it to documents that I know that I do  
18 have. So I can't tell you definitively that I  
19 am aware of the document that you are  
13:20:55 20 describing.

21 BY MR. ELIOT BERNSTEIN:

22 Q. Okay. Just so you know, the parties sued  
23 in the Shirley Bernstein trust case that there was  
24 a validity hearing involving Simon's case. The  
13:21:16 25 grandchildren's trusts, sub-trusts you refer to,

P59

1 are created under that trust not dated 9/13/12.

2 Are you aware of that?

3 MS. CRISPIN: Form.

4 THE WITNESS: As to the date of the trust

13:21:31 5 that I am referring to, I don't have it in  
6 front of me. Again, sort of glancing around,  
7 nobody seems to have a copy of it to say is  
8 that the day that you have been giving as to  
9 the date of the creation of the trust whether

13:21:47 10 validity has been upheld by the court.

11 BY MR. ELIOT BERNSTEIN:

12 Q. So are you saying your firm doesn't have a  
13 copy of the trust right now?

14 MS. CRISPIN: Form.

13:21:53 15 THE WITNESS: Oh, we would have a copy in  
16 another office.

17 BY MR. ELIOT BERNSTEIN:

18 Q. Would you like me to send you a copy?

19 MS. CRISPIN: No, that's okay, unless you  
13:22:01 20 have it here.

21 THE WITNESS: Yeah, you have given us the  
22 date.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Okay. So as of this date you are not sure  
13:22:08 25 if you have a Simon Bernstein Trust dated 9/13/12  
P60

1 or any sub-trusts under that created for any party?

2 MS. CRISPIN: Form.

3 THE WITNESS: Yeah, I definitely have a  
4 Simon Bernstein Trust that contains sub-trusts.

13:22:23 5 I am just not sure what the date of it is.

6 BY MR. ELIOT BERNSTEIN:

7 Q. Okay. And are you aware that the parties  
8 sued in the Shirley Bernstein trust construction  
9 case that you are a party to are parties that are  
13:22:37 10 under the Simon Bernstein Trust dated 9/13/12?

x.

P 66

13:28:53 10 MR. ROSE: The trial court has determined  
11 the proper beneficiaries of the Simon Bernstein

12 Trust, and all the persons with standing to  
13 object to Ted Bernstein's service are not  
14 objecting and in fact have consented. So I am  
13:29:07 15 going to terminate the deposition as to this  
16 line of questioning. You can move on to  
17 another topic.

xi.

P75

7 Q. Have you been in any construction hearings  
8 where the terms of that power of appointment has  
9 been construed?

14:32:04 10 A. I have not if there have been any.

11 Q. You are the personal representative, so  
12 hopefully you would know of any hearing that  
13 construed the will, right?

14 A. That construed the Shirley will?

14:32:16 15 Q. No, the Simon will and the power of  
16 appointment thereunder?

17 A. Right. I think if there was something  
18 construing those, at least when I was serving,  
19 since I have been serving, I believe I would get  
14:32:26 20 notice, be entitled to notice.

xii.

P79

23 Q. Okay. So back to my question. So you are  
24 aware that the complaint alleges that Simon and Ted  
14:36:11 25 committed acts against Mr. Stansbury, correct?

P80

1 A. Yes, there's various allegations again  
2 that involve one, both of them, but we'd have to

3 look at the allegations to be more specific as to  
4 who was alleged to have done what.

14:36:31 5 Q. Okay. So in these things that we are  
6 talking both Ted and Simon would have had liability  
7 to Mr. Stansbury individually, correct?

8 MR. ROSE: Object to the form.

9 THE WITNESS: Well, if the complaint -- I  
14:36:49 10 guess you are asking me to speculate here.

11 BY MR. ELIOT BERNSTEIN:

12 Q. Prior to any settlement?

13 A. Well, they were both alleged to have  
14 done -- breached contractual obligations or  
14:36:59 15 committed torts.

16 Q. Okay. And so both could have been liable  
17 for the damages, correct?

18 A. In theory, yes.

xiii.

P81

16 Q. Okay. And have you done anything to  
17 investigate Ted Bernstein's culpability, any  
18 apportionment of damages that might be responsible  
19 to him?

14:38:29 20 A. I am not aware of any.

xiv.

P 83

8 Q. Well, we are also trying to establish some  
9 bases for frauds going on here. And I believe  
14:40:29 10 Mr. Feaman's closing argument that the court is  
11 being misled is also a fraud, and I am sure aware  
12 of obstruction and false process charges. So we

13 are trying to clear up how the conflicts are  
14 working and the adverse interests are at play here  
14:40:45 15 between Ted acting per his -- for his own  
16 self-interest.

17 And that's what I was just getting to.  
18 Has Ted Bernstein acted in his own self-interest by  
19 shifting the liabilities of the several million  
14:41:00 20 dollar lawsuit from himself to the beneficiaries  
21 you represent?  
22 A. And I will mention it again, I don't know  
23 the ins and outs of the negotiations --  
24 Q. Okay.  
14:41:11 25 A. -- that might have occurred. I just know

xv.

P 84  
1 where the case sits today, that's all, the  
2 Stansbury litigation.  
3 Q. Who's your firm's liability carrier?  
4 A. I don't know who it is now.  
14:41:27 5 Q. Are you insured?  
6 A. Yes, but I don't know the name of the  
7 company.  
8 Q. Can we find that out?  
9 A. Well, I am sure there's a way to find out.

xvi.

P 85  
9 Q. Well, it's not. Are you aware of stolen  
14:43:03 10 and unaccounted for assets that Mr. Feaman brought  
11 up to the court in his September 2nd, 2016 hearing?  
12 A. The file here speaks for itself. But I

13 have gone, I think, farther than probably I should  
14 have timing wise with what was sketched out as to  
14:43:21 15 this deposition, the questions that were asked on  
16 direct examination.

17 Q. Did you do anything to verify the validity  
18 of the Simon Bernstein 2012 will that you are  
19 operating under?

14:43:42 20 A. The court has determined that the will is  
21 valid.

22 Q. No, I asked you did you do anything, any  
23 work, your firm?

24 A. I and my firm are unaware of any grounds  
14:43:55 25 under which that will would be invalid.

xvii.

P 87  
14:45:10 5 Q. Well, these are relevant questions about  
6 fraud and your knowledge of those fraud and you are  
7 taking the appropriate steps to preclude the fraud  
8 or if you are in fact aiding and abetting.

9 A. I am not going to get into an argument  
14:45:23 10 with you.

11 Q. Okay.

12 A. But those are issues for another day.

13 They are not before the court.

14 Q. So you are refusing to answer any  
14:45:32 15 questions that are coming your way basically?

xviii.

**19. 20150506 IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION Case No. 13 cv 3643 - DEPOSITION OF TED BERNSTEIN Taken on behalf of the Estate of Simon Bernstein DATE TAKEN: May 6, 2015**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition%20with%20Exhibits.pdf>

20. Stamos Questioning Ted Bernstein

PAGE 8

12. . . . Q. . Well, do you have any official role in any

13. . . official capacity with regard to the estate itself or

14. . . any entities or structures that relate to the estate?

15. . . . . MR. SIMON: Objection; vague.

16. . . . A. . I believe I do; as trustee.

17. . . . Q. . Of what are you trustee?

18. . . . A. . Simon Bernstein Trust.

19. . . . Q. . What is the year of that trust?

20. . . . A. . I don't recall.

21. . . . Q. . You are also a plaintiff in the case that's

22. . . pending in Chicago; is that correct?

23. . . . A. . Yes.

24. . . . Q. . So have you perceived any divergence of

25. . . interest or any conflict of interest in having a role

PAGE 9

1. . . with respect to the trust and the estate while

.2. . simultaneously being a plaintiff in the case in Chicago?

.3. . . . A. . I do not.

·4. · · · Q. · As the trustee of the trust, the Simon Bernstein Trust, will the proceeds of the estate, once they are disbursed, be disbursed to that trust of which you are a trustee?

·8. · · · · · MR. SIMON: · Objection; speculation.

·9. · · · · · Q. · To your knowledge, is that your understanding of the mechanics of it?

10. · · · A. · I do believe that that's correct.

12. · · · Q. · And you agree that, if you are successful as a plaintiff in the Chicago case, the amount of assets available in the estate to be disbursed to the trust of which you are a trustee will be reduced, correct?

16. · · · A. · Could you -- could you ask me that in a different way?

18. · · · Q. · Yes. · If you are successful as a plaintiff in the Chicago case and the proceeds of the insurance policy regarding which we are all litigating is disbursed to the plaintiffs in the Chicago case, those funds will not be disbursed to the estate. · You understand that?

24. · · · A. · I do.

25. · · · Q. · And, therefore, the estate will have less

PAGE 10

- 1· ·funds to disburse to the trust of which you are a
- 2· ·trustee.· Do you understand mechanically that's what
- 3· ·would happen in that circumstance?
- 4· · · · A· · I -- I do.
- 5· · · · Q· · So you don't perceive a conflict in those
- 6· ·roles?
- 7· · · · A· · I do not.

i.

PAGE 35

- 6. . . . Q. . Did you have an understanding that
- 7. . . Mr. Spallina submitted a claim to the insurance company
- 8. . . representing himself to be the trustee of the '95 trust?
- 9. . . . A. . Can you ask me that again?· There was wind or
- 10. . something.

11. . . . Q. . I'm sorry. . That's actually a train.

12. . . . . Do you understand that Mr. Spallina made
13. . application to the insurance company for the proceeds of
14. . the insurance stating that he was the trustee of the
15. . trust?

16: : : : A: : I do understand that, yes.

17. . . . Q. . When is the first time you became aware that  
18. . Mr. Spallina was going to make an application  
19. . identifying himself as the trustee?

20. . . . A. . I'm -- I will say after Simon's death  
21. . obviously, but other than that, I don't -- I can't tell  
22. . you what the time period was.  
23. . . . Q. . Did you ever have a -- were you aware he was  
24. . going to do that before he did it?  
25. . . . A. . I was not.

PAGE 36

.1. . . . Q. . You were only aware of that after he was --  
.2. . after he did it?  
.3. . . . A. . After he did it.  
.4. . . . Q. . How did you become aware of that?  
.5. . . . A. . Through conversations with Robert Spallina.  
.6. . . . Q. . Look, if you will, at the top of -- I'm sorry,  
.7. . look at the middle, from Robert Spallina, October 19th,  
.8. . to Pam Simon, copied to you. Do you see that?  
.9. . . . A. . We're on Page 1 now?  
10. . . . Q. . Yes, we are.  
11. . . . A. . Page 1, and you want me to pick up where?  
12. . . . Q. . Where it says, right in the middle, "Pam, my  
13. . office is processing."  
14. . . . A. . Yeah.  
15. . . . Q. . Do you see that?  
16. . . . A. . Yes, I do.

17. . . . Q. . And you were copied on this, correct?

18. . . . A. . I was.

19. . . . Q. . It says, "My office is processing --" this is

20. . from Spallina. "My office is processing the claim as

21. . your father was the owner of the policy and the proceeds

22. . will likely be paid to the estate in the absence of

23. . finding the trust."

24. . . . . Is it fair to say -- did you understand at

25. . that point it was understood that the trust could not be

PAGE 37

.1. . located, the '95 trust?

.2. . . . . MR. SIMON: Objection; speculation, form.

.3. . . . A. . Yes.

.4. . . . Q. . Then he says, "As I mentioned previously,

.5. . there was a discussion with the carrier about possibly

.6. . using the 2000 trust (the one you are carved out of but

.7. . would be split five ways according to Ted), but I am not

.8. . sure that we will achieve that result." Do you see

.9. . that?

10. . . . A. . I do.

11. . . . Q. . What was the first conversation you had with

12. . Mr. Spallina about the possibility of submitting the

13. . claim to the insurance company using the 2000 trust?

14. . . . A. . Around the same time that these discussions

15. . . . . were going on.

16. . . . . Q. . When did you become aware that the 2000 trust

17. . . . . existed?

18. . . . . A. . Around this same time period.

19. . . . . Q. . When you first had that conversation with

20. . . Mr. Spallina, what did you say to him and what did he

21. . . say to you about using the 2000 trust to submit a claim

22. . . to the insurance company?

23. . . . . MR. SIMON: Objection; privilege.

24. . . . . Don't answer.

25. . . . . MR. STAMOS: Privilege? Privilege of who for

PAGE 38

.1. . . . whom?

.2. . . . . MR. SIMON: Attorney-client. He was his

.3. . . . attorney. Spallina was his attorney. You're

.4. . . . asking about a conversation between him and his

.5. . . . attorney.

.6. . . . Q. . Well, he was your attorney personally or as

.7. . . trustee or what?

.8. . . . A. . He was my attorney as trustee.

.9. . . . Q. . Trustee of what?

10. . . . A. . Shirley Bernstein Trust.

11. . . . Q. . Did the Shirley Bernstein Trust have an  
12. . interest in the insurance policy that we're litigating  
13. . about?  
14. . . . A. . It did not.  
15. . . . Q. . So what did the conversation you had with him  
16. . about the 2000 trust have to do with your role as  
17. . trustee of Shirley's trust?  
18. . . . . MR. SIMON: Same objection; privilege.  
19. . . . . Don't answer.  
20. . . . . MR. STAMOS: Well, I'm not asking for a  
21. . . . conversation. I'm trying to establish -- I think  
22. . . . that you're obligated to establish the basis of a  
23. . . . privilege objection, and I'm entitled to test the  
24. . . . existence of the privilege.  
25. . . . . You've declared that Mr. Spallina was his

PAGE 39

.1. . . . lawyer. He's now told me Mr. Spallina was his  
.2. . . . lawyer as trustee of Shirley's trust, and he's now  
.3. . . . established with me that Shirley's trust had no  
.4. . . . interest in the subject matter of the insurance  
.5. . . . policy, while we know that Mr. Bernstein has a  
.6. . . . personal interest in the result of the insurance  
.7. . . . policy. So I don't see how Mr. Spallina was his

·8· · · · lawyer with regard to this topic.

·9· · · · · Do you have a basis for asserting that?

10· · · · · MR. SIMON:· He consulted with him as an

11· · · · attorney on this matter.· That's my basis.

12· · · · Q· · (By Mr. Stamos)· Is that true, Mr. Bernstein.

13· · · · · THE WITNESS:· Answer?

14· · · · · MR. SIMON:· (Nonverbal response.)

15· · · · A· · Is it true that I consulted with him about

16· ·this matter?

17· · · · Q· · That you consulted with him about this matter

18· ·in a capacity other than as the trustee of Shirley's

19· ·trust.

20· · · · · And I don't mean to be disrespectful by saying

21· ·"Shirley's trust".· I'm just shortening --

22· · · · A· · Sure.

23· · · · Q· · Is "sure" the answer to my question or

24· ·response to my comment there?

25· · · · A· · Oh.

ii.

**PAGE 41 – is this page 40?**

1· · · · Q· · (By Mr. Stamos) Were there any other

·2· ·conversations in which you and Pam and he participated

·3· ·with regard to the subject matter of the 2000 trust?

·4· · · · A· · No, not that I recall.

·5· · · · Q· · What was the notion behind the potential for

·6· · using the 2000 trust?

·7· · · · · MR. SIMON:· Objection; speculation.

·8· · · · A· · I don't know.

·9· · · · Q· · When Mr. Spallina made the application to the

10· · company identifying himself as the trustee of the '95

11· · trust, was he acting as your lawyer at that time?

12· · · · · MR. SIMON:· Objection; form.· I think you said

13· · · · made an application to an insurance company?

14· · · · Q· · I thought we established earlier that you were

15· · aware that Mr. Spallina had applied to the insurance

16· · company for distribution of the proceeds to the '95

17· · trust and had done that representing himself to be the

18· · trustee of the '95 trust.· Did I hear that correctly?

19· · · · A· · Yes.

20· · · · Q· · Okay.· When he did that, was he your lawyer

21· · then?

22· · · · A· · Yes.

23· · · · Q· · So are you telling us that he submitted that

24· · as your lawyer without your knowledge?

25· · · · A· · I'm telling you that, if that's what he did as

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1. · my -- if that's what he did, he was doing it as my  
· 2. · attorney.

· 3. · · · Q. · But you're telling me that he did it without  
· 4. · your knowledge?

· 5. · · · A. · I'm telling you that, if he did it, he did it  
· 6. · as my attorney.· Whether he did it with my knowledge or  
· 7. · not, that's something I think I've said I -- I don't  
· 8. · remember.

· 9. · · · Q. · When you say he did it as your attorney, are  
10. · you saying he did it as your attorney in your capacity  
11. · as the trustee of Shirley's trust?

12. · · · A. · All my --

13. · · · · · MR. SIMON:· Objection; speculation.

14. · · · · · MR. STAMOS:· Well, I mean, I'm not sure what's  
15. · · · speculative about that.

16. · · · Q. · Can you answer that question?

17. · · · · · MR. SIMON:· Yeah, I can answer what's  
18. · · · speculative about it.· He --

19. · · · · · MR. STAMOS:· No, no, no.· I haven't asked you  
20. · · · any questions..· I'm asking the witness..· I'm not  
21. · · · asking you to explain to the witness now how to  
22. · · · calculate this as being speculative.· I'm asking  
23. · · · the question.

24. . . . . I'm going to ask the court reporter to read

25. . . . that question back.

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.1. . . . . (Read back by the reporter.)

.2. . . . A. . I'm saying that my conversations with Robert

.3. . Spallina, I viewed him as my counsel. In any

.4. . conversations I had with Robert Spallina, I expected

.5. . that the attorney-client privilege was there.

.6. . . . Q. . But what I'm trying to get at is, do you have

.7. . an understanding as to in what -- because you have --

.8. . you wear many hats apparently. Are you saying he was

.9. . your attorney in every hat you wore?

10. . . . . MR. SIMON: Object to form.

11. . . . Q. . Do you understand my question?

12. . . . A. . I believe I do.

13. . . . Q. . Okay. Are you telling us that he was your

14. . attorney in each of the capacities you have that relate

15. . to the subject matter of this lawsuit?

16. . . . A. . In these -- in these matters --

17. . . . Q. . For your father's --

18. . . . A. . Yes.

19. . . . Q. . So that would include he was your attorney as

20. . the trustee of Shirley's trust; he was your attorney as

21. ·the successor trustee of the '95 trust; and he was your

22. · personal attorney?

23. . . . A. . . As everything that relates to these matters,

24. . . yes, I -- I viewed Robert as my attorney.

25. . . . Q. . . Did he ever disclose to you potential issues

PAGE 45

·1· ·of conflict that arose by virtue of the divergent roles

.2. .you have as I've just described, and perhaps there are

### ·3· ·other roles?

.4. . . . . MR. SIMON: Objection; privilege.

.5. . . . . MR. STAMOS: Privilege for which attorney --

·6· . . . . . MR. SIMON: If that's not privileged, nothing

•7• . . . is.

.8. . . . . MR. STAMOS: Well, we're going to have to

.9. . . litigate about this, so I'm trying to figure out --

10. . . . . MR. SIMON: That's fine.

11. . . . . MR. STAMOS: -- a privilege in which

12. . . . attorney-client relationship? The attorney-client

13: . . . relationship of him to --

14: . . . . . MR. SIMON: You just asked -- Jim, let me

15. . . . answer your question.: You just asked about a

16: . . . conflict in many different capacities, correct?

17: :::::MR. STAMOS:: Yes.

18. . . . . MR. SIMON: So any of those capacities or all  
19. . . . of them, it's privileged, and that's --  
20. . . . . MR. STAMOS: I understand conceptually. What  
21. . . . I'm asking you is, in which capacity are you saying  
22. . . . there was a conversation that resulted in a  
23. . . . privileged conversation?  
24. . . . . MR. SIMON: In the capacity that he was the  
25. . . . client and Robert was the attorney, and we won't be

iii.

PAGE 47

17. . . . Q. . (By Mr. Stamos) Did you personally make a  
18. . judgment or reach a conclusion as to whether the 2000  
19. . trust should be used as a beneficiary in making a  
20. . submission to the insurance company for proceeds of the  
21. . insurance policy?  
22. . . . A. . I did not.  
23. . . . Q. . Did you ever have a conversation with anyone  
24. . other than Mr. Spallina about the potential for using  
25. . the 2000 trust in making an application to the insurance

PAGE 48

1. . company?  
.2. . . . A. . Possibly -- possibly Donald Tescher.  
.3. . . . Q. . Did you ever have a conversation with your

·4· ·sister who would not have received proceeds of the

·5· ·policy if, in fact, the 2000 trust were employed?

·6· · · · A· · Not that I recall, no.

·7· · · · Q· · So this entire process was conducted, and at

·8· ·no point did you discuss with your sister the fact that

·9· ·if the 2000 trust were employed, in fact, she would be

10· ·cut out of the proceeds of the insurance policy?

11· · · · ·MR. SIMON:· Objection; asked and answered.

12· · · · ·You can answer.

13· · · · Q· · Is that correct?· That's your testimony?

14· · · · A· · That's correct.

15· · · · Q· · Did you have a conversation with anyone else

16· ·other than maybe Spallina and maybe Tescher?

17· · · · A· · About the 2000 trust document; is that the

18· ·question?

19· · · · Q· · Yes.

20· · · · A· · No, I don't believe so.

21· · · · Q· · Where Mr. Spallina writes to Pam here in the

22· ·middle of Exhibit Number 1, Page 1, "As I mentioned

23· ·previously, there was a discussion with the carrier

24· ·about possibly using the 2000 trust, the one you are

25· ·carved out of but would be split five ways according to

PAGE 49

·1· ·Ted, but I'm not sure that we will achieve that result."

·2· · Are you familiar with what he's talking about there?

·3· · · · A· · Yes.

·4· · · · Q· · What's he talking about there?

·5· · · · A· · It looks like he's talking about the fact that

·6· ·the 2000 document didn't include Pam, and he was

·7· ·probably -- he -- it looks like he may have been

·8· ·referencing, according to him, according to me, the --

·9· ·the -- there would be a split five ways.

10· · · · Q· · What was the basis for your belief that there

11· ·would be a split five ways?

12· · · · A· · There were conversations going on at that

13· ·point in time about how to -- what to do with, you know,

14· ·this insurance policy, and splitting it five ways was

15· ·what -- my understanding was how the -- what the

16· ·proceeds of the policy -- of the trust were going to be.

17· · · · Q· · The 2000 trust?

18· · · · A· · No, not the -- I knew nothing about a 2000

19· ·trust.

20· · · · Q· · Do you recall receiving this email where --

21· ·the last item in the string is from you, where

22· ·Mr. Spallina says, "As I mentioned previously, there was

23· ·a discussion with the carrier about possibly using the

24. ·2000 trust, the one you are carved out of but would be

25. ·split five ways according to Ted," doesn't that imply

PAGE 50

·1. ·that you were involved in a conversation about the 2000

·2. ·trust?

·3. · · · A· · I didn't have conversations with the carrier.

·4. ·Spallina had conversations with the carrier.. I did not.

·5. · · · Q· · No, no.. Doesn't this imply that you had a

·6. ·conversation with Mr. Spallina in which he says, "But it

·7. ·would be split five ways according to Ted"?· I mean, how

·8. ·would he know what Ted thought unless Ted told him, and

·9. ·you're Ted?

10. · · · A· · I -- I -- I can't help you there.. I don't

11. ·know what Spallina was thinking.

12. · · · Q· · In any event, so we've established that this

13. ·is a string of emails that you and Ted and Pam shared,

14. ·correct?. You and Spallina and Pam shared, correct?

15. · · · A· · Yes.

16. · · · Q· · And you would have seen them at or about the

17. ·time they're dated, correct?

18. · · · A· · Yes.

iv.

PAGE 75

6. . . . Q. . Let me just back up a second.· The document  
·7. ·that you were talking about that there was a problem  
·8. ·with was a document which it appeared that the Tescher &  
·9. ·Spallina firm had participated in backdating a signature  
10. ·by your father, correct?· Is that your understanding of  
11. ·it?  
12. . . . A. . Something along those lines.· I'm not quite  
13. ·sure that it's backdating or creation of a document.  
14. ·I'm not sure that backdating would be the right way to  
15. ·describe that.  
16. . . . Q. . It included a notarization that was not  
17. ·authentic, correct?  
18. . . . A. . There were -- there were two issues that arose  
19. ·out of that law firm that were highly irregular as far  
20. ·as I'm concerned.  
21. . . . Q. . What were those?  
22. . . . A. . One was a -- was the signing of a notarized  
23. ·document by a notary that was not proper, and the second  
24. ·was the creation or fabrication of a document by  
25. ·Mr. Spallina that -- that related to Shirley's trust

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·1· ·document.· It was, I believe, in the amended trust  
·2· ·document, but I'm going now by complete recollection

.3. of --

.4. . . . Q. . Do you recall what the purpose of that

.5. . . . document was, the second document you're talking about?

.6. . . . A. . The purpose was to make changes to the

.7. . . original trust document.

.8. . . . Q. . Any particular change that you can recall?

.9. . . . A. . No, not -- not, you know, sitting here without

10. . the document, no.

v.

PAGE 88

5. . . . Q. . (By Mr. Stamos) If you would look at Exhibit

.6. . . 24, please.

.7. . . . A. . Okay.

.8. . . . Q. . Is it your understanding that this document,

.9. . . the Simon L. Bernstein Trust -- I'm sorry, let me start

10. . again.

11. . . . . This document is dated July 25, 2012, correct?

12. . . . A. . Yes. It's hard to read, but yes.

13. . . . Q. . You understand this document treats all of

14. . Simon's children as predeceasing for the purpose of its

15. . distribution, correct?

16. . . . A. . I have not read this document, but -- so I

17. . can't -- you know, I can't tell you that I agree with

18. ·you.

19. · · · Q. · Are you aware, being one of those children, as

20. ·to whether you are a beneficiary or are entitled to any

21. ·distribution from the 2012 trust?

22. · · · · ·MR. SIMON:· Objection; the document speaks for

23. · · · itself.

24. · · · A. · Do you want me to read the whole document?· If

25. ·that's what it says, then that's what it says.· If not,

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·1. ·then --

·2. · · · Q. · No, I don't -- that's not what I'm asking you.

·3. ·There's a reasonable amount of money involved here, and

·4. ·what I'm asking you is, as one of Simon's children, are

·5. ·you aware, personally aware -- not did you read this

·6. ·just now and what is it saying, but are you aware of

·7. ·whether you are a beneficiary of a trust that he left

·8. ·when he died?

·9. · · · A. · I am -- I am aware of the trust when he died

10. ·and I'm aware that I'm not a beneficiary.

11. · · · Q. · Okay.. That's what 2012 talks about, correct?

12. · · · A. · Correct.

13. · · · Q. · Not only are you not a beneficiary, none of

14. ·your siblings are beneficiaries, correct?

15. . . . A. . You are correct.

16. . . . Q. . Was there a dispute in the family when you all

17. . learned that your father was going to, in effect,

18. . disinherit his singling?. I'm sorry, the siblings?

19. . . . . MR. ROSE: . What time was that?. Did you --

20. . . . . MR. STAMOS: . Let me start again.

21. . . . Q. . Prior to his death, you became aware that it

22. . was his plan that he was not going to leave money to his

23. . children, correct?

24. . . . A. . I did -- I'm aware of that.

25. . . . Q. . And that lead to some discord in the family,

PAGE 90

.1. . correct?

vi.

PAGE 90

19. . . . Q. . When -- I ask you to -- if you could pick up

20. . Exhibit Number 26, please.

21. . . . . (Exhibit 26 was marked for identification.)

22. . . . Q. . Exhibit Number 26 was one of the documents

23. . produced by the Tescher & Spallina firm. . Have you seen

24. . it before?

25. . . . A. . Yes.

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1. . . . Q. . The third page is a transcription so that we  
2. . could read what it actually said. Do you see that?  
3. . . . A. . Do I see what the third page is?  
4. . . . Q. . Yeah.  
5. . . . A. . Yes, I do.  
6. . . . Q. . What was the genesis of the facts surrounding  
7. . Pam writing this note?  
8. . . . . MR. SIMON: Objection; speculation.  
9. . . . Q. . I'm asking what you know, not what you're  
10. . speculating about.  
11. . . . A. . Can you ask me the -- what -- the question  
12. . again, or what you're specifically asking me?  
13. . . . Q. . What do you understand to have been the  
14. . circumstances of the facts that led to Pam writing this  
15. . note to your father? Why did she write it, as far as  
16. . you know?  
17. . . . . MR. SIMON: Objection.  
18. . . . A. . As far as I know, she read it -- she wrote it  
19. . because she was -- she was passionate about the fact  
20. . that the document -- that the estate plan did not  
21. . include some of Sy's beneficiaries.  
22. . . . Q. . Meaning several of the siblings, right?  
23. . . . A. . Some of his children. Some of my siblings.

24. . . . Q. . Did it exclude you as well?

25. . . . A. . It did.

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.1. . . . Q. . Did you encourage her to write that, or did

.2. . . you know she was going to write that note when she wrote

.3. . . it?

.4. . . . A. . I did not.

.5. . . . Q. . Did you take any view on the subject matter?

.6. . . . . MR. SIMON: Objection.

.7. . . . Q. . The subject of the disinheritance.

.8. . . . . MR. SIMON: Objection; relevance.

.9. . . . Q. . You may answer.

10. . . . A. . Did I take any view to who?

11. . . . Q. . Did you have a view internally as to the

12. . appropriateness of your father's plan to disinherit some

13. . of his children?

14. . . . A. . Appropriateness, no. I encouraged --

15. . . . Q. . You didn't have any --

16. . . . A. . . . my father --

17. . . . Q. . Oh, go ahead, I'm sorry.

18. . . . A. . I encouraged my father to go speak with his

19. . counsel about the fact that he received this and what he

20. . should contemplate doing in receipt of it and how he was

21. .feeling about it, and I encouraged him to talk to  
22. .counsel about it.

vii.

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.3. . . . Q. . This is my final question, or just about:  
.4. .When you learned that Mr. Spallina had filed a claim  
.5. .identifying himself as trustee of the '95 trust, did you  
.6. .ever report to anyone in the insurance company or any  
.7. .authority that he, in fact, was never the trustee of the  
.8. .'95 trust?  
.9. . . . A. . I did not.  
10. . . . Q. . Did you ever instruct him to take steps to  
11. .correct any misimpression he might have caused others to  
12. .form as a result of him having made that claim?  
13. . . . A. . I'm not sure he caused misimpressions in  
14. .anybody, so I don't know, and I didn't have any  
15. .conversations with insurance companies.

viii.

PAGE 95 – Eliot Bernstein Questioning Ted Bernstein

11. . . . Q. . On the night your father died, did she bring  
12. .documents to you at the hospital?  
13. . . . A. . I believe she did.  
14. . . . Q. . Was one of those documents a document with a

15. .check and a letter regarding Maritza Puccio?

16. . . . A. . No.

17. . . . Q. . What documents did she bring you?

18. . . . A. . My recollection is she brought me something --

19. .things pertaining to living wills.. I'm not using

20. .correct legal terms I'm sure, but DNRs and things like

21. .that.

22. . . . Q. . On the day your dad died, did you contact the

23. .sheriff?

24. . . . A. . No.

25. . . . Q. . On the day after he died, did you contact the

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.1. .sheriff?

.2. . . . A. . I don't recall.

.3. . . . Q. . Did you file a sheriff's report at all after

.4. .your father died?

.5. . . . A. . I don't recall.

.6. . . . Q. . Did you make any claims that Maritza Puccio,

.7. .his girlfriend, might have poisoned him?

.8. . . . A. . No.

.9. . . . Q. . You gave no statement to the sheriff?

10. . . . . MR. SIMON: Objection; asked and answered.

11. . . . . Don't answer.

12. . . . Q. . Did you file a coroner's -- did you order a

13. . . coroner inquiry on the day your father died?

14. . . . A. . I did not.

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15. . . . Q. . At any time?

16. . . . A. . I did not.

17. . . . Q. . Do you know anybody who did?

18. . . . A. . I believe the Palm Beach County did.

19. . . . Q. . Palm Beach County who?

20. . . . A. . The County.

21. . . . Q. . The County ordered a coroner's --

22. . . . . MR. SIMON: Asked and answered.

23. . . . Q. . -- investigation?

24. . . . . MR. SIMON: Asked and answered.

25. . . . Q. . Okay.. Why did they order it?

ix.

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.4. . . . Q. . On the day after your -- on the morning after

.5. . your father died -- or actually that morning, did you go

.6. . to your father's house?

.7. . . . A. . What date are you asking me about?

.8. . . . Q. . September 13th.

.9. . . . A. . You know, it's a blurry time.. I -- shortly

10. ·after dad died, I -- I went to his house.

11. · · · Q. · Were there sheriffs there?

12. · · · A. · I believe some -- somebody from a law

13. ·enforcement agency showed up one of those days shortly

14. ·after dad died.

15. · · · Q. · Did you speak with those sheriffs?

16. · · · A. · I did.

17. · · · Q. · What did you talk to them about?

18. · · · A. · Not a lot of recollection, but they were

19. ·asking me questions about things.

20. · · · Q. · Like?

21. · · · A. · Medication, what -- what amounts of

22. ·medication, if I knew what kind of medication he took or

23. ·was taking or things like that.

24. · · · Q. · Why were they there?

25. · · · · · MR. SIMON: · Objection; speculation.

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·1. · · · Q. · Well, you met with the sheriff. · Didn't you

·2. ·wonder why he was at your father's house on the day he

·3. ·died and you were giving statements to him?

·4. · · · · · MR. SIMON: · Same objection.

·5. · · · A. · You -- did you ask me why were they there?

·6. · · · Q. · Yeah.

·7. · · · A. · I don't know.· I can't remember why they were  
·8. ·there.

·9. · · · Q. · And you had no involvement in the call.· Did  
10. ·your attorney have any involvement in the call to the  
11. ·sheriff that you're aware of?

12. · · · A. · I don't -- I can't -- I don't think so. I  
13. ·don't think so.

14. · · · Q. · So you, to the best of your recollection, you  
15. ·don't know who called the sheriff or contacted them?

16. · · · · · MR. SIMON:· Objection; form.

17. · · · Q. · Are you aware the night your father died that  
18. ·a call had been made to the hospital claiming that he  
19. ·had been poisoned?

20. · · · A. · I'm not -- I'm not aware of a call that was  
21. ·made where -- where it was claimed that he was poisoned.

22. · · · Q. · You weren't aware of that?

23. · · · A. · (Nonverbal response.)

24. · · · Q. · Okay.

25. · · · · · MR. ROSE:· Can you hear this okay in Chicago?

x.

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·1. · · · Q. · Are you aware of any claim that your father  
·2. ·had been poisoned by anybody?· Have you ever heard that

·3· claim in the course of these proceedings?

·4· · · · A· · I -- I have heard things about dad being

·5· · poisoned.

·6· · · · Q· · Did you report those things to the insurance

·7· · company?

·8· · · · · MR. SIMON:· Objection; relevance.

·9· · · · · MR. ELIOT BERNSTEIN:· Well, there's a death

10· · · · benefit claim, and I think it would be pretty

11· · · · relevant, if somebody was murdered, who the

12· · · · beneficiaries would be and how it would be paid and

13· · · · if the insurance company should seek an

14· · · · investigation.

15· · · · · MR. SIMON:· You can ask the question.

16· · · · · MR. ELIOT BERNSTEIN:· So --

17· · · · Q· · Go right ahead.

18· · · · A· · Can you ask me the question again?

19· · · · Q· · Did you report to the insurance company that

20· · you had information that your father might have been

21· · poisoned?

22· · · · A· · I did not.

23· · · · Q· · Did you report it to the federal court that

24· · your father might have been poisoned?

25· · · · A· · I have -- I have not.

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·1· · · · · Q· · When you filed the lawsuit, did you notify

·2. ·anybody that your father might have been poisoned?

•3. . . . A. . Which lawsuit?

·4. . . . Q. . The 1995 trust.

·5· . . . A· · I did not.

.6. . . . Q. . When you became trustee -- Robert Spallina

.7. .filed that original claim.. When you became trustee, who

·8. ·did you notify?· Did you send out anything to the

## 9. beneficiaries?

10. . . . A. . . When I became the trustee of --

11. . . . Q. . The successor trustee of this lost trust that

12. · doesn't exist legally.

13. . . . A. . . Did I send anything to anybody?

14. . . . Q. . . Yeah.

15. . . . . MR. SIMON: Objection as to form.

16. . . . Q. . . Did you contact the beneficiaries by sending

17. ·them proper notice that you were trustee?

18. . . . . MR. SIMON: Objection as to form.

19. . . . A. . I think all the beneficiaries were in

20. ·discussions, but I didn't.

xi.

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·6· . . . A . . I think you're asking me, if I knew that

.7. .somebody was murdered -- would I notify an insurance

.8. .company if I knew that somebody was murdered.

.9. . . . Q. . If you thought somebody was murdered.

10. . . . A. . . Would I notify an insurance company if I had

11. · reason to be involved in that situation, I think what

12. ·you're asking me is, if I had that knowledge, I would

13. · notify an insurance company.

14. . . . Q. . . When you filed this lawsuit, you filed a

15. .breach of contract lawsuit, correct?

16. . . . A. . I'm not sure.

17. . . . Q. . Well, you're the plaintiff.. You filed the

18. ·lawsuit --

19. . . . . MR. SIMON: Show him the Complaint. That's

20 . . . what it's for.

21. . . . Q. . So you're not sure --

22. . . . . MR. SIMON: Show him the Complaint, Mr.

23. . . Bernstein.

24. . . . . MR. ELIOT BERNSTEIN: That's a good enough

25. . . . answer.

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.1. . . . Q. . . What type of lawsuit did you file with the

## ·2· ·federal court?

.3. . . . . MR. SIMON: Objection. Show him the

•4. . . . Complaint, please.

.5. . . . Q. . I'm just asking based on your knowledge.

·6· . . . A· . And I'm -- and I'm not a lawyer, and I don't

·7. ·have the document, and the type of lawsuit that was

·8. ·filed, without looking at something, I can't tell you.

.9. . . . Q. . So you're the trustee of this trust and you

10. .filed as a plaintiff a lawsuit and you don't know what

11. . . kind of lawsuit?

12. . . . . MR. SIMON: Objection; speculation,

13. . . . argumentative. We've asked you several times to

14. . . . give him the Complaint which would give you the

15. . . . answer you're looking for, Mr. Bernstein, so please

16. . . . continue.

17. . . . . MR. ELIOT BERNSTEIN: I'm just asking for his

18. . . . knowledge.

19. . . . . MR. SIMON: I'm just asking you to continue.

20. . . . We'll just stop.. We can just stop.

21.....MR. ELIOT BERNSTEIN: I'm just asking for his

22. . . . knowledge.

23. . . . . MR. SIMON: Then go ahead.

24. . . . Q. . So, based on your knowledge, you are claiming

25. .that you have no idea how you filed this lawsuit?

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·4· · · · Q· · Did you deliver the documents that you got

·5· · from Rachel Walker at the hospital to any party?

·6· · · · A· · Other than the hospital?

·7· · · · Q· · Yeah.

·8· · · · A· · Deliver them?· I don't recall, Eliot.

·9· · · · Q· · Where are those documents?

10· · · · A· · I don't recall that either.

11· · · · Q· · Well, Rachel Walker, you sent her to get

12· · documents from the home of Simon after he died, correct?

13· · · · A· · I believe I did.

14· · · · Q· · And they were estate documents, correct?

15· · · · A· · I think I understand what you're asking me,

16· · and, yes, they were -- they were documents that were

17· · part of his estate planning.

18· · · · Q· · And I'm asking you if you know where they are.

19· · · · A· · I think I answered.· I don't recall right now

20· · where they are.

21· · · · Q· · Were you in custody of Simon's personal

22· · property and possessions after he died?

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·3· · · · · MR. ROSE:· The report entry though is --  
·4· · · · · starts with the words "On 9/13/12 at 12:11 hours."  
·5· · · · · MR. STAMOS:· Oh, okay.· We don't have that  
·6· · · · · one.· All right.  
·7· · · · · THE WITNESS:· Okay.  
·8· · · · · Q· · (By Mr. Eliot Bernstein)· You were talking to  
·9· · the sheriff's department on this day, correct?  
10· · · · · A· · Yes, I was.  
11· · · · · Q· · And that's the day your father died, right?  
12· · · · · A· · Yes.  
13· · · · · Q· · Did you advise the sheriff's department that  
14· · your father might have been overdosed or the likes by  
15· · his girlfriend?  
16· · · · · A· · No.  
17· · · · · Q· · No?  
18· · · · · A· · No.  
19· · · · · Q· · Okay.· Were you advised by anybody that your  
20· · father could have been overdosed?  
21· · · · · A· · Yes.  
22· · · · · Q· · That's good.· So now you're remembering that  
23· · you did talk to the sheriff's department that day?

1. . . . Q. . Did you voice concerns to Delray Hospital that  
·2. ·your father might have been overdosed or taken too much  
·3. ·medication?  
·4. . . . . MR. SIMON: Objection; asked and answered.  
·5. . . . Q. . Okay.· Can you read in the 11th line.  
·6. . . . A. · What is the first word?  
·7. . . . Q. . It will be at the end of that sentence.· "He,"  
·8. ·being you, Ted, "said," can you read that?  
·9. . . . A. · "He said he voiced his concerns to the doctors  
10. ·at Delray Community Hospital but they advised there did  
11. ·not appear to be any suspicious circumstances  
12. ·surrounding Simon's death and they would not be  
13. ·conducting an autopsy."  
14. . . . Q. . Can you keep reading the next sentence,  
15. ·please.  
16. . . . A. · "Ted contacted both a private company and the  
17. ·Palm Beach County Medical Examiner's Office regarding  
18. ·having an autopsy conducted."  
19. . . . Q. . Would you like to change your prior statement?

xv.

PAGE 111

·1. . . . Q. . Did you contact a private company regarding  
·2. ·doing an autopsy?

·3· · · · A· · I believe that I did.

·4· · · · Q· · Oh, now you did, okay.

·5· · · · · MR. SIMON:· Objection; move to strike,

·6· · · · argumentative.

·7· · · · Q· · Did you contact the Palm Beach County Medical

·8· · Examiner's Office about having an autopsy?

·9· · · · A· · I can't recall.

10· · · · Q· · Well, read the next line.· Did you tell a

11· · sheriff's deputy that?

12· · · · A· · Which line are you asking me to read?

13· · · · Q· · The one that is -- I think it's like 14.. Hold

14· · on.

15· · · · · MR. SIMON:· Eliot, I'm going to give you two

16· · · · more questions, and then we're going to do my

17· · · · questions, and then I'm going to stop.

18· · · · · MR. ELIOT BERNSTEIN:· I've got a few more

19· · · · questions.

20· · · · · MR. SIMON:· You've got two.

21· · · · · MR. ELIOT BERNSTEIN:· And these are very

22· · · · serious questions, so please.. This could have --

23· · · · you know, potential murder of my father.. I know

24· · · · you're concerned because my father spoonfed you his

25· · · · whole life.

1. . . . . MR. SIMON:· Nobody from the insurance  
·2. . . . department --  
·3. . . . Q· · Ted, on Line 15 --  
·4. . . . . MR. SIMON:· We're done now.  
·5. . . . Q· · -- Ted contacted -- it starts with "Ted  
·6. ·contacted."· Could you read that into the record,  
·7. ·please.  
·8. . . . . MR. SIMON:· You can read that.  
·9. . . . Q· · Three lines up from the bottom of the first  
10. ·paragraph.  
11. · . . A· · "Ted contacted both the private company and  
12. ·the Palm Beach County Medical Examiner's Office  
13. ·regarding having an autopsy conducted.· Both advised he  
14. ·should contact the Palm Beach County Sheriff's Office."  
15. . . . Q· · Did you contact the Palm Beach County  
16. ·Sheriff's Office?  
17. . . . A· · I don't remember.  
18. . . . . MR. SIMON:· We're done.  
19. . . . Q· · You don't recall that you're --  
20. . . . . MR. ELIOT BERNSTEIN:· I'm not done.· I have  
21. · . . questions.  
22. . . . . MR. SIMON:· You're done.. We agreed to five to

23. . . . eight. I'm going to ask him two questions and then

24. . . . we're out of here.

25. . . . . MR. ELIOT BERNSTEIN: Then you're out of time.

xvi.

PAGE 115

18. ·BY MR. ELIOT BERNSTEIN:

19. . . . Q. . You mentioned the policy. You're the trustee

20. ·of this lost trust. Do you have possession of the

21. ·policy?

22. . . . A. . I think I have a copy of the policy.

23. . . . Q. . A fully executed life insurance policy?

24. . . . . MR. SIMON: Objection; relevance.

25. . . . Q. . Have you produced that policy to the court?

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1. . . . . MR. SIMON: Objection; relevance. The

·2. . . . policy's been paid out by the carrier.

·3. . . . Q. . The policy, do you have a copy of the actual

·4. ·policy from the carrier?

·5. . . . A. . A copy of the policy? I think so.

·6. . . . Q. . Fully executed?

·7. . . . . MR. SIMON: Objection.

·8. . . . A. . I don't know what that means.

·9. . . . Q. . A policy that has all the pages to it that's a

10. ·complete policy, that's got the beneficiaries, the death

11. ·benefits, all that listed out.· A copy of the policy.

12. · · · · ·MR. SIMON:· Objection; form --

13. · · · Q· · Do you have possession of that?

14. · · · · ·MR. SIMON:· Objection; form.· Objection;

15. · · · foundation.

16. · · · Q· · Do you have the policy?

17. · · · · ·MR. SIMON:· Objection, relevance.

18. · · · A· · I believe I have a copy of what the insurance

19. ·company sent during this time of reinstatement. I

20. ·believe I have a copy of the insurance policy.. Whether

21. ·executed, I -- I don't know what they deem executed.

22. · · · Q· · You have a copy of the insurance policy, okay.

23. ·Have you given that in your production?

21.

22.

23.

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## **CONTRADICTIONS ON GRANDCHILDREN TRUSTS AND OTHER SIGNIFICANT**

### **CONTRADICTIONS**

**47. Rose Contradictions - Contradictions of Dates of Shirley Trust Beneficiaries**

**48. Ted Trust Validity Complaint states Simon L. Bernstein Trust dated 9/13/12 – Shirley Trust Trust Construction Complaint**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140806%20Theodore%20Filing%20for%20Construction%20of%20Trust.pdf>

a. 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.,

**49. Trust Construction Amended Complaint states Simon L. Bernstein Trust dated 9/13/12 – Shirley Trust**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141003%20Amended%20Complaint%20Trust%20Construction%20Case.pdf>

a. 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.,

**50. 20160308 3/8/16 Rose Letter Stating no Trusts Exist for children –**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160308%20Alan%20Rose%20Mraction%20Letter%20Regarding%20No%20Trusts%20for%20Josh%20Jake%20and%20Danny%20under%20Simon%20Trust.pdf>

- a. "As to the Trusts, they were created by the Will and Trust of Simon, additional copies of which are attached even though you have been provided copies of these on numerous occasions. As to the trusts to be created per Simon's wishes, I believe you refused to allow the trusts to be funded with an interim distribution and you do not serve as trustee. I am not sure if these trusts have been created yet, but in any event, that is a matter of little consequence to the person serving as Guardian because he or she could oversee the setting up of any such trust if needed. There are no additional trust documents beyond what is attached.
  - i. The only attached trusts are the - Simon Bernstein Will dtd 07-25-2012 conformed copy - original in courthouse.pdf; Simon L. Bernstein Amended and Restated Trust Agreement dtd 7-25-2012 - duplicate original.pdf. THERE IS NO SIMON BERNSTEIN TRUST DATED 9/13/2012 that he sued under attached and there is not one anywhere in the record - NO JURISDICTION
  - ii. Therefore there are no sub trusts for the 10 grandchildren and the only subtrusts that exist under Shirley and Simon that were created on the same day the original trusts were created in 2008 are the Eliot, Jill and Lisa Family Trusts and if referring to grandchildren in trusts these are only trusts that exist with 6 grandchildren under their children, Ted Pam and Lineals deceased.

iii. July 2012 Simon Trust refers only to trusts for grandchildren held thereunder and the only ones held under are the ones signed on same day for Eliot, Jill and Lisa..

i) Spallina states the grandchildren trusts are created and funds them for 10 grandchildren and names and dates them but they are not in production. They transfer funds from sale of condo under Shirley, where there are only Eliot, Jill and Lisa family beneficiaries. Ted sells real property Condo and then makes distributions, when he in Shirley is Dead for ALL PURPOSES OF DISPOSITIONS, so how did he do any of that?

**51. Trusts they must be able to produce records as NONE exist in record or have ever been produced and these are the sued parties under the Simon Bernstein Trust that does not exist dated 9/13/2012 and supposedly these are the trusts they funded with the partial payment of the Shirley condo sale proceeds from her trust. Under the Amended July 2012 Simon Trust these trusts do not exist and it refers to trusts held hereunder, which are only the Eliot, Jill and Lisa trusts from the 2008 trust. These alleged trusts also were not created on the day Simon died either, after the fact, as they would have been in TS Production. If Eliot is not trustee as Rose claims how did it transfer and why would other kids be.**

a. The trusts that do not exist are as follows:

1. Jill lantoni, Trustee f/b/o Julia lantoni under the **Simon Bernstein Trust dtd 09-13-2012** (EIN: 30-6348369)
2. Ted Bernstein, Trustee f/b/o Alexandra Bernstein under the Simon L. Bersntein Trust dtd 09-13-2012 (EIN: 30-6348370)
3. Ted Bernstein, Trustee f/b/o Eric Bernstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6348371)
4. Ted Bernstein, Trustee f/b/o Michael Bernstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6348372)

5. Eliot Bernstein, **Trustee** f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6348368)
6. Eliot Bernstein, Trustee f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6348373)
7. Eliot Bernstein, Trustee f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6348374)
8. Pam Simon, Trustee f/b/o Molly Simon under the Simon L. Bersntein Trust dtd 09-13-2012 (EIN: 30-6372583)
9. Lisa Friedstein, Trustee f/b/o Max Friedstein under the Simon L. Berstein Trust dtd 09-13-2012 (EIN: 30-6372584)
10. Lisa Friedstein, Trustee f/b/o Carly Friedstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6372585)

2) Rose Contradictions - Contradictions of Dates of Trust

- b. Ted Complaint states Simon L. Bernstein Trust dated 9/13/12 as a Defendant for 7 grandchildren but not his own children despite claiming the trusts are the beneficiaries – Shirley Trust
- c. Trust Construction  

Complaint <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140806%20Theodore%20Filing%20for%20Construction%20of%20Trust.pdf>

  - i. Rose sues the following in Shirley Trust “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., “

d. Trust Construction Amended Complaint states Simon L. Bernstein Trust dated 9/13/12 – Shirley

Trust <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141003%20Amended%20Complaint%20Trust%20Construction%20Case.pdf>

i. 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.,

e. 3/8/16 Rose Letter Stating no Trusts Exist for grandchildren -

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160308%20Alan%20Rose%20Mrachek%20Letter%20Regarding%20No%20Trusts%20for%20Josh%20Jake%20and%20Danny%20under%20Simon%20Trust.pdf>

- i. "As to the Trusts, they were created by the Will and Trust of Simon, additional copies of which are attached even though you have been provided copies of these on numerous occasions. As to the trusts to be created per Simon's wishes, I believe you refused to allow the trusts to be funded with an interim distribution and you do not serve as trustee. I am not sure if these trusts have been created yet, but in any event, that is a matter of little consequence to the person serving as Guardian because he or she could oversee the setting up of any such trust if needed. There are no additional trust documents beyond what is attached.
- ii. The only attached trusts are the – "Simon Bernstein Will dtd 07-25-2012 conformed copy - original in courthouse.pdf; Simon L. Bernstein Amended and Restated Trust Agreement dtd 7-25-2012 - duplicate original.pdf"
- iii. Therefore there are no sub trusts for the 10 grandchildren and the only subtrusts that exist under Shirley and Simon that were created on the same day the original trusts were created in 2008 are the Eliot, Jill and Lisa Family Trusts and if referring to grandchildren in trusts these are only trusts that exist with 6 grandchildren under their children, Ted Pam and Lineals deceased.
- iv. 2012 Simon Trust refers only to trusts for grandchildren held thereunder and again since it amends the 2008 not replaces, the only trusts for grandchildren in 2012 and 2008 documents held thereunder are the 3 trusts, Eliot, Jill and Lisa family trusts.
- v. Spallina states the trusts are created and Ted funds them for 10 grandchildren under Shirley and names and dates them and states creation but they are not in production. They transfer funds from sale of condo under Shirley, where there are only Eliot, Jill and Lisa family as beneficiaries but Ted Pam take 40% and both predeceased

with lineals. Ted sells real property, the Condo and then makes distributions from Shirley, when he is in Shirley Ted is Dead for ALL PURPOSES OF DISPOSITIONS, so how did he do any of that?

## **52. Spallina & Tescher Contradictions Dates of Trust**

a. Emails Spallina and Tescher

i. BATES TS004424

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130501%20Spallina%20to%20Yates%20regarding%20Children%20Trusts.pdf>

From: Robert Spallina [mailto:rspallina@tescherspallina.com]  
Sent: Wednesday, May 01, 2013 5:35 PM  
To: Christine Yates  
Cc: Donald Tescher  
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Sale of Condo

Christine - The condo sold and Ted will be making partial distributions to the trusts. We assigned EINs yesterday and today to the children's trusts see below. Eliot should open an account wherever he chooses. Those trusts are created under Si's Trust through the exercise of his POA over Shirley's Trust which you have copies of. Other than that, we have extricated ourselves from the insurance matter and Ted is handling that with his brother-in-law. With regard to the estate, the Stansbury litigation is ongoing with no resolution yet in sight.

Eliot Bernstein, Trustee f/b/o Joshua Bernstein under the Simon L.

Bernstein Trust dtd 07-25-2012 (EIN: 30-6348368)

Eliot Bernstein, Trustee f/b/o Daniel Bernstein under the Simon L.

Bernstein Trust dtd 07-25-2012 (EIN: 30-6348373)

Eliot Bernstein, Trustee f/b/o Jake Bernstein under the Simon L.

Bernstein Trust dtd 07-25-2012 (EIN: 30-6348374)

Contact me with any further questions.

b. Emails Moran

i. BATES TS006675

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130822%20Moran%20Emails%20Changing%20Trusts%20for%20Grandchildren%20to%20a%20trust%20dated%2020120913%20day%20Simon%20died.pdf> TS6671-TS6676

From: Kimberly Moran [mailto:kmoran@tescherspallina.com]  
Sent: Thursday, August 22, 2013 12:09 PM  
To: tbernstein@lifeinsuranceconcepts.com;  
lisa.friedstein@gmail.com; psimon@stpcorp.com; Jill lantoni;  
iviewit@gmail.com  
Cc: Robert Spallina  
Subject: Bernstein Grandchildren's trusts

Dear Ladies and Gentlemen:

We know that some of you are in the process of opening the subtrust accounts, so attached is a copy of the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012, together with a list of the trusts with their respective EIN numbers and titling suggestions, although some brokerage firms or banks may title the accounts in their own way. The trusts are as follows:

Jill lantoni, Trustee f/b/o Julia lantoni under the Simon Bernstein Trust dtd 09-13-2012 (EIN: 30-6348369)  
Ted Bernstein, Trustee f/b/o Alexandra Bernstein under the Simon L. Bersntein Trust dtd 09-13-2012 (EIN: 30-6348370)  
Ted Bernstein, Trustee f/b/o Eric Bernstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6348371)  
Ted Bernstein, Trustee f/b/o Michael Bernstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6348372)  
Eliot Bernstein, Trustee f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6348368)  
Eliot Bernstein, Trustee f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6348373)  
Eliot Bernstein, Trustee f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6348374)  
Pam Simon, Trustee f/b/o Molly Simon under the Simon L. Bersntein Trust dtd 09-13-2012 (EIN: 30-6372583)  
Lisa Friedstein, Trustee f/b/o Max Friedstein under the Simon L.

Berstein Trust dtd 09-13-2012 (EIN: 30-6372584)  
Lisa Friedstein, Trustee f/b/o Carly Friedstein under the Simon L.  
Bernstein Trust dtd 09-13-2012 (EIN: 30-6372585)

If you have any questions, please do not hesitate to contact us.

Best regards,

ii. BATES #TS006676

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130822%20Moran%20Emails%20Changing%20Trusts%20for%20Grandchildren%20to%20a%20trust%20dated%2020120913%20day%20Simon%20died.pdf> TS6671-TS6676

From: Ted Bernstein  
[mailto:tbernstein@lifeinsuranceconcepts.com]  
Sent: Friday, August 30, 2013 11:35 AM  
To: Eliot Bernstein (iviewit@gmail.com)  
Subject: FW: Bernstein Grandchildren's trusts

Eliot,

Please let me know when you have opened the accounts that would need to be open before any potential distributions could be made to the children's trusts. Once you have done so, notify me with the information and I will need to forward you a standard release and refunding agreement that will need to be signed before any distributions can be made. Feel free to call me with any questions or concerns.

Ted

From: Kimberly Moran [mailto:kmoran@tescherspallina.com]  
Sent: Thursday, August 22, 2013 12:09 PM  
To: Ted Bernstein; lisa.friedstein@gmail.com;  
psimon@stocorn.com; Jill Iantoni; iviewit@gmail.com  
Cc: Robert Spallina  
Subject: Bernstein Grandchildren's trusts

Dear Ladies and Gentlemen:

We know that some of you are in the process of opening the subtrust accounts, so attached is a copy of the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012, together with a list of the trusts with their respective EIN numbers and titling suggestions, although some brokerage firms or banks may title the accounts in their own way. The trusts are as follows:

Eliot Bernstein, Trustee f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6348368)

Eliot Bernstein, Trustee f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6348373)

Eliot Bernstein, Trustee f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 09-13-2012 (EIN: 30-6348374)

If you have any questions, please do not hesitate to contact us.

Best regards,  
Kimberly Moran, Legal Assistant  
Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Tel: (561) 997-7008  
Fax: (561) 997-7308

### **53. CONTRADICTIONS SPALLINA VALIDITY TRIAL TESTIMONY @ UNEDITED**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

WITH ELIOT COMMENTS AND LINKED DOCS

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing%20ELIOT%20COMMENTS.pdf>

Page 32

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

14. . children.

15. . . . . Were those trusts created at the time?

16. . . . A. . . Yes, they were.

- i. Here Spallina is referring to the 3 trusts set up for Eliot, Jill and Lisa on the date Simon and Shirley signed the 2008 documents, Rose tries to make it appear as if all five children had trusts created but there are only 3.

Page 33

.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

Page 34

.1. . documents in 2008?

.2. . . . A. . Yes, they did.

ii.

Page 44

4. . . . Q. . . Did Ted play any role in the administration of  
· 5. · the estate while Simon was alive?  
· 6. . . . A. . . No, he did not.

Page 46

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

Page 47

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

iii.

Page 50

· 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.

iv.

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,

PAGE 77

.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,

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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.

v.

Page 95

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.

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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.

vi.

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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.

vii.

23. . . . Q. . . Did the fraudulently altered document change  
24. . the beneficiaries that were listed in Shirley's trust?

25. . . . A. . . They did not.

viii.

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.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.

ix.

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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.

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.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 document

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.

X.

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.

xi.

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·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.

xii.

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.

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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.

xiii.

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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?

xiv.

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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.

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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:

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

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- 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  
Page 124  
·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 --

xv.

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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?

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1. · · · · ·THE WITNESS:· It could have, yes, Your Honor.

xvi.

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·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

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·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.

xvii.

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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

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xviii.

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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 --

xix.

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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

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·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?

xx.

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·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

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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.

xxi.

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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

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.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,

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1· · · · we'll leave it there and see what happens next.

xxii.

Page 163

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

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·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.

24. . . . Q. . . Assuming the documents are valid, they'll have  
25. . to be a later trial to determine the effect of Simon's  
Page 189  
.1. . . exercise of his power of appointment?  
.2. . . . A. . . Yes.

xxiv.

Page 191  
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.

xxv.

Page 196  
14. . BY MR. BERNSTEIN:  
15. . . . Q. . . Did Ted Bernstein close the Estate of Shirley  
16. . Bernstein as the successor personal representative?  
17. . . . A. . . No.

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·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· · 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?

Page 200

·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?

Page 201

.1. . . . . MR. ROSE: Objection. Relevance.

.2. . . . . THE COURT: Sustained.

xxvii.

#### **54. CONTRADICTIONS PBSO REPORTS @**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/PBSO%20FILES/Copies/Set%20TWO.pdf> (SET TWO)

- a. Spallina claims to PBSO that for Shirley only benefits Eliot, Jill and Lisa through their existing trusts that are irrevocable when Shirley dies. If Si could have exercised Power of Appt only to Eliot, Jill Lisa children.

- i. Page 5 of 59 of PBSO report, Page 17 of Document, "SPALLINA SAID THAT THE ESTATE PLAN WAS SIMILAR TO MOST OTHERS, IT SAID SHOULD ONE SPOUSE DIE FIRST, THE OTHER WILL RECEIVE EVERYTHING (ALL ASSETS). HE SAID THAT UNDER BOTH TRUSTS , THE INITIAL DOCUMENTS READ THAT UPON THE SECOND DEATH, TWO CHILDREN (TED AND PAM) WHERE EXCLUDED."
- ii. Page 6 of 59 of PBSO report, Page 18 of Document, SPALLINA REITERATED THAT UPON THE DEATH OF THE SECOND SURVIVOR, EVERYTHING FROM BOTH TRUSTS GOES TO JILL, LISA, AND ELIOT
- iii. HE TOLD ME THAT WAS THE LAST CHANGE SHIRLEY EVER MADE TO HER DOCUMENTS AND THAT SHE PASSED ON DECEMBER 2010. SIMON WAS STILL ALIVE AND THE TRUST READ THAT EVERYTHING WENT TO HIS BENEFIT. SPALLINA REITERATED THAT HER DOCUMENTS READ THAT UPON SIMON'S DEATH, EVERYTHING (HER ASSETS) WENT TO JILL, LISA, AND ELIOT.
- iv. Page 7 of 59 of PBSO report, Page 19 of Document, HE SAID SIMON TOLD HIM THAT HE WANTED TO MAKE THE NECESSARY CHANGES TO HAVE BOTH TRUSTS READ THAT THE 10 GRANDCHILDREN WERE THE BENEFICIARIES. HE TOLD ME THAT HE TOLD SIMON (SI AS HE CALLS HIM) THAT HE COULD NOT MAKE THOSE CHANGES TO SHIRLEY'S TRUST BECAUSE SHE HAD WROTE TED AND PAM AND THEIR CHILDREN AS PREDECEASED IN HER TRUST. SPALLINA REITERATED THAT SIMON CAN DO WHATEVER HE WANTS WITH HIS ESTATE ,

BUT ALL HE CAN DO WITH SHIRLEY'S TRUST IS GIVE IT TO LISA, JILL, AND ELIOT'S CHILDREN.

- v. SPALLINA SAID THAT HE EXPLAINED TO HIM AGAIN, THAT ONLY HIS TRUST, NOT SHIRLEY'S CAN GO TO BOTH GRANDCHILDREN, UNLESS HE TAKES ALL OF THE ASSETS OUT OF THE SHIRLEY TRUST AND PUTS THEM INTO HIS NAME .
- vi. Page 8 of 59 of PBSO report, Page 20 of Document, SO, AFTER THE AFOREMENTIONED PHONE CALL, NEW DOCUMENTS WERE DRAWN UP FOR SIMON'S ESTATE. THESE NEW DOCUMENTS GAVE EVERYTHING TO ALL 10 GRANDKIDS. HE ALSO EXERCISED HIS POWER OF SHIRLEY'S ESTATE, LEAVING EVERYTHING TO ALL 10 GRANDKIDS, EVEN THOUGH LEGALLY HE COULD NOT INCLUDE TED AND PAM'S KIDS BECAUSE OF THE PREDECASED LIMITATION. HE SAID THESE DOCUMENTS WERE EXECUTED AT THE END OF JULY 2012. HE SAID SEVEN WEEKS LATER SIMON DIES, UNEXPECTEDLY. I FOUND THAT SIMON PASSED ON SEPTEMBER 13, 2012 OF A HEART ATTACK.
- vii. SPALLINA SAID THAT THEY NOTICED THAT THE FIRST PAGE OF THE DOCUMENT SKIPPED FROM ONE TO THREE, SO HE TOOK IT UPON HIMSELF TO ADD IN NUMBER TWO, BEFORE SENDING IT TO YATES. THE CHANGE THAT NUMBER TWO MADE TO THE TRUST, AMENDED PARAGRAPH E OF ARTICLE III , MAKING IT READ THAT ONLY TED AND PAM WERE CONSIDERED PREDECASED, NOT THEIR CHILDREN.

HE SAID THE ORIGINAL TRUST STATES THAT TED, PAM , AND THEIR CHILDREN ARE DEEMED PREDECEASED.

viii. Page 8 of 59 of PBSO report, Page 20 of Document, HE SAID THAT TED MADE A DISTRIBUTION TO SEVEN OF THE 10 GRANDCHILDREN'S TRUSTS. FOUR OF WHICH INCLUDE TED'S THREE CHILDREN AND PAM'S CHILD. SPALLINA SAID THAT TED ONLY FUNDED SEVEN OF THE GRANDCHILDREN, BECAUSE ELIOT REFUSED TO OPEN ACCOUNTS FOR HIS THREE KIDS SO THAT TED COULD FUND THEM.

HE SAID THAT IN SEPTEMBER OF 2013, \$80,000 WAS DISTRIBUTED TO EACH OF THE SEVEN TRUSTS , WHICH IS A TOTAL OF \$560,000. SPALLINA REITERATED THAT TED WAS TOLD TO NOT MAKE DISTRIBUTIONS.

b. Ted states to PBSO

- i. Page 11 of 59 of PBSO report, Page 23 of Document, HE [TED] SAID THAT HE WAS NOT ASKED TO BE PART OF THE PLANNING, NOR DID HE INQUIRE ABOUT IT.
- ii. TED STATED THAT HE FOUND OUT UPON HIS FATHER'S DEATH, THAT HE WAS THE TRUSTEE FOR HIS MOTHER'S TRUST. HE TOLD ME THAT THE ATTORNEY'S (TESCHER AND SPALLINA) MADE HIM AWARE OF THIS. HE SAID HE WAS ALSO INFORMED HE WAS A COTRUSTEE FOR SOME OTHER ACCOUNT.
- iii. Page 12 of 59 of PBSO report, Page 24 TED STATED THAT HE WAS NOT INVOLVED IN ANY OTHER DISCUSSIONS REFERENCE ESTATES UNTIL HIS FATHER'S PASSING ON SEPTEMBER 13, 2012. HE SAID THAT TESCHER AND

SPALLINA TOLD HIM AFTER HIS FATHER'S DEATH THAT HE WAS THE TRUSTEE FOR HIS MOTHER'S ESTATE . HE SAID OVER MANY IN PERSON MEETINGS AND PHONE CALLS HE WAS GIVEN GUIDANCE BY THE ATTORNEYS ON HOW TO PERFORM HIS DUTIES AS A TRUSTEE, BECAUSE THIS WAS ALL NEW TO HIM. HE HAD NEVER BEEN IN THIS ROLE BEFORE. HE STATED HE WAS NOT PROVIDED A CHECKLIST OR BOOK ON HOW TO PERFORM THESE DUTIES. TED SAID THAT HE MADE IT CLEAR TO HIS SIBLINGS THAT HE IS THE TRUSTEE ON SHIRLEY'S TRUST. TED STATED THAT HE WAS TOLD THAT SHIRLEY'S TRUST WAS TO BE DISTRIBUTED AMONGST HER 10 GRANDCHILDREN. TED STATED THAT HE DID NOT READ ALL OF SHIRLEY'S TRUST DOCUMENTS AND THAT SPALLINA AND TESCHER HAD BOTH TOLD HIM SEVERAL TIMES HOW SHIRLEY'S TRUST WAS TO BE DISTRIBUTED.

TED SAID THAT HE DID READ IN THE DOCUMENTS WHERE THE 10 GRANDCHILDREN WERE TO RECEIVE THE ASSETS FROM THE TRUST. HE SAID THAT HE DID ISSUE A PARTIAL DISTRIBUTION TO THE SEVEN OF THE 10 GRANDCHILDREN.

- iv. Page 13 of 59 of PBSO report, Page 25, HE STATED THAT SPALLINA TOLD HIM IT WAS OK TO DISTRIBUTE THE FUNDS. HE STATED THAT TESCHER AND SPALLINA RESPONDED VIA E-MAIL ON HOW TO RECEIVE THE FUNDS, SUCH AS SETTING UP TRUST ACCOUNTS FOR THE FUNDS TO GO INTO.
- v. Page 14 of 59 of PBSO report, Page 26, TED CONFIRMED THAT HE WAS NOT THE TRUSTEE FOR SIMON'S ESTATE, BUT THAT IT WAS EXPLAINED TO HIM,

VERBALLY, THAT ALL 10 GRANDCHILDREN WILL RECEIVE THE ASSETS FROM THAT ESTATE IN AN EQUAL DISTRIBUTION AT SOME POINT IN TIME. WE DID DISCUSS THE POWER OF APPOINTMENT PUT IN THE TRUST DOCUMENTS . IT APPEARED AS IF TED WAS NOT AWARE OF ANYTHING CALLED A POWER OF APPOINTMENT , UNTIL THE LAST FEW WEEKS . THAT WAS WHEN SPALLINA NOTIFIED THE COURTS OF HIS WITHDRAW FROM BEING THE ATTORNEY FOR SIMON AND SHIRLEY'S ESTATES. IT APPEARS IT WAS EXPLAINED TO HIM AT THAT TIME.

- c. Alan Rose states to PBSO,
  - i. Page 14 of 59 of PBSO report, Page 26, ATTORNEY ALAN ROSE PROVIDED A STATEMENT, STATING HE WISHED TO CLARIFY SOME THINGS IN REGARDS TO HOW THE ESTATE DOCUMENTS READ IN HIS OPINION. HE STATED THAT SHIRLEY'S ASSETS WENT TO LISA, JILL, AND ELIOT OR THEIR LINEAL DECEDENTS.
  - ii. HE STATED THAT ONCE SHIRLEY PASSED HER ASSETS WENT INTO HER TRUST.
  - iii. HE STATED THAT SIMON WAS THE SOLE BENEFICIARY FOR HIS LIFE. HE STATED THAT SIMON DID HAVE A POWER OF APPOINTMENT THAT HE COULD EXERCISE; REFERENCE SHIRLEY'S TRUST, CHANGING THE BENEFITS TO LISA, JILL, AND ELIOT'S CHILDREN.
  - iv. SIMON COULD CHANGE HIS DOCUMENTS AT ANY TIME UP TO HIS DEATH. ALAN STATED THERE IS QUESTION AS TO WHETHER OR NOT SIMON HAD THE POWER TO DISTRIBUTE THE FUNDS FROM THE TRUST TO SIX

GRANDCHILDREN OR 10. THE 10 WOULD INCLUDE THE CHILDREN OF ALL FIVE OF SIMON'S KIDS.

v. HE STATED THAT SHIRLEY'S ORIGINAL DOCUMENTS STATE THAT TED AND PAM AND THEIR LINEAL DECEDENTS ARE CONSIDERED PREDECEASED. HE STATED THAT WERE OTHER WAYS TO MAKE SIMON'S WISHES COME TRUE FOR THE ESTATES . HE SAID THAT CHANGES COULD HAVE BEEN MADE TO SIMON' S DOCUMENTS TO REFLECT SHIRLEY' S SO THAT EQUAL DISTRIBUTIONS WERE MADE AMONGST THE 10 GRANDCHILDREN. THIS EXPLANATION OF THE DOCUMENTS GENERATED A SIMILAR IF NOT THE SAME CONCLUSION AS THAT OF SPALLINA'S FROM LAST WEEK .

vi. Page 20 of 59 of PBSO report, Page 32,ON 02/14/14 I RECEIVED COPIES OF RECEIPT OF PARTIAL DISTRIBUTION FORM FROM ATTORNEY ALAN ROSE . I RECEIVED A FORM SIGNED BY PAMELA SIMON IN REGARDS TO MOLLY SIMON, SIGNED AUGUST 30, 2013. I RECEIVED ONE SIGNED BY JILL !ANTONI IN REGARDS TO JULIA !ANTONI SIGNED ON AUGUST 30, 2013. I RECEIVED THREE SIGNED BY TED BERNSTEIN , ONE FOR EACH MICHAEL , ALEXANDRIA, AND ERIC BERNSTEIN. THEY WERE NOT DATED .

THE FORM READS THAT THE AFOREMENTIONED GRANDCHILDREN (MOLLY , JULIA, MICHAEL , ALEXANDRIA, AND ERIC) OF SIMON BERNSTEIN ARE TO RECEIVE \$80 , 0 00 EACH INTO THEIR TRUSTS. IT ALSO STIPULATES THAT THE MONEY IS TO BE RETURNED IF THE COURTS DEEM THAT IT WAS IMPROPERLY

DISTRIBUTED. IT REFERENCES THE SHIRLEY

BERNSTEIN TRUST AGREEMENT.

THIS CASE REMAINS OPEN.

DETECTIVE RYAN W. MILLER #7704

02/14/14 @ 1457 HRS.

TRANS. VIA EMAIL/COPY/PASTE: 02/20/2014/MDR/#6405

- d. Spallina files docs in FL stating Eliot is beneficiary.
- e. Others contradictions
- f. Who was sued and who is existent and not
- g. Compare and contrast lawsuits being instigated with legally non-existent parties, Ted as Trustee in IL with no trust, Rose suing in FL non-existent trusts and trying spin spin to reverse course of fraud after fact.
- h. Fraud still not corrected in court, parties directly implicated remain in case and despite overwhelming verbiage in docs that Ted is dead.
- i. Conflicts
- j. Colin mentored by Labarga
- k. Colin steers to Coates, former Proskauer partner, Proskauer defendant in counter complaint, Coates ignores and then after possessing court files Sua Sponte at first hearing steps down.
- l. Steers to Phillips, who is retiring out with Colin after riveting Post stories and who professes LOVE for Colin and the attorneys involved.
- m. Steers to new judge possibly but certainly within a reasonable person belief that prejudice MAY exist and this is just further steering knowing Phillips would be gone and this under judicial canons causes the Appearance of Impropriety, which substantiates recusal.

- n. Florida courts should sign conflict waivers from this point forward.
- o. Rose new documents, has not turned them over to Court or PBSO at this time, no chain of custody.
- p. Copies of alleged Originals that he discovered but Tescher and Spallina did not produce
- q. Copies of alleged Originals of children's trust that were missing signatures that Tescher and Spallina, nor original lawyer who created them did not produce but Spallina and Tescher would have had custody.
- r. Rose should not be able to discover any documents after Tescher & Spallina were court ordered to produce ALL records.

No 10 grandchildren trusts were produced by Tescher and Spallina but Rose claims to have them and also not to have them.

How does Rose have custody of any estate of Simon documents when he or client is not a fiduciary. Why Brown and O'Connell not seeking originals after court order?

- s. New docs at validity trial
- t. Books contain different docs, the ones he gives court v Eliot
- u. Documents not in production with Bates stamps, later turn up in production
- v. All Simon business records missing copies and originals, all hard drives both home and business, etc.
- w. Adam Simon new documents
- x. Spallina and Tescher Record New Documents