

Simon Trust and disqualify him in any fiduciary capacity whatsoever in the Estates and Trusts of Simon and Shirley.

39. That Tescher and Spallina, upon their removal from these proceedings as both Fiduciaries and Counsel in Simon's Estate, in the wake of the frauds committed to benefit their client Theodore and themselves, then FRAUDULENTLY attempted to transfer Trusteeship to Theodore as their parting gift to these proceedings. This FRAUDULENT transfer of Trusteeship to Theodore when knowing he is a party that was directly involved in and who benefited directly from their fraudulent activities, in a Successor Criminal scheme.
40. That Tescher and Spallina knew Theodore and his counsel Alan who they recruited from the start to aid and abet their schemes would do everything as Successor Criminals to further cover up their crimes and those of Tescher and Spallina through this fraudulent transfer of Trusteeship scheme. Thus began another long and lengthy waste of time trying to get rid of the Successors Criminals and stop their continued fraud, waste and abuse.
41. That this attempted felonious transfer violates the very alleged Simon Trust terms that Tescher and Spallina wrote and this is reason alone for this Court to remove Theodore immediately and sanction all those involved in this felonious attempt to continue the frauds in and upon this Court, the Beneficiaries, Interested Parties and Creditors by attempting such a criminally shady and unlawful transfer of Trusteeship that violates even the very terms of the Alleged Trust and the definition of fiduciary.
42. That Alan has further been retained by Theodore who was only representing him as a Defendant in the Creditor Stansbury lawsuit against the Estate and Trusts prior, to now replace the capacities Tescher and Spallina were abdicating with their withdrawal and removal from all

Bernstein family related matters.

43. That Alan too has been involved and participated in the advancement of the fraudulent schemes to benefit himself and his client Theodore from the start in cahoots with Tescher and Spallina and advancing the fraudulent schemes, again acting opposite the best interests of the Beneficiaries and Creditors et al.
44. That Alan, despite knowing of the Florida Bar Rules against advancing frivolous pleadings and legally devoid and baseless arguments still allows Theodore to continue to act as ALLEGED Successor Trustee, even despite direct and explicit language excluding Theodore from acting in any capacities in the Trusts of Simon.
45. That Alan continues to represent Theodore as the alleged Trustee's counsel despite his knowledge that Theodore cannot serve and yet continues to advance pleadings in this matter that he knows are TOXIC, VEXATIOUS, FRIVOLOUS, MISLEADING AND PROHIBITED BY LAW AND THE TERMS OF THE SIMON TRUST.
46. That it is understandable that they would disregard law to maintain illegally gained Dominion and Control of the Estate and Trusts and as Alan's life too hangs in the balance in these matters, as if Theodore is ousted by this Court in all fiduciary capacities, so goes Alan. Then, the Estates and Trusts can finally begin to ascertain the damages done and begin hunting down those ripe for prosecution and hunting down the missing assets, documents and personal properties. No longer will Alan and Theodore be able to delay, stymie or derail these proceedings and misuse Estate and Trust assets to protect themselves whilst launching harassing campaigns against beneficiaries using their delayed and interfered inheritances against them, including Minor Children, as more fully defined herein.

**THEODORE HAS BEEN DENIED BY THIS COURT TWO RECENT MOTIONS TO  
BECOME A FIDUCIARY IN THE ESTATE OF SIMON**

47. That this Court should take note that Theodore has TWICE attempted to become a fiduciary in the Estate of Simon despite knowing all the reasons he is unfit and further waste the courts time and the Estates and Trusts assets. Theodore's first Petition was to become Curator as Successor to Tescher and Spallina upon their termination and this was rejected on February 19th, 2014 by the Your Honor who stated in the Order, "DENIED, for the reasons stated on the record." This DENIAL was for just and sound reasons by the Court that should have applied to removal of Theodore in any and all fiduciary capacities in both Simon and Shirley's Estates and Trusts that Theodore was acting in already as a fiduciary or seeking nomination to become one.
48. That the second attempt to become a fiduciary of the Estate of Simon was made by Theodore in a hearing held in July 2014 in efforts to become Successor Personal Representative at the replacement of Benjamin Brown as Curator.
49. That he Court however strongly urged Theodore and Alan to WITHDRAW their TOXIC, VEXATIOUS, FRIVOLOUS, PROHIBITED and DOOMED pleading PRIOR to even hearing the pleading.
50. That after considerable waste of this Court, the Beneficiaries, Creditors and everyone's time, effort and monies in a frivolous pleading certain to fail, Alan and Theodore finally WITHDREW the pleading but only after the Court warned them that they would SANCTIONED if they lost for everyone's costs.
51. That the Court's Order dated July 11, 2014 reads, "Ted Bemstein's Petition For Appointment of Successor Personal Representative is hereby ~~DENIED~~ WITHDRAWN. Again, this Court

suggested such withdrawal of their pleading at the hearing and this SECOND attempt was withdrawn for just and sound reasons urged by the Court and these reasons again should have applied to removal of Theodore in any and all fiduciary capacities Theodore was acting in or seeking nomination for at the time.

52. That for the same reasons the Court has deemed Theodore unfit in now two attempts to become a Successor Fiduciary forward, now constitute the same reasons that should serve for this Court to act on its own Motion under Fla. Stat. 736.0706 to remove Theodore from any/all fiduciary capacities in either the Estates or Trusts of Simon and Shirley, as further discussed herein.
53. That in addition to the fact that the Trust language precludes Theodore from becoming a Successor Trustee in Simon's Trusts, Theodore is further not qualified now or has ever been to be a fiduciary in the Estates and Trusts of both Simon and Shirley, including from a continued pattern and practice of fraudulent activity, breaches of fiduciary duties and more, that include but are not limited to all of the following:

**CONFLICTS OF INTEREST AND ADVERSE INTERESTS THAT PRECLUDE THEODORE FROM BEING A FIDUCIARY IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY**

54. Theodore has adverse interests and conflicts of interest that preclude him from acting as a fiduciary, including but not limited to:
- i. Theodore and his lineal descendants were wholly disinherited in Estate and Trust documents done in 2008 and only allegedly have been included through the use of forged, fraudulent, improperly notarized and legally invalid documents, all alleged to have been done only days before Simon passed. If these alleged 2012 documents and forged and fraudulent documents do not stand up, Theodore and his lineal descendants will be excluded entirely from the Estates and

Trusts and this puts Theodore in conflict with other beneficiaries and impairs his ability to be impartial due to the conflicts.

- ii. Theodore and his counsel Alan Rose ("Alan") are both further adverse to Eliot Bernstein and his family, as it is through Eliot's Pro Se efforts that Theodore's prior counsel, the fiduciaries of Simon's Estate and Trusts and Alan's affiliates who brought him into these matters, Tescher and Spallina, have been forced out of these proceedings and removed as Fiduciaries and Counsel. Further, there has been an arrest of their employee made and where Eliot is still pursuing Tescher, Spallina, Manceri, Theodore and Alan, with criminal authorities and in state and federal civil actions for their direct involvement and benefit from the frauds, thefts, conversions and comingling of assets and more, severely impairs both Theodore and Alan's ability to be impartial to Eliot and has led to their continued retaliation and extortion of Eliot, as further defined herein. If Theodore is removed as a fiduciary in these matters by this Court and losses his illegally gained Dominion and Control of the Estates and Trusts and his ability to misuse Trust funds for his legal defenses of these actions, he and his Counsel Alan both may land in jail and lose their assets if successfully prosecuted in these matters forward.
- iii. That Theodore and Alan are both Respondents in the probate cases in Shirley and Simon's Estates and Trusts before this Court and are now also Defendants in a related Counter Complaint recently moved to Your Honor, Case #502014CP002815XXXXSB, with allegations that directly relate to these Probate and Trust matters, including; CIVIL CONSPIRACY, CIVIL EXTORTION, THEFT, FRAUDULENT CONVERSION, INTENTIONAL INTERFERENCE WITH AN INHERITANCE/EXPECTANCY, CIVIL FRAUD, BREACH OF FIDUCIARY DUTIES, ABUSE OF PROCESS, LEGAL MALPRACTICE and EQUITABLE LIEN.

- iv. That Theodore is conflicted with the Estates and Trusts sued under the Creditor William Stansbury's lawsuit against the Estate and Trusts of Simon and Theodore Professionally and Personally, as Theodore is the alleged primary cause of the torts claimed by Stansbury and Theodore is the primary Defendant in that action. Despite the possibility that Theodore may have or may, settle(d) his personal capacities with Stansbury, the Estate, the Trusts and the Beneficiaries will still have claims that may seek recovery from Theodore personally for any settlement with Stansbury that uses Simon or Shirley's Trust and/or Estate funds that further damage the Beneficiaries. The Estate and the Beneficiaries may make the claim that Theodore and not the Estates and Trusts are WHOLLY responsible for the torts and damages to Stansbury, as Petitioner is already making that claim and would seek immediate recovery from Theodore and this again makes irrefutable conflicts of interest.

Where evidence shows that Theodore may have benefited solely from the misconduct alleged by Stansbury and new evidence suggests that Simon was unaware that Stansbury had been defrauded by Theodore until approximately six weeks before his sudden and unexpected death. That at that time, Simon and Theodore are alleged to have been at extreme odds with each other, with Simon abandoning his offices with Theodore due to Theodore's extreme anger raged upon Simon by Theodore, his son, that was witnessed by others. Theodore was enraged at his exclusion from the Estates and Trusts and that Simon would not support him in his defense of the alleged bad faith acts against Stansbury.

Stansbury, whom Simon and Shirley loved and trusted, so much so, as to name Stansbury in their 2008 estate plans as the Personal Representative and Trustee over their entire Estates and Trusts, and not Theodore their own eldest son for good and just reasons. Where Stansbury may again be

in those fiduciary capacities if Theodore is successfully removed by this Court and the 2012 Will and Amended and Restated Trust of Simon fails due to the improperly notarized and perhaps forged documents, according to newly discovered 2008 documents of Simon's, including two new 2008 Simon Trusts and a Will, only recently produced by Tescher and Spallina, upon the Court's Order to turn over ALL of their records on their removal, after suppressing and denying these documents from Beneficiaries and this Court for almost two years despite repeated requests by beneficiaries and their counsel.

- v. That Theodore is further conflicted with the Estate and Trust of Simon and the Beneficiaries, Interested Parties and Creditors further due to a lawsuit IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION Case No. 13cv3643, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95 v. HERITAGE UNION LIFE INSURANCE COMPANY, adjudicated by Hon. Judge Amy St. Eve. The lawsuit filed by Theodore acting as Trustee of a NONEXISTENT TRUST is for Breach of Contract that he was advised by Tescher and Spallina et al. that he had no basis to file but Theodore filed anyway using yet another TOXIC, VEXATIOUS, FRIVOLOUS, FRAUDULENT and PROHIBITED pleading, this time acting as a "Trustee" of a NONEXISTENT TRUST that he claims he has never seen. Again Theodore effectuates this criminal illegal legal scheme to convert insurance proceeds into his own pocket is aided and abetted by his minion of Attorneys and this Fraud is now upon a Federal Court and as that crime attempts to remove an asset of the Estate of Simon out the back door, this is yet another Fraud on this Court that Theodore is smack in the middle of costing the Estates and Trusts time, monies and attorney fees, while providing no benefit to the Estates, Trusts and



Beneficiaries. Theodore has paid Tescher and Spallina from Estate and Trusts assets to remove this insurance asset from the Estate where he and sister Pamela would get none of it and thus they tried this costly scheme and fraud on a federal court to convert it into he and his sister Pamela Simon's pockets, instead of their very own children.

It should be noted that remarkably, Theodore in a January 28, 2014 police interview stated to Palm Beach County Sheriff Investigators, "Ted confirmed that **he did not make any decisions in relation to Simon's insurance policy generated out of Chicago, Illinois [emphasis added]**."

However, Theodore is actually the Plaintiff that filed the lawsuit in 2012 trying to claim the insurance proceeds through the illegal Breach of Contract legal action, which puts Theodore again directly in conflict with the Estate Beneficiaries. If that baseless lawsuit fails, the Estate would receive the benefits due to the fact that no beneficiary can be found at the time of death.

The Court is already well aware of this lawsuit and has recently allowed the Personal Representative and Counsel to represent the Estate in that matter, again after over a year and half that the Estate was blocked from entry in the case to represent the Estates interest in the insurance proceeds by Tescher and Spallina, who were representing Ted initially in the Breach of Contract Lawsuit and are alleged to have made a FRAUDULENT INSURANCE DEATH BENEFIT CLAIM that led to the alleged breach.

That it should be noted that several weeks before filing the FRAUDULENT Breach of Contract Lawsuit, Robert Spallina filed an Insurance Death Benefit Claim as the Trustee of the same LOST trust that he claims to have never seen or possessed and this claim was DENIED by the carrier as Spallina could not prove his alleged beneficial interest as the alleged Trustee of a LOST Trust he claimed to the carrier not to possess. The DENIAL OF THE CLAIM led to



Theodore then claiming he was now the "Trustee" of the LOST Trust he never saw and in such IMAGINARY FIDUCIARY CAPACITY filed the Breach of Contract lawsuit against Heritage for their failing to pay on Spallina's DENIED and FRAUDULENT INSURANCE CLAIM.

Again, this insurance scheme inures benefits directly to the pocket of Theodore and his minion of counsel and where again, it is Theodore that is completely disinherited from both the 2008 and 2012 Estates and Trusts of Simon and Shirley (not Eliot as Alan repeatedly tries to sell this Court). Without this fraudulent insurance scheme to convert the insurance proceeds from the Estate of Simon's Beneficiaries and Creditors, Theodore would receive nothing. These conflicts of interest further demand Theodore's removal from these proceedings in any/all fiduciary capacities he has or alleges to have in both Simon and Shirley's Estates and Trusts.

- vi. That further disqualifying Theodore from acting as fiduciary are further statements he made to PBSO investigators and this Court that show that he is perjuring himself and unfit to serve as a fiduciary and conflicted with these matters, whereby according to the PBSO Supplemental Report,

**"TED STATED THAT HE DID NOT READ ALL OF SHIRLEY'S TRUST DOCUMENTS [EMPHASIS ADDED]** and that Spallina and Tescher 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 [EMPHASIS ADDED]**. He said that he did issue a partial distribution to the seven of the 10 grandchildren."

Spallina stated to PBSO investigators that "SPALLINA STATED THAT AGAINST HIS ADVICE, A DISTRIBUTION WAS MADE FROM ONE OF THE TRUSTS AFTER SIMON'S DEATH. HE STATED THAT HE ADVISED AGAINST THIS..." and later states "SPALLINA

REITERATED THAT TED WAS TOLD TO NOT MAKE DISTRIBUTIONS.”

That Theodore could not have read as he claims, language in the 2008 Shirley Trust (that he also claims not to have read?) that the grandchildren were to receive the assets from the Trust, as that language is NOT in the Trust anywhere at all. The only Beneficiaries defined in the Shirley Trust are Eliot, Jill and Lisa and their lineal descendants, as Theodore and Pamela and their lineal descendants are considered predeceased as evidenced already herein.

That the only possible way Theodore could have read in the Shirley Trust documents that the 10 grandchildren were to receive benefits, is if he would have read the newly alleged FRAUDULENTLY CRAFTED “Second First Amendment to Shirley’s Trust,” the very Trust document Spallina states to PBSO that he fraudulently altered for Shirley POST MORTEM by two years in January 2013. This fraud achieved allegedly by Spallina altering an alleged “First Amendment to Shirley’s Trust” whereby the altered document then fraudulently attempted to include the 10 grandchildren in Shirley’s Trust fraudulently.

The problem for Theodore here is also that he claims to PBSO in that same Supplemental Report,

“Ted said that he not spoken to Spallina about his withdrawing from being the attorney for the trusts, but that he did speak with Tescher. He said that Tescher told him he had been made aware of a fabricated document that was potentially problematic for the Estates [referencing the Second First Amendment]. He said that Tescher told him that Spallina created the fabricated document and it essentially impacted the ability for Simon to distribute funds to all 10 grandkids. Ted said that Tescher told him that he had only recently become aware of this document, approximately three weeks from today (01/28/14).”

Again, Theodore made the distributions in Sept 2013 to the 10 grandchildren before learning of the altered document, which directly contradicts his own prior claims and his illegal actions in

distributing the funds to knowingly improper parties.

Theodore then wrote to Eliot further contradicting his statement that he saw language allowing him to make distributions in Shirley's documents to the grandchildren that does not exist and where he claims again not to have known of the altered document until way after his distributions by stating to Eliot,

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Tuesday, **January 14, 2014[emphasis added]** 5:23 PM  
**To:** Eliot Bernstein (iviewit@gmail.com)  
**Subject:** Update

Eliot,

You may have received a letter or email from Don Tescher today. Late last week I learned of **shocking developments concerning mom and dad's planning documents that were prepared by their counsel at the time [Ted fails to state they were his counsel too at the time]. In light of what I have learned,[emphasis added]** I will be obtaining new counsel, as Trustee and PR. Things are still unfolding. As a courtesy to you, please let me know if you would like to arrange a meeting with me and my counsel in an effort to bring you up to speed.

Sincerely,

Ted

---

Spallina then tells PBSO investigators in the already exhibited herein report,

Spallina told me that he and his Partner had discussions reference to fulfilling Simon's wishes of all 10 grandchildren receiving the benefit from both Simon and Shirley's Trust...

That Spallina said that **they** [referring to he and his partner Tescher] 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 [Christine Yates of the most respectable Tripp Scott law firm that represented Eliot and his children and cost them over \$50,000.00 to chase around fraudulent documents sent to her and more]. 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 predeceased, not their children. He said the original trust states that Ted, Pam and their children are deemed predeceased. Spallina said he did this at this office in Boca Raton, Florida. He said that no one

else took part in altering the document.

So if Spallina sent this document to Yates in January 2013 and did not confess to it until January 2014 to PBSO investigators, how could Theodore have seen language in Shirley's Trust documents that would have allowed him to make distributions to 10 grandchildren on or about September 16, 2013, when even Ted claims he did know about the "Second First Amendment" until January of 2014.

That for Theodore's admitted failure to even read Shirley's Trust documents as stated to Palm Beach County Sheriff Investigators and then acting as the alleged Trustee and making fraudulent distributions upon language that does not exist, this Court should sanction and remove him instantly for this reckless, wanton and grossly neglect behavior.

This breach has led to fraudulent conversion and comingling of assets to profit Theodore and his six or seven lawyers directly and in fact use trust and estate funds for counsel and fiduciaries to advance and effectuate these fraudulent schemes that benefit both he and his counsel at the expense of the Beneficiaries and Creditors. Now Theodore tells lie after lie to various authorities attempting to cover up the crimes and further mislead the Court and others, which is outrageous conduct for an alleged fiduciary that is supposed to be held to a higher standard not a lower standard for their actions.

That Theodore further stated to PBSO investigators in contradiction to Spallina's prior exhibited statement herein where Spallina states he told Theodore to NOT make distributions that "He [Theodore] stated that Spallina told him it was OK to distribute the funds." That this contradiction of statements to investigators puts Theodore in direct contradiction with his own counsel's statements and shows that irrefutably, Theodore is now adverse to other beneficiaries

who are claiming the distributions were illegal conversions and a comingling of funds to improper parties and thus how can he now be impartial forward under Florida Statute 736.0803, where his actions as an alleged fiduciary may benefit his children at the expense of other beneficiaries in both the Estates and Trusts of Simon and Shirley.

**ACCOUNTING VIOLATIONS BY THEODORE AS ALLEGED FIDUCIARY IN THE  
ESTATES AND TRUSTS OF SIMON AND SHIRLEY – FLORIDA STATUTE 736.0813  
DUTY TO INFORM AND ACCOUNT**

55. That Theodore and his predecessors Tescher and Spallina have all failed to follow the very Terms of the Trusts he operates under, The Trust Code and Florida Probate Rules and Statutes, that all require a duty of accounting to beneficiaries.
56. To date, Theodore, nor Spallina and Tescher have ever sent any required accountings or administrative information for the trusts they claim to be trustees of to the beneficiaries, yet all have had several open checking accounts that they have administered freely with no supervision or accountability using them as their own personal accounts and reporting to no one in violation of statutes and law.
57. That Theodore has refused to turn over multiple trusts in the Estate and Trusts of Simon and Shirley and where Eliot still to this date is missing several of these important dispositive documents.
58. Theodore refuses to provide financial information of transactions he has done or any accountings despite repeated requests and therefore breaches all duties of loyalty and accounting under the terms of the trust.
59. THEODORE is self-dealing, converting and co-mingling trust funds and uses trust funds for his own personal use. Petitioner has reasons to believe THEODORE and others he has recruited to

the Estates and Trusts as either counsel or as Fiduciaries, in coordinated efforts are stealing Trust and Estate assets, failing to give accountings, suppressing and denying Trust documents, altering Trust and Estate documents and the Beneficiaries and Creditors need immediate relief from this Court by removing Theodore on the Court's own motion as required by law and appointing a qualified independent Trustee to marshal the assets and guarantee the terms of the trust are carried out in a non-conflicted and non-vindictive fashion against those Theodore and Alan are adverse to. No accountings have been provided for the Simon Trust for two years and in Shirley's Estate & Trusts for almost four years and Beneficiaries have been denied this information as part of the overall fraud and looting of the Estates and Trusts. Petitioner has requested accountings that are due to him under the terms of the Trusts, upon request, annually and when the PR and Trusteeship have changed according to Statute. There have been NO Annual accountings provided, NO requested accountings provided and NO accountings at the change of trusteeship by Theodore or the former removed Fiduciaries and Counsel in these matters in violation 736.0813 and 733.604.

736.0813 Duty to inform and account.—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust

instrument, the right to accountings under this section, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or on change of the trustee.

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

60. That Theodore upon accepting the PROHIBITED fiduciary capacity of ALLEGED Successor Trustee from Tescher via the Fraudulent Transfer of Trusteeship has failed to provide an accounting for the Trust since January 2014 and Tescher similarly failed to produce ANY Trust accountings while he was the ALLEGED Trustee.
61. That Theodore upon allegedly accepting his Letters of Administration most amazingly granted to him by Your Honor while there were serious allegations of breaches and criminal misconduct before the Court, in October 2013, has failed to provide an accounting when he became Successor PR of Shirley's Estate in violation of statutes and law. It should be noted that no FINAL ACCOUNTING of the Estate of Shirley was ever completed by Simon due to fraudulent and forged waivers being submitted and other closing documents filed by Simon while he was dead for four months and so NO ACCOUNTINGS have ever been done in Shirley's Estates and Trusts, in violation of Probate and Trust Rules and Statutes.

**BREACHES OF FIDUCIARY DUTIES BY THEODORE IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY**

62. On January 28, 2014, THEODORE, in the already Exhibited PBSO report admitted to PBSO investigators regarding distributions that he made that he had never read the Trust documents in full, "Ted stated that he did not read all of Shirley's Trust documents and that Spallina and

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND

SHIRLEY BERNSTFIN

Page 29 of 68

Thursday, August 28, 2014



Tescher had both told him several times how Shirley's Trust was to be distributed."

63. However, Spallina stated to PBSO, "Spallina reiterated that Ted was told to not make distributions." Then Theodore stated, "Ted stated that Spallina told him it "was OK to distribute the funds."

THEODORE however states in various emails produced by his counsel Tescher and Spallina in the Court Ordered production upon their termination that he had in fact read the trust document "carefully." From an alleged email dated October 25, 2013, months prior to his statements to PBSO that he had not read the Shirley Trust and only followed the advice of counsel we find Theodore again contradicting himself when he states,

**Robert Spallina**

**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]

**Sent:** Friday, October 25, 2013 7:34 PM

**To:** Robert Spallina

**Subject:** RE: Withdrawal Activity Report

Good news is that on quick glance, all looks kosher but Deborah and I will tie everything out over the weekend. Bad news is that there is a steadily increasing amount of money being wasted on Eliot related matters. Once we get past Monday, I want to meet with you about my damages that I have incurred as a result of my role as trustee. I have read through the document carefully [emphasis added] and I have important questions and concerns about doing some things to counter the affects and I feel that there is time sensitivity involved. I hope Kim is doing as best as can be expected [this statement regarding Kimberly Moran and Eliot having her arrested by PBSO for fraudulent notarizations and admitted forgery]. I'm available over the weekend if you need me.

Ted

There are multiple ongoing investigations into felony criminal misconduct involving Theodore and Alan, including but not limited to, Frauds, Insurance Fraud, Fraud on a State and a Federal Court, Bank Fraud, Theft of Estate and Trust Assets of Simon and Shirley totaling millions of dollars, Falsifying Documents, Criminal Breaches of Fiduciary Duties and more, all relating to Simon and Shirley's Estates and Trusts and those who have administered them from the start.

64. That the next Breach of Fiduciary duties by Theodore is a direct attack on Eliot's three minor

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN

Page 30 of 68

Thursday, August 28, 2014

children and retaliation by Theodore and Alan against Eliot, whereby Theodore alleges the three minor children of Eliot's are Beneficiaries of the Shirley and Simon Trusts that he alleges to be Trustee for. In a sophisticated attempt to destroy their educational futures that were long planned and paid for by Simon and Shirley and as part of an extortive effort to get Eliot to participate in taking knowingly illegal distributions again, in the same manner he and Tescher and Spallina did, a new recent attempt was launched using the children as pawns this time with Theodore and Alan.

65. That Eliot contacted the alleged Trustee Theodore on July 25, 2014 for a Welfare Payment according to the terms of the alleged Trust as defined herein, which provides for distributions for schooling and requested a simple yes or no answer so that he could notify St. Andrew's school, who had notified Eliot that on August 09, 2014 his children would lose their enrollments for school for the 2014-2015 year for past due balances owed and current tuition due.
66. That the children have been in St. Andrew's school throughout most of their lives and which was contracted and paid for entirely by Simon and Shirley while they were alive and provisions were made to continue after their deaths that have been interfered with to cause this calamity with intent. Greater detail of this extortive attempt and fraud can be found in Eliot's recently filed Motion for Interim distributions filed in both Simon and Shirley's Estates and Trusts. See Motion for Interim Distribution @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140815EMERGENCYMOTIONFORINTERIMDISTRIBUTIONS.pdf>

67. That despite knowing of the illegal distributions already made using the fraudulent documents and schemes to alter Shirley's Beneficiary Class by Tescher and Spallina, Alan now tried to get

Eliot to take illegal distributions, this time by extorting him using his children's school tuition as the basis of the extortion play or pay this time and tried to keep the extortive attempt secreted from this Court and others by misleading Eliot with misstated and misquoted statutes regarding Settlements.

68. That even other Attorneys at Law that Alan attempted to recruit into this scheme are catching on to his schemes, as illustrated in the Creditor Stansbury's counsel, Peter Feaman, Esq.'s letter to Alan in response to his request to have the creditor release his hold on the assets in Simon's Estate and Trusts, since Eliot would not again partake in the fraudulent distribution scheme under Shirley's Trust, see Exhibit 3 - Feaman Letter to Alan. Whereby Feaman states after requesting an accounting from Alan of the alleged Simon Trust to confirm his claims about how little was left in the Trust and then being denied a copy, Feaman states to Alan,

My client tells me there are numerous witnesses who know that it was Simon's intent to provide for the St. Andrews schooling for Eliot's children. Heck, the house he bought for Eliot is within walking distance of the school! Whatever differences there are between Ted and Eliot, **the grandkids should not be used as pawns.** There is money to pay for the grandchildren's education. Stop playing games and get this done. At the end of the day, an adjustment can be made if necessary, **but stop putting the kids in the middle [emphasis added].**

69. That once Theodore and Alan could not get Eliot or Feaman to participate in their renewed extortive schemes and play be Alan's rules, Theodore then failed as an alleged Fiduciary to respond to Eliot's repeated request for a simple yes or no answer to the Welfare Payment, in order to notify the school of their decision and make preparations if necessary to relocate the children. No timely reply was given (talk about uncooperative) and they allowed the due date to pass and the children to lose their enrollments and enacted a new series of schemes to cover up

their new breaches.

70. That once they failed with scienter, in an attempt to cover up their breach of duties and failure to pay under the terms of the Trusts of Simon and/or Shirley, they then claimed they need all kinds of stipulations now from this Court to make any payment and stated they were seeking a Court Order to make the payments, which of course they have never did and so enrollment was compromised.
71. That instead of the promised Court filing to get the requested Welfare Payments, in efforts to now recruit the Court to aid and abet in the coverup of their breaches, they instead filed a Contempt Motion against Eliot, to act as if Eliot has somehow prevented them from making the Welfare Payments to keep the children in school and are using this new ABUSE OF PROCESS and TOXIC, VEXATIOUS, FRIVOLOUS, COSTLY, EXTORTIVE pleading as an excuse for failing to act in a timely manner.
72. This breach of duties resulting in MASSIVE DAMAGES THEY HAVE NOW CAUSED TO THREE MINOR CHILDREN'S FUTURES. In fact, it appears they intentionally created these delays through this new Fraud on the Court to have Eliot take "distributions fraudulently to unknown and improper beneficiaries as Theodore et al. had already done, despite admitting to the Court in hearings repeatedly that they are unsure who the beneficiaries are in the Shirley Trust at this time due to the Fraud. In an email of Alan's dated August 01, 2014 he states that the Trustee does not Object to "Payment from the Trust Funds", whereby Alan states,

As Trustee, Ted has no objection to making a payment from the Trust funds to St. Andrews School for each of Eliot's three kids [emphasis added], so long as (i) the Court enters an order directing and authorizing such payment, with the approval of a guardian ad litem if the Court decides to appoint one, and also holding the Trustee

harmless for complying with such order and requiring repayment if needed; (ii) the payment for each child will reduce the amount to be distributed to that child's trust and with Eliot agreeing that if it is ultimately decided that the payments were to go to him and not his childrens' trusts (which we believe is not the case), then these same payments would count against Eliot's distribution; and (iii) each of you has the opportunity to be heard by responding to the email or by appearing in court."

73. That the Court should note that in that language Alan refers to the disbursements as PAYMENTS not DISTRIBUTIONS as he then tried to put into the proposed agreement he drafted where he consistently peppered the document with the word distributions, despite Your Honor on the record at the hearing telling him they were PAYMENTS not distributions.
74. Then Theodore and Alan filed yet another TOXIC, VEXATIOUS, FRIVOLOUS, COSTLY and MISLEADING Construction of Trust motion, recently filed in now a separate hearing to make it look like they could also not make the Welfare Payments without this Court's Order and a reconstruction of the Shirley Trust and to have this Court somehow now reconstruct Shirley's Irrevocable Trust to fit the crimes they already have committed in knowing violation by taking "distributions" to knowingly improper beneficiaries of that Trust with scienter. Yes, Alan and Theodore, who aided and abetted the prior frauds and benefited directly from them, now want to have this Court reconstruct Shirley's Trust four years later to attempt to make the illegal "distributions" Theodore made with others knowing they were improper no somehow legal.
75. That Alan claims they cannot make Welfare Payments without Eliot taking them as knowingly improper "distributions" to beneficiaries that have not been resolved by the Court and are currently admitted by all parties to be unknown.
76. That their claims that Welfare Payments cannot be made and must be made as knowingly

ILLEGAL “distributions” despite the fact that at the present time there are no legally qualified beneficiaries known to make legal distributions too are untrue.

77. That Donald Tescher stated in a letter dated, December 26, 2013, “Ted as trustee of Shirley's trust did make some partial distributions and that issue was also addressed at the first hearing where Judge Colin again addressed Eliot on the proper course of action. [KEEP IN MIND THAT WHEN THE COURT FIRST ADVISED ELIOT TO TAKE THE FUNDS YOUR HONOR WAS UNAWARE THAT THEY WOULD BE FRAUDULENT AND WHEN DISCOVERING THAT OUT THEN STATED WHEN ASKED BY ELIOT TO GIVE HIS LEGAL BLESSING TO THE ACT OF COMMITTING FRAUD, YOUR HONOR WOULD NOT BLESS THEM AND GIVE ELIOT PROTECTION.] Despite Eliot's refusal to open up trust accounts for your boys, Ted has paid necessities for your family (since the Oppenheimer trusts were depleted by your actions) to keep the house running.” Those Welfare Payments were made without a Court Order and any language to release them from anything.

78. That further, Theodore claimed in a letter to Candice dated December 26, 2013,

Because of my concern stemming from my fiduciary role as well as the fact that Joshua, Jacob and Danny are my nephews, Robert Spallina and I agreed that I would pay some of the bills for your family that I deemed necessary for their well being, on a temporary basis. For example, I have paid for such things as health insurance, electric, water, phones and Internet. I have made these payments from the Shirley Trust account and I will deduct these amounts from any distributions that are ultimately made to the three boys' trusts.

This statement shows that Alan and Theodore could have simply made the payments to St.

Andrews school and then deducted them later after the Court determined the true and proper

beneficiaries and only after review of ALL the dispositive documents by forensic analysis and more but they chose instead to try a last attempt to use Eliot's children's schooling and futures to force him to take the illegal and improper distributions the way Theodore and his sisters Pam, Lisa and Jill knowingly did already with the help of Tescher, Spallina and Alan et al.

79. That Theodore and Alan's attempt to further again extort Eliot this time by using his children's schooling as leverage and force him to either take the distributions illegally or else his children would be forced out of school has been brought to this Court's attention in a yet another unheard pleading filed by Eliot, see

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140804EMERGENCYMOTIONFORINTERIMDISTRIBUTIONS.pdf>, which further defines the continued and ongoing Pattern and Practice of Fraud and Extortion being committed by Alan and Theodore against Eliot, his three minor children and lovely wife Candice.

80. This new and exotic extortive attempt began when Alan tried to trick Eliot into a meeting to extort him to take KNOWINGLY ILLEGAL DISTRIBUTIONS TO IMPROPER PARTIES in a meeting Alan tries to claim is about a settlement and Alan tries to claim nothing in the meeting can be used in anyway with any party, in efforts to keep the extortion a secret from the Courts and others.

81. The meeting was only to get a yes or no on if the ALLEGED Trustee Theodore would make the Welfare Payments as he has done in the past as provided for the in the ALLEGED trust he operates under and NOTHING TO DO WITH SETTLING ANY CLAIMS.

82. That Alan in fact cites to Eliot a law that he has knowingly fabricated by adding language to the law to make it appear that the meeting could not be used in any way in Court or elsewhere



because he claims it is cloaked as a settlement conference and hoped Eliot as a Pro Se litigant would not fact check his legal citing and would comply with Alan's misrepresented law and be forced to keep the extortionary attempt in the dark.

83. That Alan's email to Eliot clearly shows that despite knowing that Shirley's beneficiaries were altered through illegal activity and despite the fact that the beneficiaries are now not known due to the fraud (again costing everyone a fortune to defend and expose), Alan tries to use Eliot's children's school tuition to extort him to take the monies illegally or else the children will be thrown out of school. Alan in his letter even claims he is aware the beneficiaries are not known at this time but in a last ditch effort to get Eliot to partake in illegal distributions to non legally qualified beneficiaries, he picks up where Spallina and Tescher's extortion of Eliot left off, as he demands Eliot take "distributions" to knowing improper beneficiaries, instead of, as Eliot suggested, making them as Welfare Payment until the Court rules on who the ultimate beneficiaries will be and then deduct it from those parties distributions, either Eliot or his children.
84. That all this renewed extortive effort to have Eliot in desperation with a proverbial "gun to the head" of he and his wife to keep their kids in the school they were put in by Eliot's parents and paid for by them for virtually their entire lives, once again force him to accept "distributions" illegally to gain an implied consent that Eliot too took illegal distributions as Theodore and others did and further participate in the crime leaving him perhaps no recourse against those who already took KNOWINGLY improper and illegal distributions. This is the same tactic that was tried by Theodore, Tescher, Spallina and Manceri several times before, using the children in several of the attempts as hostage, until they finally admitted to altering trust documents to make

the illegal distributions to improper parties and more and after lying to the Court and others for months until they finally confessed.

85. That finally, it was just learned from review of the production documents turned over by Tescher and Spallina upon their resignations and by Order of this Court that the school contract for the 2012-2013 was directly with Simon and should have been a liability of the Estate and instead these costs were shifted to Eliot's children to pay by Spallina and Tescher, which is yet another fraud that is more fully expanded on in the Counter Complaint filed in the related Oppenheimer v. Eliot and Candice Bernstein lawsuit now before this Court.
86. That both Theodore and Alan have profited and benefited from aiding and abetting in the advancement of the fraudulent schemes to enrich themselves and primarily Theodore at the expense of Beneficiaries, Interested Parties and Creditors from excessive billing, self-dealing and fraudulent transfers.
87. That Theodore, his sisters Pamela, Jill and Lisa, all knew that documents had been fraudulently notarized and forged in their names and in their deceased father's name POST MORTEM at least from May 2013 when Eliot first presented the evidence to the Court in his initial Petition to this Court and served it upon them and for months none of them notified authorities and instead began a rush to pillage and liquidate and walk off with assets in both Simon and Shirley's Estates and Trusts.
88. That despite knowing of these crimes, Theodore and the others who took the "distributions" failed to take any steps as alleged fiduciaries to report these crimes to the authorities or this Court, instead rushing to take the knowingly improper "distributions." Theodore only admitted he knew of the frauds to PBSO in January of 2014 when he was hauled in for questioning in

direct contradiction to the truth, which is he knew at least in May of 2013 when Eliot served the evidence. In fact, Theodore and his sisters then attempted to gloss over and pardon the criminal acts of proven Fraudulent Notarizations and admitted Forgeries of the arrested and convicted Legal Assistant/Notary Public of Tescher and Spallina, Kimberly Moran et al. by submitting further fraudulent waivers to this Court.

89. That from the time Theodore, Spallina, Manceri, Tescher and Alan knew of the allegations alleging the fraudulent distributions and a mass of other crimes launched against them, Theodore et al. began a further aggressive and forceful campaign of terror and retribution against Eliot, his three minor children and lovely wife Candice, in efforts to stop them from bringing these criminal acts and civil torts they partook in to Justice.

**CONTINUED MISREPRESENTATIONS, MISTATEMENTS OF FACTS AND WASTE, FRAUD AND ABUSE IN THE ADMINISTRATION OF THE ESTATES AND TRUSTS**

90. The court needs to act on its own Motion to Remove Theodore as Trustee and review those petitions and motions filed by Eliot and the Creditor Stansbury to stop these continuing and ongoing Frauds on the Court, again being committed by Fiduciaries and Officers of this Court under the Court's tutelage who are directly involved in and directly benefited from the prior frauds! This Court needs to put a stop this RECKLESS, WANTON and GROSSLY NEGLIGENT disregard for law, this Court, the Beneficiaries and Creditors and begin to prevent the ongoing attempts to cover up their crimes through further fraud, waste and abuse of process.
91. That this Court needs to stop them from committing additional new crimes instantly, including the new alleged thefts of Personal Properties (discussed further herein and in prior unheard Motions and Petitions) and round up and rid the Court of every single person who was involved

in any way with the prior fraudulent activity, as is required by law when Fraud Upon the Court has been proven. This Court needs to clean up its own Court and provide for fair and impartial due process free of the fraudsters who operate cloaked as Officers and Fiduciaries of this Court and not wait for Stansbury or Eliot to file further Motions and Petitions to have him removed, IT IS THIS COURTS DUTY. Every day this Court leaves these reckless and unlawful Fiduciaries and Officers of this Court in place, is a day of suffering, damages and abusive costs for the already injured parties.

92. That the Court should note that all of these PROVEN AND ADMITTED FRAUDS on this Court, the Beneficiaries and the Interested Parties have ALL been committed through legal process abuse that allowed for illegal seizure of Dominion and Control of the Estates committed by OFFICERS OF THIS COURT and FIDUCIARIES, using this Court as the host for the CRIMES and ALL of these parties were APPROVED BY YOUR HONOR.
93. That despite knowing these facts, this Court continues to allow those involved and under investigation to now continue to act in Fiducial and Legal capacities, despite KNOWING THESE FACTS and knowing that under law they should have already resigned voluntary when requested and under law they should be removed by this Court on the Court's own Motion. These problems occurred and continue to occur in this Court and it is this Court's duty under law to clean up the mess it is responsible for, not wait for Eliot or others to do this.
94. That Alan and Theodore now pick up and continue the Pattern and Practice of Harassment, Extortion, ATTEMPTED NEW Illegal Distributions of Estate and Trust funds, Fraud on the Court, Fraud on Beneficiaries, Fraud on Creditors and more committed by Theodore and the prior PR's, Trustees and Counsel in the Estate and Trusts of Simon and Shirley, Tescher and

Spallina, who have been removed from these matters after MASSIVE amount of time, effort and costs to Petitioner and others to have them removed.

95. That Theodore has brought ALL of these people who have participated in all these fraudulent activities into the Estates and Trusts of Simon and Shirley who have all BLED THE ESTATE of hundreds of thousands in legal fees already. Where Theodore and his cohorts have benefited and continue to benefit at the expense of everyone else involved. Again, THIS COURT NEEDS TO PUT AN END TO THE FRAUDS BEING COMMITTED BY OFFICERS OF THE COURT and remove them on the Court's own motion as allowed for in instances such as these, especially where the main frauds have all been effectuated by multiple Frauds on this Court. The only remedy at law is removal, award of damages, sanctions and more.
96. That the Court can no longer look the other way or wait for Pro Se Eliot to file proper legal pleadings and have hearings where PROHIBITED pleadings are filed fraudulently and argued wasting everyone's time and simply remove those who should voluntarily withdraw. Where the Court has legal obligations to act on its own motion to stop FRAUD, WASTE and ABUSE especially in its own Court committed by Officers of the Court.
97. That this Court allowing Theodore and Alan to continue to act as fiduciaries and counsel before the Court can only be viewed by the victims as aiding and abetting the crimes and attempting to cover up the crimes that took place in this Court, especially where all these felony crimes occurred in this Court by Officers and Fiduciaries that are under the tutelage of this Court and Your Honor. That Your Honor has a duty to protect the beneficiaries and interested parties and has failed to follow law and judicial canons to protect them.
98. That Theodore and Alan are violating a Court Order that involves now attempting to further and

cover up the crime of THEFT, CONVERSION AND COMINGLING OF ESTATE ASSETS, in fact FELONY MISCONDUCT IN VIOLATING THE COURT ORDER as pled in Eliot Motion in Response to Theodore's Contempt Motion filed with this Court and yet unheard.

99. That Alan and his client Theodore have failed to follow the Court's Order, see Exhibit 4 – Court Order for Inspection of Residence and Accounting for Personal Property, for an re-inventorying of the Estate assets of Simon, after learning in a hearing before this Court that statements made by Theodore and Alan revealed that Estate assets were missing and unaccounted for. Where it appears that Theodore and others may have stolen off with these personal properties of Simon and then lied to this Court about where they had gone.
100. That the Court was told in the hearing that furnishings of Simon's estate that were held in a Condominium held in Shirley's Trust were moved to Simon's other residence when the Condominium was sold. Despite Theodore and Alan's claim that the furniture was moved to Simon's other residence, no records of such transaction were turned over by Spallina and Tescher who were the prior responsible parties for the personal properties and the items appear in the Final Accounting submitted upon their termination in these proceedings.
101. That no mention was made in the fraudulent estate Final Accounting prepared by Tescher and Spallina after their resignations and withdrawals that were turned over by Order of this Court that these personal property assets were disposed of in any way. The fact that the items were missing and Theodore who is alleged to be the Trustee responsible for the items could not state where they were are what led to the Court Order to verify that the assets were where they now stated. Spallina and Tescher were responsible for the items of Simon's estates and should be sanctioned.
102. That Theodore, alleging to be the Trustee of Shirley's Trust, knows that he is responsible for the

marshalling of those assets of Simon's Estate contained in Condominium, as he was informed of this obligation by Spallina in a letter dated September 14, 2012 (1 day after Simon passed) whereby it states,

On a separate note, as discussed, you are designated as the successor trustee to Si on your mother's trust document. In this regard, both the residence and the beach condo were titled in the name of her trust. **All of the contents in both places are the subject of your father's estate, over which Don and I have been named as Personal Representatives. Please make sure that both homes are secure and that the contents contained therein are protected. As a fiduciary of your mother's trust and during the period of administration of your father's estate, you owe a duty to the ultimate beneficiaries to protect the assets...**[emphasis added] It may be helpful to take pictures and even create an inventory of the contents so that when there is a division of the assets among the family there are no issues.

103. That after telling the Court that the furniture was moved to Simon's other residence and then knowing they were again going to be busted if the Court Order was complied with as the furniture is not there, Donald Tescher in his deposition on July 09, 2014, ordered by Alan (who throughout the deposition objected and represented Tescher several times), see Tescher Deposition Regarding Furniture excerpt and partial transcript and exhibits at <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140709TescherDepositionAndExhibits.pdf>, fully incorporated by reference herein, then claimed and Alan chimed in now in direct contradiction to what was told to the Court that the contents were now sold with the Condominium without any accounting for the properties to the Beneficiaries or anyone or even including this information in the shoddy Final Accounting Tescher and Spallina produced. Where further evidence will prove that this claim is also untrue, as the Condominium was sold without any personal properties listed as part of the transaction.

104. That when the lies they told to the Court that the furniture and other properties were moved to the



other residence did not hold up as they themselves seemed confused at the hearing, the Order for the Inspection was granted by Your Honor. They then claimed that the Court ORDER could not be complied with because the items were boxed in the garage and this somehow made them unaccountable for, then they were sold without any accounting and with each claim being proven false they have continued to try and make up new explanations for where the missing items went and continue to violate the Court Ordered Inspection.

105. That it is alleged that Theodore took the possessions to his own second home and then sold that home after selling the Condominium with the contents owned by Simon's Estate in them as part of a further elaborate scheme to steal millions of dollars of assets and/or Theodore disposed of these properties in other ways for his own personal gain, as beneficiaries were NOT notified of any such sale of these items. Again, this Court and everyone else involved are wasting precious time, effort and monies to expose these nonstop frauds and thefts, all again being perpetrated by Officers of this Court who were directly involved in the prior frauds, who again appear to have lied to this Court about Estate assets and now fail to follow the Court's Order to cover up and further their crimes.

106. That Eliot will be filing yet another criminal complaint for this GRANDTHEFT of the personal properties estimated worth millions and again will have to recruit law enforcement time and efforts to hunt down the missing items and contact all those parties involved in the transactions that Theodore, Alan and others did regarding the ILLEGAL sale of the Condominium and the subsequent missing personal properties of Simon's Estate.

107. That other crimes alleged and under investigation regarding the sale of the Condominium include Theodore signing documents as the PR of Shirley's Estate to make the sale complete when he

was not appointed as the Personal Representative at the time he made the sale and signed the documents in that fiduciary capacity knowingly and with scienter.

108. That Theodore at the time of the sale knew the Estate of his mother had been closed illegally through a Fraud on the Court using his deceased father as PR to close the Estate and knew no Successor PR was ever appointed by this Court due to that Fraud and thus knew he was signing the tax documents for the sale illegally. Again, the closing of the Estate of Shirley was achieved through fraud with a DEAD Personal Representative, Simon, acting as if alive to close his deceased wife's Estate, which was all part of an elaborate FRAUD ON THE COURT by OFFICERS of the Court that has already been proven in this Court.
109. That this Court will remember in the September 13, 2013 hearing that Your Honor upon learning of this Fraud on the Court and Fraud on the Beneficiaries using a dead PR to close an estate as if alive to then attempt to enact fraudulent changes to the beneficiaries stated that you had enough evidence at that time, almost a year ago, to read Theodore, Spallina and Tescher their Miranda rights, see Exhibit 2 and perhaps now it is that time for the reading of these Miranda Rights to protect the Estates and Trusts and prevent further criminal activity by Officers and Fiduciaries of this Court.
110. That Your Honor will also remember that it was proven that POST MORTEM FORGED documents for Simon were tendered to this Court by Spallina and Tescher as part of the elaborate scheme to change beneficiaries by Theodore's counsel that directly benefited Theodore the most, to the disadvantage of other beneficiaries.
111. That upon learning of these facts, the Court issued a second statement in the September 13, 2013 hearing that it had enough to read them their Miranda warnings and again the Court instead let

them walk out the door and continue to practice law, continue to act as fiduciaries and counsel, allowed Successor Criminals to be anointed exposing all parties involved and the general public to these lawyers who have committed felony crimes in these proceedings and without sanctions or required reporting of their crimes as required under Judicial Canons and law, as of yet.

112. That further in the September 13, 2013 hearing it was further stated by Spallina that Moran's forgeries and fraudulent notarizations were a one off event and he knew of nothing else wrong in the Estates and Trusts, while knowing and CONCEALING FROM THE COURT that he and his partner Tescher had committed yet another FELONY CRIME by FRAUDULENTLY ALTERING TRUST documents that they failed to notify the Court of at that time they claimed they knew nothing else wrong and therefore bold face lied to the Court.
113. That Spallina, only later, in January 2014, three months after the hearing and wasting everyone's time and monies in the hundreds of thousands in that time period, then confessed to Palm Beach County Sheriff investigators that he and his partner Tescher had known they could not change the Shirley Trust Beneficiary Class (although Alan will now try and con everyone that he can do that in his new Motion for Construction) and together Spallina and Tescher had discussed their options and determined they would alter documents to perpetrate the fraud and Spallina then admitted that he ALTERED TRUST DOCUMENTS with scienter and sent them to various parties.
114. That again Spallina's confession only came when he and Tescher knew they were busted from Eliot's Pro Se pleadings and Eliot and Candice's excellent investigatory efforts that exposed their crimes and led to ongoing investigations of them and Theodore and Alan.
115. That again, the confession came only after everyone, including this Court, the Palm Beach

County Sheriff's office, the Governor Rick Scott's Notary Public Division, the State Attorney, the Beneficiaries and Interested Parties, wasted hundreds of thousands of dollars having to force the confessions. That Eliot questions the truthfulness of the confessions as well, as it appears that it was carefully crafted and fraught with further perjured statements to try and cover up their crime as best they could.

116. That Eliot again apologizes to the Court for having to file a lengthy pleading to unravel the web of lies and deceit in Alan's TOXIC, VEXATIOUS, FRIVOLOUS, EXTORTIVE, PROHIBITED, COSTLY and MISLEADING pleading that is further an abuse of process but there are just so many false statements and attempts to twist things around by these Successor Criminals to somehow, now that they are all busted, make Eliot, the victim of their crimes already proven and admitted, look like the bad guy to the Court.
117. That it takes a lot of time to explain and unravel each of these schemes to this Court and unwind the lies in their pleadings and Eliot is doing the best he can Pro Se to comport with the statutes and rules he is not schooled in and thus admits his pleadings may fall short but Eliot has ALWAYS HAS TOLD THE TRUTH TO THIS COURT DESPITE HOW MANY PAGES IT TAKES AND HAS NEVER PUT FORTH ANY FORGED, FRADULENT, FRAUDULENTLY NOTARIZED DOCUMENTS or lied to the Court, nor has he violated any criminal codes or civil torts in these proceedings, unlike Theodore, Spallina, Tescher, Alan, Manceri, Pankauski et al..
118. That again Alan and Theodore and their cohorts costing everyone time and money on TOXIC, VEXATIOUS, FRIVOLOUS, EXTORTIVE, MISLEADING, CRUEL and COSTLY pleadings that abuse process, and Eliot, despite his lengthy, yet poetically just pleadings that may be legally faulty as expected in Pro Se pleadings, has put forth nothing abusive, unless this Court considers

the length of truth abusive.

119. That if the Court wishes to stop the poetic pleadings of Eliot, the Court can simply, again on its own motion under the circumstances, demand that the Estates and Trusts provide funds for Eliot to retain counsel, as certainly the ALLEGED Fiduciaries and Counsel in these matters (excluding Brown and O'Connell) have already wasted fortunes on legal fees to further their criminal misconduct. Where these monies of the Estates and Trusts are either Eliot's or his children's and Theodore, Spallina, Tescher, Alan, Manceri and Pankauski have used these funds of Eliot's and his children for EXCESSIVE AND ABUSIVE legal fees to execute their crimes and then more Estate and Trust funds used to further protect and shield themselves from prosecution of their crimes.
120. That Theodore and his cohorts have nothing to lose spending the Trusts and Estate funds recklessly and illegally, which are not theirs and deny the victims counsel, which is provided for in the very documents they operate under to protect the Beneficiaries. Certainly, having Eliot and his children represented by separate counsel due to the Conflicts created through the frauds that make Eliot and his children in conflict for the proceeds, caused by Tescher and Spallina et al. with scienter will not only benefit this Court but further protect, the Estates, Trusts, Beneficiaries, Interested Parties and Creditors.
121. That there have been serious breaches of Trust already proven and many more alleged and under investigation, all involving Theodore Bernstein and Alan as central parties in the misconducts.
122. That it has been evidenced herein and in prior pleadings filed that Theodore is unfit and unwilling to follow probate and trust Rules and Statutes.
123. That it has been evidenced that Theodore cannot act as the Trustee in the Simon Trust as he is

expressly prohibited and this may be even further fraud on this Court, the Beneficiaries and Interested Parties.

124. That it has been evidenced herein and in prior pleadings filed that Theodore has persistently failed as alleged Trustee to administer the Trust in Simon and Shirley's Trusts legally.
125. That Theodore and Alan are both in conflict and have adverse interests in these matters, especially in regard to Eliot.
126. That the Court removing Theodore instantly from ALL fiduciary capacities in the Estates and Trusts of Simon and Shirley for very serious breaches of fiduciary duties and alleged criminal misconduct from his direct participation in the prior frauds committed in this Court and now causing continued torts and alleged criminal misconduct regarding assets of the Estate causing continuing and ongoing harms to Beneficiaries, Interested Parties and Creditors.
127. That there has been substantial change of circumstances after discovering criminal misconduct and breaches of fiduciary duties that Theodore is directly involved in and benefited from and a continued Pattern and Practice of newly alleged criminal misconduct under ongoing investigations that justify the Court's instant removal of Theodore to protect the assets of the Estates and Trusts of Simon and Shirley to prevent further criminal acts and civil torts from occurring that damage the Beneficiaries, Interested Parties and Creditors further.
128. That the Court should find that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable co-trustee or successor trustee is available.
129. That for all of these reasons stated herein, this Court must act as legally obligated on its own motion under 736.0706 to remove Theodore and Alan from ALL Fiduciary and Legal capacities

they have in both the Estates and Trusts of Simon and Shirley, in order to remove the conflicts and adverse interests and stop further violations of, Attorney Conduct Codes, Judicial Canons, State and Federal Law that are being committed by their continued allowance by this Court to remain as Fiduciaries and Counsel before this Court and continue acting as OFFICERS OF THIS COURT. Their continued actions are wasting estate assets due to their fraudulent misadministration and attempts to cover up their own and their friends and business associates prior crimes with one lie after another to this Court and the Beneficiaries, Interested Parties and Creditors.

130. That the remedies to cure the damages from the prior Frauds In and Upon this Court, the Beneficiaries, Interested Parties and Creditors, would mandate now that the Trustees and Fiduciaries sue themselves and when this type of situation arises the only remedy at law is to remove them from this irrefutable conflict of interest.
131. That the Fiduciaries and Counsel thus far in these matters have all (except Benjamin Brown and Brian O'Connell) acted in their own best interests, basking in ill-gotten legal and trustee fees, instead of acting the best interests of the Beneficiaries and Creditors and it is expected for them to continue misusing trust and estate assets to now protect themselves from further prosecution and therefore the Court must instantly remove them.
132. That failure of the Court to remove ALL tentacles from these proceedings of those who participated, profited and benefited from the prior CRIMINAL MISCONDUCT and FRAUD COMMITTED BY OFFICERS OF THIS COURT THAT HAS OCCURRED IN AND UPON THIS COURT, the BENEFICIARIES, INTERESTED PARTIES AND CREDITORS violates the sanctity and decorum of the Court, violates law and judicial canons and denies fair and



impartial due process and procedure under law to all the other parties and allows for continuing and ongoing crimes to be committed.

133. That Eliot demands the Court take Judicial Notice of the criminal misconduct and follow its own rules and act on its own motions to restore law and order to the Court and impart fair and impartial due process to all parties and begin by STRIKING all TOXIC, FRIVOLOUS, VEXATIOUS and MISLEADING filings of the Fiduciaries and Counsel acting as OFFICERS OF THIS COURT and Remove these fiduciaries and counsel in order to stop the further fraud, waste and abuse by those Officers of this Court and alleged Fiduciary, who knowingly and with scienter continue to act in violation of Probate and Trust Rules and Statutes, despite the Court's knowledge of their participation in the prior frauds, their overwhelming conflicts of interests and adverse interests that all legally preclude their continued involvement as Fiduciaries and Counsel.
134. That Theodore and Alan wholly ignore their duties to withdraw voluntarily due to their lack of qualification and continue to act despite repeated requests to withdraw for multitudes of legally valid reasons. These continued actions further misuse Estate and Trusts assets and are accruing damages to the Beneficiaries, Interested Parties and Creditors from the Court allowing this continuing Pattern and Practice of Fraud, Waste and Abuse started by the prior fiduciaries and counsel who worked together with Theodore and Alan to perpetrate the prior frauds from the start and again this will require the Beneficiaries to ultimately sue them all for damages. Certainly if they will not voluntarily withdraw knowing they are unfit to act as fiduciaries and officers of this Court, then they will not sue themselves either and thus this Court must smack down the gauntlet and forcefully and aggressively remove them.

135. That finally, Eliot, his lovely wife Candice and their three angelic boys have been tormented, lied

to, defrauded, extorted and abused through legal process by these Officers of this Court and their crimes to deny, delay, stymie and steal off with assets of Eliot and his children's due to them as inheritance and deny them through further frauds to deny them entirely their inheritances, jeopardizing and exposing the Estates and Trusts to more and more risks from their actions, as they lack to administer these legally and this has caused major damages, including directly to THREE MINOR CHILDREN with intent, including withholding the KIA, failing to provide trust assets used for education, theft of millions of dollars of assets, failure to account under law, removing health insurance etc. that all border on child abuse by these alleged Fiduciaries and Officers of this Court and now threaten the minor children's school futures and more.

136. That Eliot and his family have refused to participate in knowingly fraudulent distributions to improper parties, while those improper parties have stolen off, converted and comingled assets they took knowingly improperly and illegally with scienter and now use Eliot and his children's family's inheritance monies to line their pockets and harass and extort Eliot in prayers that these criminal tactics will force Eliot to participate in illegal "DISTRIBUTIONS" and attempt to gain under FL Statute 736.1012 consent from Eliot through his participation to take "distributions" under great pressure and duress to attempt to keep his children in school as provided for under the Terms of the Trusts.

**Beneficiary's consent, release, or ratification.—A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:**

- (1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or
- (2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material

facts relating to the breach.

This all done despite the fact that (1) above negates any such extorted consent that may have gained. Despite that fact, Eliot will not commit a violation of law knowingly and also violate one or more of the Ten Commandments and participate in their crimes under ANY circumstances, except with this Court's blessing to participate in such fraud that the Court would not give in the September 13, 2013 hearing and so Eliot doubts the Court now will with all of this new information of criminal misconduct unfolding since that hearing decide that Eliot should participate in knowingly  
**FRAUDULENT ILLEGAL DISTRIBUTIONS TO ADMITTED UNKNOWN BENEFICIARIES  
AT THIS TIME.**

137. That until Eliot and others can review for further evidence of **FRAUD AND FORGERY**, **ALL** the records, court records, dispositive and other documents, accountings, inventories and re-inventory **ALL** assets of the Estates and Trusts of Shirley and Simon, this Court must provide **EMERGENCY WELFARE PAYMENTS TO ELIOT AND HIS FAMILY TO BE DEDUCTED LATER FROM HIS OR HIS CHILDREN INHERITANCES** when the Court determines the Beneficiaries or add them to **THE CONTINUING AND TOLLING DAMAGES ASSESSED TO THE RESPONSIBLE PARTIES OF THESE CRIMES.**

138. That this Court should and must act to protect Eliot and his family who are victims of the past and present Fiduciaries and their Counsel, who all took part and benefited from the prior Willful, Wanton, Reckless, Criminal and Egregious Acts of Bad Faith committed with Unclean Hands that again were done by Officers of this Court Under Your Direct Jurisdiction and in light of the Court's knowledge of these past and ongoing Crimes and Extortion after Extortion of Eliot to either take the improper proceeds and lose rights to claim damages against others by participating

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN

Page 53 of 68

Thursday, August 28, 2014

in the knowingly fraudulent activity or watch his family be starved out through fraud after fraud by Fiduciaries approved by Your Honor, as now proven, admitted and evidenced in Eliot's pleadings since May 2013, it is time this Court act to release WELFARE PAYMENTS DUE TO THE INTENTIONAL INTERFERENCE WITH INHERITANCE THAT HAS DELAYED DISTRIBUTION until this Court can determine beneficiaries to make distributions legally to and until all of this grotesque Fraud can be sorted out due to CRIMINAL MISCONDUCT BY OFFICERS OF THIS COURT.

139. That since this Court is also partially responsible for these continued and ongoing damages caused by its Officers, damages inflicted by the delay and interference of life sustaining inheritances that were intended to be distributed to Eliot and his family over four years ago, as were the desires and wishes of both Simon and Shirley, due to special circumstances already defined in Eliot's initial pleadings with the Court.
140. The Extortions first started with Theodore, his former counsel, the former Fiduciaries and Counsel of the Estates and Trusts, seizing companies that were left to Eliot's families alone, acting with no legal authority and taking over a company responsible for paying the bills of Eliot's household for over 7 years while Simon and Shirley were alive and where the bills were even sent to others and controlled by others. Once the illegal corporate takeover was achieved by Tescher, Spallina, Theodore, members of Oppenheimer and others, Eliot's family's basic necessities were cut off without notice repeatedly by Tescher, Spallina, Theodore and others, including but not limited to shutting off, Security Services, Homeowners Insurance (this also exposing Simon's Estate to further MAJOR RISKS), Health Insurance for the entire Family, Electricity, Phones, School Services for the minor Children, School Tuition for the children,

Utilities, Food, etc.). The company also provided income and a monthly 10-20 thousand dollar monthly stipend to cover ALL expenses of Eliot's family and this too was shut off through a combination of frauds discussed further in the Oppenheimer Counter Complaint and in prior pleadings Eliot filed, see Answer and Counter Complaint Oppenheimer (*a*)

[http://www.iviewit.tv/Simon and Shirley Estate/20140730OppenheimerAnswerAndCounter.pdf](http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140730OppenheimerAnswerAndCounter.pdf) ,

fully incorporated by reference herein.

141. That when this forced destitution or else failed to compel Eliot to participate in the fraud and take knowingly improper distributions as others had done, they next moved on to using Eliot's son's birthday gift, the KIA, as a lever to force Eliot to take distributions illegally or not get the gifted car back.
142. That when that failed, they have refused Welfare Payments as provided under the Trusts despite REPEATED requests to act even under the terms of the Alleged Documents they are touting, which are most likely fraudulent to begin with but even so they fail to act as required in the best interests of the Beneficiaries for items provided for the Beneficiaries in the terms thereunder.
143. Again, these criminal acts and breaches of duties are all being committed by the fiduciaries who are supposed to be protecting the beneficiaries as intended in the Estate plans but who are instead too busy forging, fraudulently notarizing, criminally altering trust documents, looting the Estates, committing Insurance Fraud and Bank Fraud, Fraud on this Court and Federal Court, Extorting Eliot and his family, Losing, Destroying and Suppressing Trust Documents, and more to care of the damages they are causing, even to minor children. They have even been alleged to have seized illegally and misused school trust funds of the children in yet another fraudulent scheme that Eliot's Counter Complaint in the new Oppenheimer Lawsuit more fully exposes.

144. This Court must now act to allow to remove Theodore on its own initiative due to all of the reasons so stated herein.
145. That if the Court needs further evidence or anything from Eliot to further support this motion please feel free to request any other information necessary.

Wherefore, Eliot prays this Court enter an order similar to that attached hereto.

- i. FOR REMOVAL OF PR & TRUSTEE ON THE COURT'S OWN INITIATIVE in the Estates and Trusts of Simon and Shirley Bernstein – FLORIDA TITLE XLII 736.0706;
- ii. For an order for relief under s. 736.1001(2) as may be necessary to protect the trust and estate property and protect the interests of the beneficiaries.
- iii. For all records and properties of the Theodore and all of his present and former counsel to immediately, be turned over to the care and custody of the Court until further notice.

Filed on Thursday, August 28, 2014,

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his minor three children.

**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Thursday, August 28, 2014.

Eliot Bernstein, Pro Se, Individually and as

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN

Page 56 of 68

Thursday, August 28, 2014



legal guardian on behalf of his minor three children

X

**SERVICE LIST**

RESPONDENT PERSONALLY, PROFESSIONALLY, AS A GUARDIAN AND TRUSTEE FOR MINOR/ADULT CHILDREN, AS AN ALLEGED TRUSTEE AND ALLEGED PERSONAL REPRESENTATIVE  Theodore Stuart Bernstein Life Insurance Concepts 950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487 <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a> m	RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES  Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 <a href="mailto:arose@pm-law.com">arose@pm-law.com</a> and <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a> <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a> <a href="mailto:eklein@mrachek-law.com">eklein@mrachek-law.com</a> <a href="mailto:lmrachek@mrachek-law.com">lmrachek@mrachek-law.com</a> <a href="mailto:rfitzgerald@mrachek-law.com">rfitzgerald@mrachek-law.com</a> <a href="mailto:skonopka@mrachek-law.com">skonopka@mrachek-law.com</a> <a href="mailto:dthomas@mrachek-law.com">dthomas@mrachek-law.com</a> <a href="mailto:gweiss@mrachek-law.com">gweiss@mrachek-law.com</a> <a href="mailto:jbaker@mrachek-law.com">jbaker@mrachek-law.com</a> <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a> <a href="mailto:lchristian@mrachek-law.com">lchristian@mrachek-law.com</a> <a href="mailto:telarke@mrachek-law.com">telarke@mrachek-law.com</a> <a href="mailto:gdavies@mrachek-law.com">gdavies@mrachek-law.com</a> <a href="mailto:pgillman@mrachek-law.com">pgillman@mrachek-law.com</a> <a href="mailto:dkelly@mrachek-law.com">dkelly@mrachek-law.com</a> <a href="mailto:eklein@mrachek-law.com">eklein@mrachek-law.com</a> <a href="mailto:lwilliamson@mrachek-law.com">lwilliamson@mrachek-law.com</a>	RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES  John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 <a href="mailto:courtfilings@pankauskilawfirm.com">courtfilings@pankauskilawfirm.com</a> m <a href="mailto:john@pankauskilawfirm.com">john@pankauskilawfirm.com</a>	RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM AND AS FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES  Robert L. Spallina, Esq., Teschler & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:rspallina@tescherspallina.com">rspallina@tescherspallina.com</a> m <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a> m <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a> m
---	--	---	--

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN

Page 57 of 68

Thursday, August 28, 2014



<p>RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD</p> <p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 <a href="mailto:psimon@slpcorp.com">psimon@slpcorp.com</a></p>	<p>COUNSEL FOR LIMITED APPEARANCE representing Mr. Tescher in connection with his Petition for Designation and Discharge as Co-Personal Representative of the Estate of Simon L. Bernstein, deceased.</p> <p>Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 <a href="mailto:ijb@ijblegal.com">ijb@ijblegal.com</a> <a href="mailto:martin@kolawyers.com">martin@kolawyers.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and FORMER WITHDRAWN COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES, NO NOTICES OF APPEARANCES</p> <p>Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 <a href="mailto:mrmlaw@comcast.net">mrmlaw@comcast.net</a> <a href="mailto:mrmlaw1@gmail.com">mrmlaw1@gmail.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM AND AS FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Donald Tescher, Esq., Tescher &amp; Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:dteschert@tescherspallina.com">dteschert@tescherspallina.com</a> <a href="mailto:dteschert@tescherspallina.com">dteschert@tescherspallina.com</a> <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a> <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a></p>
<p>RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD</p> <p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>COUNSEL TO CREDITOR WILLIAM STANSBURY</p> <p>Peter Feaman, Esquire Peter M. Feaman, P.A. 3615 Boynton Beach Blvd. Boynton Beach, FL 33436 <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a> <a href="mailto:service@feamanlaw.com">service@feamanlaw.com</a> <a href="mailto:mkoskey@feamanlaw.com">mkoskey@feamanlaw.com</a></p>	<p>COURT APPROVED CURATOR TO REPLACE THE REMOVED FORMER PERSONAL REPRESENTATIVES/CO-TRUSTEES/COUNSEL TO THEMSELVES AS FIDUCIARIES TESCHER AND SPALLINA</p> <p>Benjamin Brown, Esq., Thornton B Henry, Esq., and Peter Matwiczky Matwiczky &amp; Brown, LLP 625 No. Flagler Drive Suite 401 West Palm Beach, FL 33401 <a href="mailto:bbrown@matbrolaw.com">bbrown@matbrolaw.com</a> <a href="mailto:attorneys@matbrolaw.com">attorneys@matbrolaw.com</a> <a href="mailto:bhenry@matbrolaw.com">bhenry@matbrolaw.com</a> <a href="mailto:pmatwiczky@matbrolaw.com">pmatwiczky@matbrolaw.com</a></p>	<p>COUNSEL FOR JILL IANTONI and LISA FRIEDSTEIN</p> <p>William M. Pearson, Esq. P.O. Box 1076 Miami, FL 33149 <a href="mailto:wpearsonlaw@bellsouth.net">wpearsonlaw@bellsouth.net</a></p>

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN

Page 58 of 68

Thursday, August 28, 2014

<p>RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD</p> <p>Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a> <a href="mailto:lisa@friedsteins.com">lisa@friedsteins.com</a></p>	<p>COUNSEL FOR JILL LANTONI and LISA FRIEDSTEIN</p> <p>William H. Glasko, Esq. Golden Cowan, P.A. 1734 South Dixie Highway Palmetto Bay, FL 33157 <a href="mailto:bill@palmettobaylaw.com">bill@palmettobaylaw.com</a> <a href="mailto:eservice@palmettobaylaw.com">eservice@palmettobaylaw.com</a> <a href="mailto:tmealy@gcprobatelaw.com">tmealy@gcprobatelaw.com</a></p>	<p>RESPONDENT -- ADULT CHILD</p> <p>Alexandra Bernstein 3000 Washington Blvd, Apt 424 Arlington, VA. 22201 <a href="mailto:alb07c@gmail.com">alb07c@gmail.com</a></p>	<p>RESPONDENT/ARRESTED AND CONVICTED OF FRAUD AND ADMITTED TO FORGERY OF SIX SIGNATURES. INCLUDING POST MORTEM FOR SIMON HAS HAD NOTARY PUBLIC LICENSE REVOKED BY FLORIDA GOVERNOR RICK SCOTT NOTARY PUBLIC DIVISION. *See notes</p> <p>Kimberly Moran <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a></p>
<p>RESPONDENT -- ADULT CHILD</p> <p>Eric Bernstein 2231 Bloods Grove Circle Delray Beach, FL 33445 <a href="mailto:ebenstein@lifeinsuranceconcepts.com">ebenstein@lifeinsuranceconcepts.com</a> <a href="mailto:edb07@fsu.edu">edb07@fsu.edu</a> <a href="mailto:edb07fsu@gmail.com">edb07fsu@gmail.com</a></p>	<p>RESPONDENT -- INITIALLY MINOR CHILD AND NOW ADULT CHILD</p> <p>Michael Bernstein 2231 Bloods Grove Circle Delray Beach, FL 33445 <a href="mailto:mchl_bernstein@yahoo.com">mchl_bernstein@yahoo.com</a></p>		<p>COUNSEL TO ALEXANDRA, ERIC AND MICHAEL BERNSTEIN AND MOLLY SIMON</p> <p>John P Morrissey, Esq. John P. Morrissey, P.A. 330 Clematis Street Suite 213 West Palm Beach, FL 33401 <a href="mailto:ohn@jmorrisseylaw.com">ohn@jmorrisseylaw.com</a></p>
<p>RESPONDENT -- ADULT STEPSON TO THEODORE</p> <p>Matt Logan 2231 Bloods Grove Circle Delray Beach, FL 33445 <a href="mailto:mattl89@aol.com">mattl89@aol.com</a></p>	<p>RESPONDENTS -- MINOR CHILDREN OF PETITIONER Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>	<p>RESPONDENT -- MINOR CHILD</p> <p>Julia lantoni, a Minor c/o Guy and Jill lantoni, Her Parents and Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilllantoni@gmail.com">jilllantoni@gmail.com</a></p>	
<p>RESPONDENT/REPRIMANDED BY FLORIDA GOVERNOR RICK SCOTT NOTARY PUBLIC DIVISION FOR FAILING TO NOTARIZE AN ALLEGED 2012 WILL AND TRUST OF SIMON AND SIGNING NOTARY UNDER FALSE NAME</p> <p>Lindsay Baxley aka Lindsay Giles <a href="mailto:lindsay@lifeinsuranceconcepts.com">lindsay@lifeinsuranceconcepts.com</a></p>	<p>RESPONDENT MINOR CHILDREN</p> <p>Carley &amp; Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p>	<p>RESPONDENT -- MINOR CHILD INITIALLY NOW ADULT CHILD</p> <p>Molly Simon 1731 N. Old Pueblo Drive Tucson, AZ 85745 <a href="mailto:molly.simon1203@gmail.com">molly.simon1203@gmail.com</a></p>	

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN

Page 59 of 68

Thursday, August 28, 2014

EXHIBIT 1 – ELIOT AND ALAN DISCUSSIONS REGARDING THE FAILED AGREEMENT

THAT DUE TO THE 300+ PAGES OF CORRESPONDENCES THIS EXHIBIT HAS BEEN LINKED TO A PRIVATE WEBSITE AND IS FULLY INCORPORATED BY REFERENCE HEREIN AS EXHIBIT 1 @

[WWW.IVIEWIT.TV/SIMON AND SHIRLEY ESTATE/20140820EXHIBIT1ROSEANDELIOTS EMAILS.PDF](http://WWW.IVIEWIT.TV/SIMON%20AND%20SHIRLEY%20ESTATE/20140820EXHIBIT1ROSEANDELIOTS%20EMAILS.PDF)

OR

[WWW.IVIEWIT.TV/SIMON%20AND%20SHIRLEY%20ESTATE/20140820EXHIBIT1ROSEANDELIOTS%20EMAILS.PDF](http://WWW.IVIEWIT.TV/SIMON%20AND%20SHIRLEY%20ESTATE/20140820EXHIBIT1ROSEANDELIOTS%20EMAILS.PDF)

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN  
Thursday, August 28, 2014  
EXHIBITS

EXHIBIT 2 - TRANSCRIPT OF PROCEEDINGS, PAGES 15 AND 16

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN  
Thursday, August 28, 2014  
EXHIBITS

In Re\_ The Estate of Shirley Bernstein.txt

00001

1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,  
2 IN AND FOR PALM BEACH COUNTY, FLORIDA  
3 PROBATE/GUARDIANSHIP DIVISION IY

4 CASE NO.: 502011CP000653XXXXSB

5 IN RE: THE ESTATE OF:

6 SHIRLEY BERNSTEIN,  
7 Deceased

8 \_\_\_\_\_/

9 ELIOT IVAN BERNSTEIN, PRO SE,  
10 Petitioner,

11 vs.

12

13 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
14 ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA  
15 (BOTH PERSONALLY & PROFESSIONALLY); DONALD  
16 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);  
17 THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL  
18 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH  
19 PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE  
20 DOE'S (1-5000),  
21 Respondents.

22 \_\_\_\_\_/

23 TRANSCRIPT OF PROCEEDINGS

24 BEFORE

25 THE HONORABLE MARTIN H. COLIN

26

27 South County Courthouse  
28 200 West Atlantic Avenue, Courtroom 8  
29 Delray Beach, Florida 33344

30

31 Friday, September 13, 2013  
32 1:30 p.m. - 2:15 p.m.

33

34

35

36 Stenographically Reported By:  
37 JESSICA THIBAUT

38

39 ♀

00002

1 APPEARANCES

2

3 On Behalf of the Petitioner:

4 ELIOT IVAN BERNSTEIN, PRO SE  
5 2753 NW 34th Street  
6 Boca Raton, Florida 33434

In Re\_ The Estate of Shirley Bernstein.txt

7 MR. MANCERI: That's when the order was  
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came  
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually  
13 filed it and signed the paperwork. November.  
14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's  
16 hard to get through. He does a lot of things  
17 when he's dead.

18 THE COURT: I have all of these waivers by  
19 Simon in November. He tells me Simon was dead  
20 at the time.

21 MR. MANCERI: Simon was dead at the time,  
22 your Honor. The waivers that you're talking  
23 about are waivers from the beneficiaries, I  
24 believe.

25 THE COURT: No, it's waivers of

♀

00026

1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of  
4 discharge by Simon, Simon asked that he not  
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his  
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date  
10 of death.

11 THE COURT: Well, how could that happen  
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the  
18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They

♀

00027

In Re\_ The Estate of Shirley Bernstein.txt  
1 should not have been notarized in the absentia  
2 of the people who purportedly signed them. And  
3 I'll give you the names of the other siblings,  
4 that would be Pamela, Lisa, Jill, and Ted  
5 Bernstein.

6 THE COURT: So let me tell you because I'm  
7 going to stop all of you folks because I think  
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda  
10 warnings?

11 THE COURT: Everyone of you might have to  
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a  
15 formal document filed here April 9, 2012,  
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and  
19 notarized on that same date by Kimberly. It's  
20 a waiver and it's not filed with The Court  
21 until November 19th, so the filing of it, and  
22 it says to The Court on November 19th, the  
23 undersigned, Simon Bernstein, does this, this,  
24 and this. Signed and notarized on April 9,  
25 2012. The notary said that she witnessed Simon

♀

00028

1 sign it then, and then for some reason it's not  
2 filed with The Court until after his date of  
3 death with no notice that he was dead at the  
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's  
7 enough to give you Miranda warnings. Not you  
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell  
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the  
14 transaction?

15 MR. SPALLINA: I was involved as the  
16 lawyer for the estate, yes. It did not come to  
17 my attention until Kimberly Moran came to me  
18 after she received a letter from the Governor's  
19 Office stating that they were investigating  
20 some fraudulent signatures on some waivers that  
21 were signed in connection with the closing of



EXHIBIT 3 - FEAMAN LETTER TO ALAN

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN  
Thursday, August 28, 2014  
EXHIBITS

## Eliot Ivan Bernstein

---

**From:** Peter M. Feaman <pfeaman@feamanlaw.com>  
**Sent:** Tuesday, August 5, 2014 10:42 AM  
**To:** Alan Rose  
**Cc:** William Stansbury  
**Subject:** RE: Eliot's Demand

By the way, what about the Shirley Bernstein Trust?  
We know The Aragon Condominium Unit was sold which netted over \$1,000,000.

Where is that money?

This is an expense that the trusts clearly should pay.

My client tells me there are numerous witnesses who know that it was Simon's intent to provide for the St. Andrews schooling for Eliot's children.  
Heck, the house he bought for Eliot is within walking distance of the school!

Whatever differences there are between Ted and Eliot, the grandkids should not be used as pawns. There is money to pay for the grandchildren's education. Stop playing games and get this done.

At the end of the day, an adjustment can be made if necessary, but stop putting the kids in the middle.

*Peter M. Feaman*

**PETER M. FEAMAN, P.A.**

3695 West Boynton Beach Boulevard  
Suite 9

Boynton Beach, FL 33436

Telephone: 561-734-5552

Facsimile: 561-734-5554

[www.feamanlaw.com](http://www.feamanlaw.com)

**Confidentiality:** The email message and any attachment to this email message may contain privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you receive this communication in error, please immediately notify the sender by return email and delete this message.

**From:** Alan Rose [mailto:ARose@mrachek-law.com]  
**Sent:** Tuesday, August 5, 2014 10:05 AM  
**To:** Peter M. Feaman  
**Subject:** Re: Eliot's Demand

My question is much simpler than that. Would Mr. Stansberry ever consent to Elliot receiving an interim distribution without there being sufficient assets to pay Mr. Stansberry's claim in full. In other words, would he agreed to a preferential distribution to Elliot that could potentially diminish or defeat his ability to collect on a claim, if he is successful

Alan B. Rose

On Aug 5, 2014, at 9:53, "Peter M. Feaman" <[pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)> wrote:

Until Mr. Stansbury sees an accounting of trust assets, he is not in a position to make a decision on the request.

Can you send me a trust accounting?

*Peter M. Feaman*

**PETER M. FEAMAN, P.A.**

3695 West Boynton Beach Boulevard

Suite 9

Boynton Beach, FL 33436

Telephone: 561-734-5552

Facsimile: 561-734-5554

[www.feamanlaw.com](http://www.feamanlaw.com)

**Confidentiality:** The email message and any attachment to this email message may contain privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you receive this communication in error, please immediately notify the sender by return email and delete this message.

---

**From:** Alan Rose [<mailto:ARose@mrachek-law.com>]

**Sent:** Tuesday, August 5, 2014 9:02 AM

**To:** Peter M. Feaman

**Subject:** Eliot's Demand

Eliot has demanded an interim payment from the Simon Bernstein Trust or Estate.

Based upon the facts as I understand them, there is not more that enough money in the Estate or Trust than the amount of the claim by Mr. Stansbury, and indeed, it appears that there is substantially less than needed to do so should Mr. Stansbury prevail.

Absent Mr. Stansbury's consent to an interim distribution to Eliot, there is no point in anyone (including the new successor PR) considering the request as from the assets of Simon's Trust or Estate.

Please advise asap if Mr. Stansbury would consent to a payment of +/- \$125,000 to St. Andrews School for Eliot's children's three private school tuitions.

Thanks

Alan B. Rose, Esq.

[arose@Mrachek-Law.com](mailto:arose@Mrachek-Law.com)

561.355.6991

<image001.jpg>

505 South Flagler Drive

Suite 600

West Palm Beach, Florida 33401

561.655.2250 Phone  
561.655.5537 Fax

**CONFIDENTIALITY NOTE:** THE INFORMATION CONTAINED IN THIS TRANSMISSION IS LEGALLY PRIVILEGED AND CONFIDENTIAL, INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVE A COPY OF THIS COMMUNICATION IN ERROR, PLEASE **IMMEDIATELY** (1) REPLY BY E-MAIL TO US, AND (2) DELETE THIS MESSAGE.

**TAX DISCLOSURE NOTE:** To ensure compliance with requirements imposed by the Internal Revenue Service (Circular 230), we inform and advise you that any tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding penalties that may be imposed under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transactions or matters addressed herein.

If there any documents attached to this email with the suffix .pdf, those documents are in Adobe PDF format. If you have difficulty viewing these attachments, you may need to download the free version of Adobe Acrobat Reader, available at: <http://www.adobe.com>



EXHIBIT 4 – COURT ORDER FOR INSPECTION OF RESIDENCE AND ACCOUNTING FOR PERSONAL  
PROPERTY



AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN  
Thursday, August 28, 2014  
EXHIBITS

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM  
BEACH COUNTY, FLORIDA

PROBATE DIVISION  
CASE NO. 5021012CP004391XXXXSB

IN RE: ESTATE OF SIMON L. BERNSTEIN  
\_\_\_\_\_ /

**ORDER ON CURATOR'S MOTION TO INSPECT AND TAKE POSSESSION OF  
ESTATE TANGIBLE PERSONAL PROPERTY**

THIS MATTER came before the Court on the Curator's Motion to Inspect and Take Possession of Estate Tangible Personal Property dated June 10, 2014 ("Motion"), the Court having reviewed the Motion, and the Court being otherwise fully advised in the premises, it is hereby:

ORDERED and ADJUDGED as follows:

The Motion is granted in part. Curator is authorized and directed to use Estate funds to retain Robert Hittel in order to inspect the tangible personal property at described on the January 22, 2013 Fair Market Value Appraisal of the Personal Property of Simon L. Bernstein (effective date September 13, 2012) ("Appraisal") located at 7020 Lions Head Lane, Boca Raton, FL ("House") and prepare a written report regarding whether such property is located at the House and its condition (if different than described on the Appraisal). The Court defers decision on the

remainder of the Motion. *Mr. Hittel's fee shall not exceed \$500.00,*

*Ted Bernstein and Eliot Bernstein may be present on the day Mr. Hittel conducts his inspection, but may not enter the house while Mr. Hittel conducts such inspection.*

DONE AND ORDERED in Chambers, Delray Beach, Palm Beach County, Florida, on  
June \_\_\_\_\_, 2014.

**SIGNED & DATED**

**JUN 19 2014**

**MARTIN H. COLIN  
CIRCUIT JUDGE**

\_\_\_\_\_  
Circuit Court Judge

Copies furnished to the parties on the attached service list

**SERVICE LIST**

Estate of Simon L. Bernstein  
Palm Beach County Case No. 502012CP004391XXXXSB


Max Friedstein 2142 Churchill Lane Highland Park, IL 60035	Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 <a href="mailto:arose@pm-law.com">arose@pm-law.com</a>	John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 <a href="mailto:john@PankauskiLawfirm.com">john@PankauskiLawfirm.com</a>	Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a>
Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a>	Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 <a href="mailto:ijb@ijblegal.com">ijb@ijblegal.com</a>	Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 210 I Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a>	Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>
Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a>	Peter Feaman, Esquire Peter M. Feaman, P.A. 3615 Boynton Beach Blvd. Boynton Beach, FL 33436 <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a>	Eliot Bernstein 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>	John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>
Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a>	William H. Glasko, Esq. Golden Cowan, P.A. 1734 South Dixie Highway Palmetto Bay, FL 33157 <a href="mailto:bill@palmettobaylaw.com">bill@palmettobaylaw.com</a>		



EXHIBIT 5 – FURTHER DISCUSSION BETWEEN ALAN AND ELIOT REGARDING NOTIFYING COURT OF  
IMPROPER AND MISTATED SIGNED ORDER

THAT DUE TO THE 300+ PAGES OF CORRESPONDENCES THIS EXHIBIT HAS BEEN LINKED TO A  
PRIVATE WEBSITE AND IS FULLY INCORPORATED BY REFERENCE HEREIN AS EXHIBIT 5 @

[HTTP://WWW.IVIEWIT.TV/SIMON%20AND%20SHIRLEY%20ESTATE/ROSE%20EMAIL%20RE%20EXTORTION%20OF%20ELIOT.PDF](http://www.IVIEWIT.TV/SIMON%20AND%20SHIRLEY%20ESTATE/ROSE%20EMAIL%20RE%20EXTORTION%20OF%20ELIOT.PDF)



AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN  
Thursday, August 28, 2014  
EXHIBITS

IN THE CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: THE ESTATE OF  
SIMON BERNSTEIN,  
Deceased

CASE NO. 502012CP004391XXXXSB

HON. JUDGE MARTIN H. COLIN

ELIOT IVAN BERNSTEIN, PRO SE  
PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL);  
ROBERT L. SPALLINA, ESQ., PERSONALLY;  
ROBERT L. SPALLINA, ESQ., PROFESSIONALLY;  
DONALD R. TESCHER, ESQ., PERSONALLY;  
DONALD R. TESCHER, ESQ., PROFESSIONALLY;  
THEODORE STUART BERNSTEIN, INDIVIDUALLY;  
THEODORE STUART BERNSTEIN, AS ALLEGED PERSONAL  
REPRESENTATIVE;  
THEODORE STUART BERNSTEIN, AS ALLEGED TRUSTEE  
AND SUCCESSOR TRUSTEE PERSONALLY;  
THEODORE STUART BERNSTEIN, AS ALLEGED TRUSTEE  
AND SUCCESSOR TRUSTEE, PROFESSIONALLY;  
THEODORE STUART BERNSTEIN, AS TRUSTEE FOR HIS  
CHILDREN;  
LISA SUE FRIEDSTEIN, INDIVIDUALLY AS A BENEFICIARY;  
LISA SUE FRIEDSTEIN, AS TRUSTEE FOR HER CHILDREN;  
JILL MARLA IANTONI, INDIVIDUALLY AS A BENEFICIARY;  
JILL MARLA IANTONI, AS TRUSTEE FOR HER CHILDREN;  
PAMELA BETH SIMON, INDIVIDUALLY;  
PAMELA BETH SIMON, AS TRUSTEE FOR HER CHILDREN;  
MARK MANCERI, ESQ., PERSONALLY;  
MARK MANCERI, ESQ., PROFESSIONALLY;  
MARK R. MANCERI, P.A. (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL);  
JOSHUA ENNIO ZANDER BERNSTEIN (ELIOT  
MINOR CHILD);  
JACOB NOAH ARCHIE BERNSTEIN (ELIOT  
MINOR CHILD);  
DANIEL ELIJSHA ABE OTTOMO BERNSTEIN  
(ELIOT MINOR CHILD);  
ALEXANDRA BERNSTEIN (THEODORE ADULT  
CHILD);  
ERIC BERNSTEIN (THEODORE ADULT CHILD);  
MICHAEL BERNSTEIN (THEODORE ADULT

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN

Thursday, August 28, 2014 ORDER

CHILD);  
MATTHEW LOGAN (THEODORE'S SPOUSE  
ADULT CHILD);  
MOLLY NORAH SIMON (PAMELA ADULT  
CHILD);  
JULIA IANTONI – JILL MINOR CHILD;  
MAX FRIEDSTEIN – LISA MINOR CHILD;  
CARLY FRIEDSTEIN – LISA MINOR CHILD;  
PAGE, MRACHEK, FITZGERALD & ROSE, P.A.  
(AND ALL PARTNERS, ASSOCIATES AND OF  
COUNSEL);  
ALAN B. ROSE, ESQ. – PERSONALLY;  
ALAN B. ROSE, ESQ. – PROFESSIONALLY;  
PANKAUSKI LAW FIRM PLLC, (AND ALL  
PARTNERS, ASSOCIATES AND OF COUNSEL);  
JOHN J. PANKAUSKI, ESQ. – PERSONALLY;  
JOHN J. PANKAUSKI, ESQ. – PROFESSIONALLY;  
KIMBERLY FRANCIS MORAN – PERSONALLY;  
KIMBERLY FRANCIS MORAN –  
PROFESSIONALLY;  
LINDSAY BAXLEY AKA LINDSAY GILES –  
PERSONALLY;  
LINDSAY BAXLEY AKA LINDSAY GILES –  
PROFESSIONALLY;  
THE ALLEGED “SIMON L. BERNSTEIN AMENDED  
AND RESTATED TRUST AGREEMENT” DATED  
JULY 25, 2012;  
JOHN AND JANE DOE’S (1-5000).

---

**ORDER ON: AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE  
OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN  
IN ALL FIDUCIAL CAPACITIES ON THE COURT’S OWN INITIATIVE –  
FLORIDA TITLE XLII 736.0706**

THIS CAUSE, having come before the Court on Eliot Bernstein’s “AMENDED MOTION FOR  
REMOVAL OF TRUSTEE ON THE COURT’S OWN INITIATIVE – FLORIDA TITLE XLII  
736.0706” and the Court having heard argument and pleadings of counsel and being otherwise duly  
advised in the premises, it is

**ORDERED and ADJUDGED**

**THAT the Court APPROVES after careful review of the reasons stated herein on its own initiative to**

**AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN**

**Thursday, August 28, 2014 ORDER**

remove Theodore and having reviewed the matters before the court for the removal of Theodore Bernstein, the Court on the Court's own initiative hereby removes Theodore in any fiduciary capacities in the Estates and Trusts of both Simon and Shirley Bernstein, as this Court finds that Theodore Bernstein is not now qualified to act as a fiduciary in any capacity in any Estate or Trusts held by the Simon and Shirley Bernstein family.

The Court also order relief under s. 736.1001(2) as may be necessary to protect the trust property or the interests of the beneficiaries.

The Court also demands all records and properties of the Theodore and all of his present and former counsel to be turned over to the care and custody of the Court until further notice.

---

DONE AND ORDERED in Delray Beach, Palm Beach County, Florida

THIS \_\_ DAY OF AUGUST, 2014.

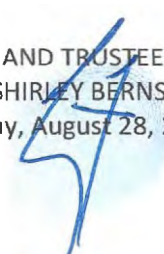
---

**MARTIN COLIN  
CIRCUIT COURT  
JUDGE**

***COPIES TO:***

Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pmlaw.com](mailto:arose@pmlaw.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com) ;  
John Pankauski, Esq., PANK.AUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com) ;  
Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, [service@feamanlaw.com](mailto:service@feamanlaw.com) ;  
Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv) ;  
William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S.

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN  
Thursday, August 28, 2014ORDER



Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com) ;

John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401,  
[john@morrisseylaw.com](mailto:john@morrisseylaw.com) ;

Benjamin P. Brown, Esq., Matwiczuk & Brown, LLP, 625 No. Flagler Drive, Suite 401,  
West Palm Beach, FL 33401, [bbrown@matbrolaw.com](mailto:bbrown@matbrolaw.com) ;

Brian M O'Connell PA, 515 N Flagler Drive, West Palm Beach, FL 33401  
[boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com) .

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN  
Thursday, August 28, 2014ORDER

# **EXHIBIT H**

**DOCKET #215 - SIMON ESTATE (SEE EXHIBIT H)**

**PET - PETITION**

**FILING DATE: 29-JUL-2014**

**FILING PARTY: STANSBURY, WILLIAM E**

**DOCKET TEXT: PETITION TO REMOVE TED BERNSTEIN AS  
SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN REVOCABLE  
TRUST**

IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR  
PALM BEACH COUNTY, FLORIDA

IN RE:

Case No. 50 2012 CP 004391 SB  
**JUDGE MARTIN COLIN**

ESTATE OF SIMON  
BERNSTEIN,

Deceased.

Division: IY

**PETITION TO REMOVE TED BERNSTEIN AS  
SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN REVOCABLE TRUST**

COMES NOW, William E. Stansbury ("Stansbury"), claimant and creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, et al., by and through his undersigned counsel, and pursuant to §736.0706, Fla. Stat. (2013), files this Petition to Remove Ted Bernstein as Successor Trustee of the Simon Bernstein Revocable Trust Agreement dated July 25, 2012 (the "Revocable Trust" or "Trust"), and in support states as follows:

**I. Stansbury has standing to seek removal.**

Stansbury filed a lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida against Simon Bernstein ("SIMON), Ted Bernstein ("TED") and several corporate defendants in August of 2012 to collect compensation, corporate distributions and other damages due Stansbury, arising out of a life insurance business in which Stansbury, SIMON and TED were principals. Stansbury asserts claims against SIMON and TED both as agents of the corporate defendants and in their individual capacities (the claims against TED have settled). The damages Stansbury claims are in excess of \$2.5 million. Shortly after the lawsuit was filed, SIMON BERNSTEIN passed away



in September of 2012. The Estate of Simon Bernstein (the “Estate”) was substituted as a party defendant.

The provisions of §736.0706(1), §736.0103, and §733.707(3), Fla. Stats. (2014) govern the issue of who has standing to seek removal of a trustee. Section 736.0706(1) Fla. Stat. (2014) states:

*(1) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on the court’s own initiative.*  
(emphasis added)

§736.0103, Fla. Stat. (2014), defines a “beneficiary”:

*(4) “Beneficiary” means a person who has **a present or future beneficial interest in a trust, vested or contingent**, or who holds a power of appointment over trust property in a capacity other than that of trustee.* (emphasis added)

A “beneficial interest” is defined as: “A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing.” Black’s Law Dictionary 149 (7<sup>th</sup> ed. 1999). The issue then is, with regard to whether Stansbury has standing, does Stansbury have at least a contingent future beneficial interest in the Trust? The answer is a resounding “yes.”

§733.707(3), Fla. Stat. (2014), states:

*(3) Any portion of a trust with respect to which a decedent who is the grantor has at the decedent’s death a right of revocation...**is liable for the expenses of the administration and obligations of the decedent’s estate to the extent the decedent’s estate is insufficient to pay them...*** (emphasis added)

Stansbury, as a claimant and creditor of the Estate, which claim exceeds the value of the assets of the Simon Bernstein Estate, has a beneficial interest in the Trust because, to the extent that the assets of Simon’s Estate are insufficient to pay his claim, he has a contingent interest in the Revocable Trust. The assets of the Trust may be called upon to pay his claim under §733.707(3).

Stansbury has a claim against the Estate in excess of \$2.5 million. The most recent inventory of the Estate shows assets valued in the approximate amount of \$1.2 million. If Stansbury prevails on his claim, a deficiency is assured.

Stansbury therefore has a contingent future beneficial interest in the assets of the Revocable Trust to the extent the assets of the Estate are insufficient to satisfy his claim when and if proven. This makes Stansbury, although not a named beneficiary of the Revocable Trust, a “beneficiary” nonetheless by virtue of his beneficial interest under the statutory definition. Therefore, Stansbury has standing to seek removal of the Trustee.

Florida case law recognizes that a person not specifically named in a will or trust document as a beneficiary may nonetheless be deemed to have a sufficient beneficial interest in a will or trust to be considered a beneficiary thereunder. See, In Re Estate of Nelson, 232 So.2d 222 (Fla. 1<sup>st</sup> DCA 1970). There, a decedent bequeathed the major portion of his estate to the attorneys that prepared his probate documents, in trust, with unlimited discretion to distribute the income or corpus for such religious, educational, scientific, charitable, or literary purposes as they saw fit. The attorneys were not named beneficiaries of the will or trust other than in their capacity as executors and trustees. Family members contested the documents and claimed the attorneys had, by virtue of their anticipated future compensation for services as executors and trustees, a sufficient beneficial interest in the will so as to make them de facto beneficiaries.

The Florida First District Court agreed. Relying on Ziegler v. Coffin, 219 Ala. 586, 123 So.2d 22 (1929), a Supreme Court of Alabama case, the Florida court held that, as a matter of law, the compensation which the attorney would receive for their services rendered as executors and trustees, together with the almost unlimited discretion and control they had in the

management of the trust estate, constituted them as beneficiaries under the will even though they were not named as legatees or devisees therein.

While not entirely analogous to this case, the holding makes clear that courts may look beyond the written documents to ascertain a claimant's status as beneficiary, based on the interests involved and the circumstances of the matter before the court. Additionally, an articulable claim of economic interest, even though contingent, is a sufficient beneficial interest to determine that a claimant such as Stansbury has the status of trust beneficiary under the statute, thereby giving him standing to pursue removal of the trustee.

**II. This Court has the Authority Under Florida Law to Remove TED as Trustee of the Revocable Trust.**

Under Florida law, this Court has broad authority to affect trust administration. Under §736.0201, Fla. Stat. (2014), the Court has the following power:

**736.0201. Role of court in trust proceedings**

\* \* \* \*

(4) A judicial proceeding involving a trust may relate to the validity, administration, or distribution of a trust, including proceedings to:

- (a) Determine the validity of all or part of a trust;
- (b) Appoint or remove a trustee;
- (c) Review trustees' fees;
- (d) Review and settle interim or final accounts;
- (e) Ascertain beneficiaries; determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments; instruct trustees; and determine the existence or nonexistence of any immunity, power, privilege, duty or right;
- (f) Obtain a declaration of rights;
- (g) Determine any other matters involving trustees and beneficiaries.

(emphasis added)

### III. Legal Standard for Removal of Trustee.

When removal of a trustee is at issue, the following statutory provisions of §736.0706, Fla. Stat. (2014) are to be considered:

#### **736.0706. Removal of trustee**

\* \* \* \* \*

- (2) The court may remove a trustee if:
  - (a) The trustee has committed a serious breach of trust;
  - (b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;
  - (c) Due to unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or
  - (d) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

TED's removal is warranted by Subsections (2)(a), (c) and/or (d). Additionally, §736.0802, Fla. Stat. (2014) describes the primary duty of a trustee:

#### **736.0802. Duty of loyalty**

- (1) As between a trustee and the beneficiaries, a trustee shall administer the trust solely in interests of the beneficiaries.
- (2) Subject to the rights of persons dealing with or assisting the trustee as provided in s. 736.1016 a ... transaction ... which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction . . . (emphasis added)

*See Aiello v. Hyland*, 793 So. 2d 1150, 1152 (Fla. 4th DCA 2001) (removal of trustee was required where trustee had a conflict of interest with interests of the trust; the conflict of interest made the trustee unable to properly carry out his duty of loyalty to the trust).

**IV. Ted Bernstein Should Be Removed as Trustee of the Revocable Trust by the Terms of the Trust and his Conflict of Interest.**

**A. Ted Bernstein is Not Eligible to Serve as a Successor Trustee under the very terms of the Revocable Trust, which means he is “unfit” under §736.0706(2)(c).**

**1. Ted Bernstein is a “related party” and therefore not eligible to serve.**

The previous co-trustees of the Revocable Trust were Donald Tescher and Robert Spallina by virtue of the Successor Trustee provision set forth in Article IV, Section C of the Revocable Trust. A copy of the Trust is attached hereto as Exhibit “A.” By letter dated January 14, 2014 addressed to the five children of Simon Bernstein, Donald Tescher for himself and on behalf of Robert Spallina, resigned as co-trustees of the Revocable Trust (and the Shirley Bernstein Trust) and stated, “If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity.” A copy of the letter is attached hereto as Exhibit “B.”

If TED has become successor trustee of the Revocable Trust, he should be removed. He is ineligible under the very terms of the Revocable Trust to serve as successor trustee. Article IV, Section C.(3) (Page 16) of the Revocable Trust states:

**C. Appointment of Successor Trustee**

3. ... A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. (emphasis added)

Under Article III, Subsection E(7), A “Related or Subordinate Party” is defined in the Trust as follows:

**ARTICLE III. GENERAL**

**E. Definitions. In this Agreement,**

7. Related or Subordinate Party. A “*Related or Subordinate Party*” to a trust describes a beneficiary of the subject trust or a related or subordinate party to a

beneficiary of the trust as the terms “related or subordinate party” are defined under Code Section 672(c).

The “Code” is defined as “the Internal Revenue Code of 1986...”

A “Related or subordinate party” under the Code means any nonadverse party who is

“...(2) any one of the following: The Grantor’s father, mother, issue, brother or sister...”

TED is the son, or an “issue” of the Grantor, SIMON BERNSTEIN, and a related party (father) to a beneficiary, TED’s son, SIMON’s grandson. Therefore, TED is ineligible as a Related or Subordinate Party and is therefore unfit to serve as a successor trustee under §736.0706(2)(c).

**2. Ted Bernstein was specifically disqualified to be a Successor Trustee by the terms of the Trust.**

Another provision of the Trust also disqualifies TED. Article III E(1) states:

Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL AIANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me ...” (emphasis added)

Therefore, by the very language of the Trust, Ted Bernstein is disqualified by this provision to serve as Successor Trustee.

**B. Ted Bernstein, as Trustee of the Revocable Trust, has a Conflict of Interest with the Estate of Simon Bernstein.**

At the time of SIMON’S death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company (“Heritage”) allegedly payable to the Simon Bernstein Irrevocable Insurance Trust (the “Insurance Trust) as beneficiary.

Shortly after SIMON’S death in 2012, Robert Spallina, one of the resigning Co-Personal Representatives of the Estate of Simon Bernstein and a resigning Co-Trustee of the Revocable Trust, submitted a claim form to Heritage on behalf of the Insurance Trust for the benefit of the

grown children of Simon Bernstein. Spallina submitted this claim despite having informed Heritage by letter shortly thereafter that he was “unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995.” (See Exhibit “C” attached.) Under Florida law, if it is determined that no Irrevocable Insurance Trust existed at the time of SIMON’s death, the insurance proceeds would be payable to the personal representative of the Estate. As such, such insurance proceeds would be available to pay creditors of the Estate such as Stansbury. See §733.808(4), Fla. Stat. (2014)

Because no insurance trust instrument could be produced, Heritage refused to pay the life insurance proceeds to anyone without a court order. The lost Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the “Life Insurance Litigation”). The case has since been removed to the United States District Court for the Northern District of Illinois in Chicago.

The Estate of Simon Bernstein recently filed a Motion to Intervene in the Life Insurance Litigation to assert the Estate’s interest in the life insurance proceeds. The Plaintiffs filed a Memorandum of Law in Opposition to the Estate’s Motion to Intervene (the “Opposition Memorandum”) (See, Exhibit “D,” attached).

The opening paragraph of the Opposition Memorandum states as follows:

**NOW COMES** Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by TED BERNSTEIN, as Trustee, (collectively referred to as “BERNSTEIN TRUST”), **TED BERNSTEIN, individually**, PAMELA B. SIMON, JILL IANTONI AND LISA FREIDSTEIN, and state as their Memorandum of Law in Opposition to the Estate of Simon Bernstein’s Motion to Intervene as follows: (emphasis added)

TED stands to benefit personally if the claim by the Simon Bernstein Estate to the life insurance proceeds is defeated because TED and his siblings (other than Eliot) have taken the position that they are the beneficiaries of the Insurance Trust. Despite the opposition of TED



BERNSTEIN to the Intervention, the court has granted the Estate's Motion to Intervene. TED is now an opposing party of record to the Estate's interest in the Life Insurance litigation.

TED, individually and as the alleged trustee of the alleged Insurance Trust, has placed his personal interests above the interests of the Revocable Trust beneficiaries, who are the grandchildren of SIMON, through TED's open, notorious and public opposition to the Estate's intervention in the Life Insurance Litigation. This creates an inherent conflict of interest for TED. TED, as successor trustee of the Revocable Trust, owes a duty of loyalty under §736.0706(1), Fla. Stat. (2014) to the trust beneficiaries, to administer the trust solely in their interest. The Estate and trust beneficiaries are the grandchildren of Simon Bernstein. This means TED must support, or at the least not obstruct, the efforts of the Estate to attempt to recover an additional \$1.7 million in life insurance benefits. If so recovered, this would dramatically reduce the exposure of the Revocable Trust's liability for any potential Estate shortfall to creditors. By opposing intervention by the Estate TED's actions will potentially expose the trust assets to liability should STANSBURY's claim exceed the assets in the Estate, a liability that can be avoided if the Estate is successful in the Life Insurance Litigation. More importantly, TED'S efforts in the Life Insurance Litigation are designed to keep the \$1.7 million out of the estate and trust and to redirect the money to him and his siblings, people who are not beneficiaries of either the Estate or the Trust.

As a consequence of the foregoing, TED is in breach of his fiduciary duty to the beneficiaries of the Revocable Trust by opposing efforts to make the Estate more solvent, which in turn exposes the Trust to increased liability, and warrants his removal under §736.0706(2)(a). Additionally, this inherent and irreparable conflict of interest is a breach of his duty of loyalty and warrants removal under *Aiello, supra*, 793 So. 2d at 1152. *See also Brigham v. Brigham*, 11

So. 3d 374, 386 (Fla. 3d DCA 2009); *McCormick v. Cox*, 118 So. 3d 980, 987-88 (Fla. 3d DCA 2013) (removal of trustee was warranted where trustee had a conflict of interest and breach his fiduciary duties; trial court properly exercised its authority to remove trustee).

### **C. Misconduct in the Shirley Bernstein Estate**

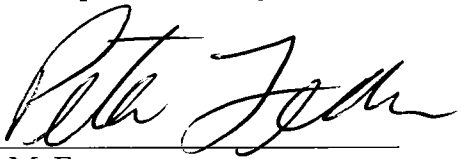
There are serious allegations of fraud and forgery in the Shirley Bernstein Estate where Ted Bernstein is the Personal Representative. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein on a date after he had passed away.

This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court questioned whether the potential parties involved should be read their Miranda Rights. (See Transcript of Proceedings, pages 15 and 16, attached as Exhibit "E.")

Further, the attorney for TED BERNSTEIN as Personal Representative of the Estate of Shirley Bernstein has admitted to altering provisions of the Shirley Bernstein Trust which had the effect of benefitting TED BERNSTEIN.

Ted Bernstein's involvement in such activity involving the Estate of Shirley Bernstein should disqualify him from serving as Successor Trustee of the Revocable Trust.

WHEREFORE, William E. Stansbury requests that TED BERNSTEIN, the apparent successor trustee of the Simon Bernstein Trust, be removed, that the court appoint a Successor Trustee with no apparent conflicts of interest, and that the Court require the filing of a Trust Accounting.

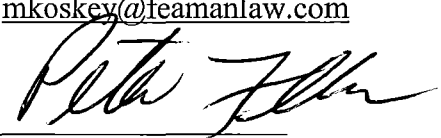
  
Peter M. Feaman

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service to: Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com); John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com); Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv); and William H. Glasko, Esq., Golden Cowan, P.A., PALMETTO BAY LAW CENTER, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com); Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell 515 North Flagler Drive, 20<sup>th</sup> Floor, West Palm Beach, FL 33401, [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com); John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com); Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, [ijb@ijblegal.com](mailto:ijb@ijblegal.com), on this 29 day of July, 2014.

PETER M. FEAMAN, P.A.  
3695 W. Boynton Beach Blvd., Suite 9  
Boynton Beach, FL 33436  
Tel: 561-734-5552  
Fax: 561-734-5554  
Service: [service@feamanlaw.com](mailto:service@feamanlaw.com)  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By: \_\_\_\_\_

  
Peter M. Feaman  
Florida Bar No. 0260347

**SIMON L. BERNSTEIN**  
**AMENDED AND RESTATED TRUST AGREEMENT**

*Prepared by:*

Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720, Boca Raton, Florida 33431  
(561) 997-7008  
[www.tescherspallina.com](http://www.tescherspallina.com)

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

**EXHIBIT** A

---

SIMON L. BERNSTEIN

---

AMENDED AND RESTATED TRUST AGREEMENT

---

This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "*Trust Agreement*," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

**ARTICLE I. DURING MY LIFE AND UPON MY DEATH**

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. **Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**



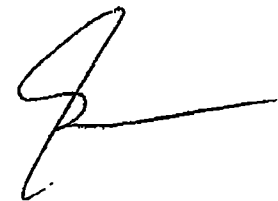
C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

## ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "beneficiary" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:



1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

**D. Termination of Small Trust.** If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

**E. Contingent Gift.** If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

**F. Protective Provision.** No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

**G. Maximum Duration.** Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

### ARTICLE III. GENERAL

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

-3-

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**





A. **Disability.** Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. **Timing of Income Distributions.** The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse.**

1. **In General.** If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

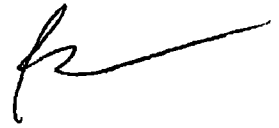
a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. **Testing.** The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. **Treatment.** If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an



in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*," "*grandchild*," "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is



raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to



such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such



Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. **Presumption of Survivorship.** If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. **Governing Law.** This Agreement is governed by the law of the State of Florida.

J. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. **Release of Medical Information.**

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested



beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

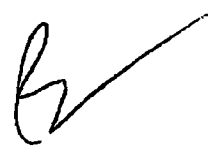
3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph LA hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

#### ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any



decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla. Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.



4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole





proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

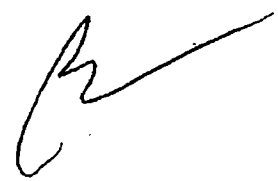
e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.



11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.



18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

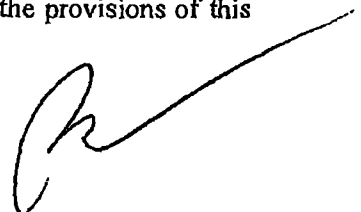
20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this



paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust



hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

a. The remaining Trustees, if any; otherwise,

b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or



entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual



and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the



Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

**K. Third Parties.** No one dealing with the Trustee need inquire into its authority or its application of property.

**L. Merger of Trusts.** If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

**M. Multiple Trustees.** If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

#### ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

**A. GST Trusts.** I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons





designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

**B. Individual Retirement Accounts.** In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:



1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).



2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

F. **Subchapter S Stock.** Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. **Residence as Homestead.** I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

*[remainder of page intentionally left blank]*



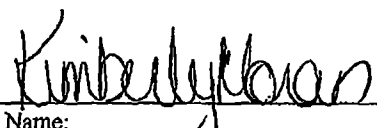
IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

  
SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 21 day of July, 2012:

  
Print Name: ROBERT L. SPALLINA  
Address: 7387 WISTERIA AVENUE  
PARKLAND, FL 33076

  
Print Name: Kimberly Moran  
Address: 6362 Las Flores Drive  
Boca Raton, FL 33433

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

  
Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

NOTARY PUBLIC-STATE OF FLORIDA  
Lindsay Baxley  
Commission # EE092282  
Expires: MAY 10, 2015  
BONDED THRU ATLANTIC BONDING CO., INC.

Lindsay Baxley  
Print, type or stamp name of Notary Public

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

- 24 -

LAW OFFICES  
TESCHER & SPALLINA, P.A.  
ESTABLISHED 1988

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

---

BOCA VILLAGE CORPORATE CENTER I  
4855 TECHNOLOGY WAY, SUITE 720  
BOCA RATON, FLORIDA 33431

**ATTORNEYS**

DONALD R. TESCHER  
ROBERT L. SPALLINA  
LAUREN A. GALVANI

TEL: 561-997-7008  
FAX: 561-997-7308  
TOLL FREE: 888-997-7008  
WWW.TESCHERSPALLINA.COM

**SUPPORT STAFF**

DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

January 14, 2014

**VIA U.S. MAIL AND EMAIL**

Ted S. Bernstein  
880 Berkeley Street  
Boca Raton, FL 33487

Eliot Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, FL 33434

Lisa S. Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035

Pamela B. Simon  
950 North Michigan Ave.  
Suite 2603  
Chicago, IL 60606

Jill Iantoni  
2101 Magnolia Lane  
Highland Park, IL 60035

**Re: Estates and Trusts of Shirley Bernstein and Simon Bernstein**

Dear Ladies and Gentlemen:

It has been brought to my attention that a document was prepared in our office that altered the disposition of the Shirley Bernstein Trust subsequent to Simon Bernstein's death. Information provided to me appears to indicate that there were two versions of the First Amendment to the Shirley Bernstein Trust Agreement, both executed on November 18, 2008. Under one version the children of Pam Simon and Ted Bernstein would not be permissible appointees of Simon Bernstein's exercise of the power of appointment while under the second version that restriction was removed. As you all know, Simon Bernstein's dispositive plan, expressed to all of you during his lifetime on a conference call, was to distribute the Estate to all ten of his grandchildren. That was the basis upon which the administration was moving forward.

Under the Shirley Bernstein Trust, there is a definition of children and lineal descendants. That definition excluded Pam Simon, Ted Bernstein and their respective children from inheriting. The document also contained a special Power of Appointment for Simon wherein he could appoint the assets of the Trust for Shirley's lineal descendants. Based upon the definition of children and lineal descendants, the Power of Appointment could not be exercised in favor of Pam Simon, Ted Bernstein or their respective children, although we believe it was Simon Bernstein's wish to provide equally for all of his grandchildren.

On November 18, 2008, it does appear from the information that I have reviewed that Shirley Bernstein executed a First Amendment to her trust agreement. The document as executed appears to make only one relatively minor modification to her trust disposition by eliminating a specific gift to Ted

**EXHIBIT** B

Bernstein's stepson. In January of 2013 a First Amendment to the Shirley Bernstein Trust Agreement was provided to Christine Yates, Esq. who, at that time, was representing Eliot Bernstein. The document provided contained a paragraph number 2 which modified the definitional language in Shirley's document so as to permit, by deleting the words "and their respective lineal descendants" from the definition, an exercise of the power of appointment by Simon Bernstein over the Shirley Bernstein Trust to pass equally to all ten grandchildren rather than only six of the grandchildren.

By virtue of The Florida Bar Rules of Professional Conduct, I am duty bound to provide this information to you. Obviously, as a result of the issues and ramifications raised by the allegations, my firm must resign from further representation in all matters relating to the Estates and Trusts of Simon Bernstein and Shirley Bernstein. Furthermore, it is my intent, and I assume also the intent of Robert Spallina, to tender our resignations as personal representatives of the Simon Bernstein Estate and as trustees of the Simon Bernstein Trust. If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity. With regard to the Simon Bernstein Estate, the appointment of the successor would require a court proceeding.

I am obviously upset and distraught over this chain of events and will do all that I reasonably can to correct and minimize any damages to the Bernstein family. As I believe you know, to date there has only been a modest funding of some, but not all, of the continuing trusts for the grandchildren emanating from Shirley's Trust assets.

Very truly yours,



DONALD R. TESCHER

DRT/km

cc: Alan Rose, Esq.



LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

BOCA VILLAGE CORPORATE CENTER I  
4855 TECHNOLOGY WAY, SUITE 720  
BOCA RATON, FLORIDA 33431

TEL: 561-997-7008  
FAX: 561-997-7308  
TOLL FREE: 888-997-7008  
WWW.TESCHERSPALLINA.COM

SUPPORT STAFF  
DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

ATTORNEYS  
DONALD R. TESCHER  
ROBERT L. SPALLINA  
LAUREN A. GALVANI

December 6, 2012

**VIA FACSIMILE: 803-333-4936**

Attn: Bree  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, IL 62651

Re: **Insured: Simon L. Bernstein**  
**Contract No.: 1009208**

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate.
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children.
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the EIN number for the 1995 trust.

If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

*Robert L. Spallina/km*  
ROBERT L. SPALLINA

RLS/km

Enclosures

**EXHIBIT** C



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

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
by Ted S. Bernstein, )

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

----- )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

SIMON BERNSTEIN IRREVOCABLE )  
TRUST DTD 6/21/95 )

Counter-Defendant )

and, )

FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
Successor in interest to LaSalle National )  
Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Tstee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd 6/21/95, )  
and ELIOT BERNSTEIN )  
Third-Party Defendants. )

**Case No. 13 cv 3643**

**Honorable Amy J. St. Eve**

**Magistrate Mary M. Rowland**

**PLAINTIFFS MEMORANDUM OF LAW  
IN OPPOSITION TO ESTATE OF SIMON  
BERNSTEIN'S MOTION TO  
INTERVENE**

**EXHIBIT** D

ELIOT IVAN BERNSTEIN,

Cross-Plaintiff

v.

TED BERNSTEIN, individually and  
as alleged Trustee of the Simon Bernstein  
Irrevocable Insurance Trust Dtd, 6/21/95

Cross-Defendant

and,

PAMELA B. SIMON, DAVID B.SIMON,  
both Professionally and Personally  
ADAM SIMON, both Professionally and  
Personally, THE SIMON LAW FIRM,  
TESCHER & SPALLINA, P.A.,  
DONALD TESCHER, both Professionally  
and Personally, ROBERT SPALLINA,  
both Professionally and Personally,  
LISA FRIEDSTEIN, JILL IANTONI  
S.B. LEXINGTON, INC. EMPLOYEE  
DEATH BENEFIT TRUST, S.T.P.  
ENTERPRISES, INC. S.B. LEXINGTON,  
INC., NATIONAL SERVICE  
ASSOCIATION (OF FLORIDA),  
NATIONAL SERVICE ASSOCIATION  
(OF ILLINOIS) AND JOHN AND JANE  
DOES

Third-Party Defendants.

---

**NOW COMES** Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by TED BERNSTEIN, as Trustee, (collectively referred to as “BERNSTEIN TRUST”), TED BERNSTEIN, individually, PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN, and state as their Memorandum of Law in Opposition to the Estate of Simon Bernstein’s Motion to Intervene as follows:

### INTRODUCTION

On January 14, 2014, this court entered an Order denying the motion to intervene of William Stansbury -- a potential creditor of the Estate of Simon Bernstein. In so doing, the court found that allowing Stansbury to intervene would (i) “not serve the interests of judicial economy and would unduly prejudice the present parties to this lawsuit”, and (ii) “unduly delay the determination of the beneficiaries of the life insurance policy at issue in this lawsuit.”<sup>1</sup>

Now, six months later, Stansbury seeks a second bite at the apple. Stansbury petitioned the Florida Probate Court to have an administrator ad litem appointed on behalf of the “Estate” to further Stansbury’s own agenda against the express wishes of decedent, Simon Bernstein. In fact, had Stansbury’s motion been granted in its entirety by the Florida court, Stansbury himself would have been appointed administrator ad litem. Instead, the Florida Court appointed the Curator (Mr. Brown) as administrator ad litem, but that appointment was expressly made subject to the conditions placed on the record in the Probate Court which will be discussed later.

What will become apparent is that this motion is a motion of the Estate in name only. This court should apply the law of the case established by its January 14<sup>th</sup> Order to deny Stansbury’s second effort to intervene in this lawsuit.

---

<sup>1</sup> Order entered January 14, 2014 [Dkt. #110].

### **FACTUAL BACKGROUND**

1. After this court denied Stansbury's first motion to intervene, Stansbury filed a petition in the Florida Probate Court to have himself appointed as administrator ad litem.<sup>2</sup>

2. Benjamin Brown had been appointed curator of the Estate of Simon Bernstein following the resignation of the Estate's personal representative.

3. During the hearing counsel for the various interested parties in the probate matter, either objected to the appointment of any administrator ad litem so as to preserve estate assets, and/or objected to the appointment of William Stansbury. At the conclusion of the hearing, the Florida Court ultimately appointed Benjamin Brown to act as administrator ad litem.

4. As stated in the Probate Court's Order appointing Benjamin Brown, such appointment was made subject to the conditions that were made part of the record during the hearing.<sup>3</sup>

5. During the hearing on the motions, the discourse between counsel for the various interested parties and the judge made it clear that the instant motion to intervene would only occur with the legal fees and costs being funded not by the Estate, but by William Stansbury.<sup>4</sup>

6. One condition demanded by William Stansbury since he was funding this excursion was that he be kept advised by the Curator and his counsel and have input with how this litigation is prosecuted.<sup>5</sup>

---

<sup>2</sup> See Transcript of Hearing on petition to appoint administrator ad litem in the matter of the Estate of Simon Bernstein at pg. 5-6. A true and accurate copy of the transcript is attached hereto as **Exh. A**. See

<sup>3</sup> See Probate Court Order attached to the Estate's motion to intervene as **Exhibit B** (Dkt. # ).

<sup>4</sup> See Transcript of Hearing on petition to appoint administrator ad litem in the matter of the Estate of Simon Bernstein. **Exh. A** pg. 13-14, 34-35, 39.

<sup>5</sup> See Transcript, **Exh. A** at pg. 28-29.

7. The sole factual basis asserted by the Estate for its motion to intervene is set forth in its Complaint for Intervenor as follows: “Intervenor Benjamin Brown seeks a judgment from this Court declaring that *no* valid beneficiary is named under the Policy and the proceeds of the Policy must therefore be paid to the Estate.”

8. It has been over six months since the court entered its Order denying Stansbury’s motion. Stansbury chose not to pursue any motion for reconsideration or appellate review of the Order. Instead, Stansbury initiated and funded the Estate’s motion to intervene.

9. The Insurer, in response to a Notice for a Rule 30(b)(6) deposition provided the Affidavit of its witness, Don Sanders.<sup>6</sup> A true and correct copy of the Aff. of Don Sanders is attached hereto as **Exh. B**.

10. At the time of the making of his Affidavit, Don Sanders was familiar with the Insurer’s Policy records. (Aff. of Don Sanders, **Exh. B** at ¶33).

11. According to the Policy records as verified by Don Sanders, no owner of the Policy ever submitted a beneficiary designation which designated “Simon Bernstein’s estate” or “the Estate” as beneficiary. (Aff. of Don Sanders, **Exh. B** at ¶70).

12. According to the Policy records as verified by Don Sanders, “on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as ‘LaSalle National Trust, N.A. as Successor Trustee’, and the Contingent Beneficiary was designated as ‘Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995.’ ” (Aff. of Don Sanders, **Exh. B** at ¶62).

---

<sup>6</sup> The Affidavit of Donald Sanders is attached hereto and made a part hereof as **Exh. B**.

### **STANDARD OF REVIEW**

A trial court must grant a motion to intervene as a matter of right if: (1) the petition is timely filed; (2) the representation by the parties already in the suit is inadequate; and (3) the party seeking intervention has a sufficient interest in the suit.

In order to show inadequacy of representation, for purposes of a motion to intervene as of right, one must not engage in speculation, but rather allege specific facts demonstrating a right to intervene. *In re Marriage of Vondra*, 2013 Ill. App. (1<sup>st</sup>) 123025, 373 Ill. Dec. 620, 994 N.E.2<sup>nd</sup> 105 (1<sup>st</sup> Dist., 2013).

This court's summary of the standard of review for a motion to intervene included the following:

“Whether an applicant has a sufficient interest to intervene is a highly fact-specific making comparison to other cases of limited value.” “Permissive intervention under Rule 24(b), permits “anyone to intervene who... has a claim or defense that shares with the main action a common question of law or fact,” unless intervention would “*unduly delay or prejudice the adjudication of the original parties rights.*”<sup>7</sup> (emphasis added).

### **ARGUMENT**

**A. This court should apply the law of the case to bar the Estate's motion to intervene since the Estate is in privity with Stansbury whose own motion to intervene was previously denied in this same litigation.**

Over six months ago, this Court denied Stansbury's motion to intervene. The holding was based, in part, on the tenuousness of the connection between the instant litigation over the Policy proceeds and Stansbury's claims pending in Florida against certain corporate defendants' and the Estate of Simon Bernstein relating to unpaid insurance commissions. The court rejected both of Stansbury's arguments for intervention as a matter of right, and for permissive intervention. Stansbury did not file any motion to reconsider or seek appellate review.

---

<sup>7</sup> See Order of January 14, 2014 [Dkt. #110]

The basis for Stansbury's motion to intervene was identical to that set forth by the Estate in the instant motion to intervene. Both Stansbury and the Estate argue that the Estate's purported interest in the Policy proceeds is solely as a beneficiary of last resort. Neither Stansbury nor the Estate set forth any affirmative argument or evidence attempting to establish that the Estate was the named beneficiary of the Policy proceeds.

The doctrine of collateral estoppel applies to avoid relitigation of a substantially similar issue arising between the same parties (or their privies) where such issue has already been determined in the course of a separate proceeding. *Rekhi v. Wildwood Industries, Inc.*, 61 F.3d 1313, 130 Lab Cas. P57, 969, 2 Wage & Hour Cas.2d 1428 (7<sup>th</sup> Cir., 1995).

The doctrine of law of the case also applies to avoid relitigation of substantially similar issues but in the *same* proceeding. In *Radwill v. Manor Care of Westmont, IL LLC*, 2013 IL App (2d) 120957, 369 Ill. Dec. 452, 986 N.E.2d 765 (2<sup>nd</sup> Dist., 2013), the court explained the rationale behind the law of the case doctrine as follows:

"The law-of-the-case doctrine protects the parties' settled expectations, ensures uniformity of decisions, maintains consistency during the course of a single case, effectuates proper administration of justice, and brings litigation to an end. *Petre v. Kucich*, 356 Ill.App.3d 57, 63, 291 Ill.Dec 867, 824 N.E.2d 1117 (2005). Thus, the doctrine bars relitigation of an issue previously decided in the same case. *Long v. Elborno*, 397 Ill.App.3d 982, 989, 337 Ill.Dec. 432, 922 N.E.2d 555 (2010). Issues previously decided include issues of both law and fact. *Alwin v. Village of Wheeling*, 371 Ill.App.3d 898, 910, 309 Ill.Dec. 656, 864 N.E.2d 897 (2007).

As set forth in the transcript of the Probate hearing appointing the Curator as administrator ad litem, the Estate, in this instance, is in privity with Stansbury. It is a matter of public record that Stansbury is funding this venture, and was granted direct involvement in litigating this matter under the auspices of the "Estate".

The arguments set forth by the Estate mirror those contained in the prior motion made by Stansbury. Because the issues, and arguments are virtually identical, and the moving party (the Estate) is in privity with the prior movant (Stansbury), the law of the case must apply to bar relitigation of this issue. The court spoke in its Order of January 14, 2014, and nothing contained in the Estate's motion or complaint to intervene necessitates revisiting the issue.

**B. The unrefuted sworn testimony of Don Sanders, Vice-President of Operations for the Insurer both supports Plaintiff's claim that it is the named beneficiary of the Policy proceeds and negates the Estate's claims. (go through the Paragraphs and cite in the statement of unrefuted facts).**

As indicated in Plaintiffs' Statement of Undisputed Facts, the Insurer has provided its Policy records and the Affidavit of Don Sanders as evidence in this case. Don Sanders reviewed the Policy records and in his Affidavit Don Sanders declares that the Estate was never named a beneficiary of the Policy proceeds. The Estate has offered nothing to dispute this essential truth.

**C. The Estate's motion to intervene is not based on any actual claim it has upon the Stake, instead it is based solely on efforts to negate the claims of the true beneficiary.**

As stated above, the Estate's motion to intervene is not based on any allegation of its own claim to the Stake. Rather, the motion merely attempts to negate the claim of the Bernstein Trust by baldly asserting that the trust does not exist because a trust agreement cannot be located.



In an interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others. *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill.App.3d 603 at 608-609, 190 Ill.Dec. 295, 621 N.E.2d 164 (1<sup>st</sup> Dist., 1983).

Here, the Estate argues that no one is representing its interests. But, the Estate, like Stansbury before it, fails to articulate any facts that support an affirmative claim by the Estate to the Stake.

The Estate argues that if all other claims are negated and thus fail then the Estate would have a claim by default. As such, the Estate needs no representation because under the Estate's theory it would simply be the beneficiary of last resort.

More importantly, in order to enforce the intent of Simon Bernstein as expressed in his Will, the Curator or Personal Representative of the Estate should be disclaiming any interest in the Stake. Instead, the Curator seeks to ignore the Will of the Simon Bernstein in order to unjustly enrich the Estate largely for the benefit and at the behest of a potential third-party creditor, and at the expense of the ultimate beneficiaries, decedent's five children. That's just plain wrong.

In Stansbury's prior motion to intervene, he attached the Petition filed by the Executors of the Estate admitting the Will to Probate in Palm Beach County, Florida, and the Petition includes a copy of the Last Will of Simon Bernstein (the "Will").

The Will was incorporated as an Exhibit in support of Stansbury's motion yet the Will itself contains a provision wherein Simon Bernstein reaffirms his beneficiary designations. The Will states in pertinent part as follows:

**Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or *insurance contract*; (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons in the manner provided in such designation which is incorporated herein by reference.<sup>8</sup>

Here, the designations of beneficiary of the Policy proceeds point directly to one such beneficiary which is the Bernstein Trust. Simon Bernstein designated the Bernstein Trust as beneficiary of the VEBA, and the VEBA Trustee was always designated as the primary beneficiary of the Policy proceeds. The contingent but sole surviving beneficiary of the Policy proceeds as of the date of Simon Bernstein's Death was the Bernstein Trust itself. Since the VEBA had been previously dissolved, the Policy proceeds are payable to the Bernstein Trust. None of the Bank Defendants whose names appear in the caption above, and whom acted as corporate trustees of the VEBA from to time has made a claim to the Stake. In fact, the only Bank party to have appeared in this matter was dismissed on their own motion after having expressly disclaimed any such interest.<sup>9</sup>

In his Will, Simon Bernstein instructs the executor to disclaims the Estate's interest in the Policy proceeds at issue. Simon Bernstein's instructions were that in the case of an invalid testamentary disposition the instrument designating the beneficiary shall be incorporated into the Will and the proceeds shall be gifted to the intended beneficiaries as established by the beneficiary designation.

---

<sup>8</sup> See (Dkt. #56-5, at pg. 35 of 41, Stansbury's Intervenor Complaint, Exh. B, Will of Simon Bernstein at p.6)

<sup>9</sup> See Motion for Judgment on the Pleadings filed by JPMorgan Bank, and the Order dismissing JP Morgan . (Dkts. #102 and #106).

Here, it is clear that Simon Bernstein expressed his intent by named the Bernstein Trust as beneficiary of the Policy proceeds, that the Policy proceeds should go to the Bernstein Trust beneficiaries (the five Bernstein children) even in the event that the beneficiary designation is ruled to be an invalid testamentary disposition such as the Estate argues.

**D. As set forth above, the Estate's motion to intervene is not based on any actual claim it has upon the Stake, instead it is based solely on his efforts to negate the claims of the true beneficiary of the Stake.**

The Estate's motion to intervene is not based on any allegation of its own claim to the Stake. Rather, the Estate attempts to negate the claim of the Bernstein Trust by baldly asserting that the trust does not exist because a trust agreement cannot be located.

In an interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others. *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill.App.3d 603 at 608-609, 190 Ill.Dec. 295, 621 N.E.2d 164 (1<sup>st</sup> Dist., 1983). Here, the Estate argues that no one is representing the claims of the Estate. But, the Estate fails to articulate any facts that support a claim by the Estate to the Stake.

It appears the Estate is arguing if all other claims are negated and thus fail then the Estate would have a claim by default. If that is the Estate's position, then the Estate needs no representation because under Stansbury's theory the Estate would simply be the beneficiary of last resort. Even this potential claim fails, as the Policy proceeds would likely pass by virtue of the laws of intestacy to the children of Simon Bernstein, as a last resort, and not through the Estate. Simon Bernstein, in his Will, expressly reaffirmed his beneficiary designations and in so doing he essentially disclaimed the Estate's interest in the Policy proceeds.

**E. Stansbury's unsupported assertion that the court should grant his motion to intervene based on Permissive Intervention under FED. R. CIV. P. 24(b)(1)(B) fails for similar reasons.**

The Estate's request for permissive intervention is based on its conclusory assertion that it "has a claim that shares with the main action a common question of law and fact, to wit, the proper disposition of the life insurance proceeds in excess of \$1,000,000.00."<sup>10</sup>

This language again mirrors the language in Stansbury's prior motion to intervene.<sup>11</sup> And like Stansbury, this conclusory allegation is totally unsupported by any evidence establishing a claim to the stake. Without any factual allegations of a claim, the court is left with nothing additional to determine as a result of the motion and complaint to intervene. Since the Estate has nothing to offer in support of its claim, there is no reason whatsoever for this court to add it to this litigation especially at this late date.

**F. Public policy concerns mitigate against the Estate's motion.**

Should the court grant the Estate's motion to intervene it will provide precedent to other similarly situated claimants who lack any factual basis for its claim. Allowing spurious claimants to participate in such litigation will only drive up costs, create needless delay and obfuscate matters for those with truly viable claims to the stake.

---

<sup>10</sup> See Dkt. #110, Estate motion to intervene at ¶9.

<sup>11</sup> See Dkt. #56-5 at ¶9, Stansbury Motion to Intervene.

**CONCLUSION**

For all of the foregoing reasons (including the reasons set forth by this court in its prior Order of January 14, 2014) this court should deny the Estate's motion to intervene.

**By:** /s/Adam M. Simon  
Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
Phone: 312-819-0730  
Fax: 312-819-0773  
E-Mail: asimon@chicagolaw.com  
Attorneys for Plaintiffs and Third-Party  
Defendants  
*Simon L. Bernstein Irrevocable  
Insurance Trust Dtd 6/21/95; Ted  
Bernstein as Trustee, and individually,  
Pamela Simon, Lisa Friedstein and Jill  
Iantoni*

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he caused a copy of the Plaintiff's Memorandum in Opposition to the Estate of Simon Bernstein Motion to Intervene to be served upon the following persons and entities electronically by ECF notification and/or by US Mail (if so indicated):

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, FL 33434  
*Via ECF and Mail*  
*Pro Se*

James John Stamos  
Stamos & Trucco LLP  
One East Wacker Drive  
Suite 300  
Chicago, IL 60601  
(312) 630-7979  
Email: [jstamos@stamostrucco.com](mailto:jstamos@stamostrucco.com)  
*Attorney for Benjamin Brown, as Curator and Administrator*  
*Ad Litem for the Estate of Simon Bernstein*

Kevin Patrick Horan  
Stamos & Trucco Llp  
1 E. Wacker Dr.  
3rd Floor  
Chicago, IL 60601  
(312) 630-7979  
Email: [khoran@stamostrucco.com](mailto:khoran@stamostrucco.com)  
*Attorney for Benjamin Brown, as Curator and Administrator*  
*Ad Litem for the Estate of Simon Bernstein*

on the 28th day of June, 2014.

/s/ Adam M. Simon  
Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
Phone: 312-819-0730  
Fax: 312-819-0773  
E-Mail: [asimon@chicagolaw.com](mailto:asimon@chicagolaw.com)  
Attorney for Plaintiffs

In Re\_ The Estate of Shirley Bernstein.txt

00001

1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,  
2 IN AND FOR PALM BEACH COUNTY, FLORIDA  
3 PROBATE/GUARDIANSHIP DIVISION IY  
4 CASE NO.: 502011CP000653XXXXSB

IN RE: THE ESTATE OF:

5 SHIRLEY BERNSTEIN,  
6 Deceased

7  
8 ELIOT IVAN BERNSTEIN, PRO SE,  
9 Petitioner,

vs.

10 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
11 ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA  
12 (BOTH PERSONALLY & PROFESSIONALLY); DONALD  
13 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);  
14 THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL  
15 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH  
16 PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE  
17 DOE'S (1-5000),  
18 Respondents.

19  
20 TRANSCRIPT OF PROCEEDINGS  
21 BEFORE  
22 THE HONORABLE MARTIN H. COLIN

23 South County Courthouse  
24 200 West Atlantic Avenue, Courtroom 8  
25 Delray Beach, Florida 33344

Friday, September 13, 2013  
1:30 p.m. - 2:15 p.m.

Stenographically Reported By:  
JESSICA THIBAUT

25

♀

00002

1 APPEARANCES

2

3 On Behalf of the Petitioner:

4 ELIOT IVAN BERNSTEIN, PRO SE  
5 2753 NW 34th Street  
6 Boca Raton, Florida 33434

7 MR. MANCERI: That's when the order was  
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came  
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually  
13 filed it and signed the paperwork. November.  
14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's  
16 hard to get through. He does a lot of things  
17 when he's dead.

18 THE COURT: I have all of these waivers by  
19 Simon in November. He tells me Simon was dead  
20 at the time.

21 MR. MANCERI: Simon was dead at the time,  
22 your Honor. The waivers that you're talking  
23 about are waivers from the beneficiaries, I  
24 believe.

25 THE COURT: No, it's waivers of

♀

00026

1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of  
4 discharge by Simon, Simon asked that he not  
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his  
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date  
10 of death.

11 THE COURT: Well, how could that happen  
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the  
18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They

♀

00027



1 should not have been notarized in the absentia  
2 of the people who purportedly signed them. And  
3 I'll give you the names of the other siblings,  
4 that would be Pamela, Lisa, Jill, and Ted  
5 Bernstein.

6 THE COURT: So let me tell you because I'm  
7 going to stop all of you folks because I think  
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda  
10 warnings?

11 THE COURT: Everyone of you might have to  
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a  
15 formal document filed here April 9, 2012,  
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and  
19 notarized on that same date by Kimberly. It's  
20 a waiver and it's not filed with The Court  
21 until November 19th, so the filing of it, and  
22 it says to The Court on November 19th, the  
23 undersigned, Simon Bernstein, does this, this,  
24 and this. Signed and notarized on April 9,  
25 2012. The notary said that she witnessed Simon

♀

00028

1 sign it then, and then for some reason it's not  
2 filed with The Court until after his date of  
3 death with no notice that he was dead at the  
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's  
7 enough to give you Miranda warnings. Not you  
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell  
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the  
14 transaction?

15 MR. SPALLINA: I was involved as the  
16 lawyer for the estate, yes. It did not come to  
17 my attention until Kimberly Moran came to me  
18 after she received a letter from the Governor's  
19 Office stating that they were investigating  
20 some fraudulent signatures on some waivers that  
21 were signed in connection with the closing of

# **EXHIBIT I**

**DOCKET #188 - SIMON ESTATE (SEE EXHIBIT I)**

**RESP - RESPONSE TO:**

**FILING DATE: 27-JUN-2014**

**FILING PARTY: STANSBURY, WILLIAM E**

**DOCKET TEXT: RESPONSE IN OPPOSITION TO THE APPOINTMENT  
OF TED BERNSTEIN AS SUCCESSOR PERSONAL REPRESENTATIVE  
AND MOTION FOR THE APPOINTMENT OF AN INDEPENDENT  
THIRD PARTY AS BOTH SUCCESSOR PERSONAL REPRESENTATIVE  
AND TRUSTEE OF THE SIMON BERNSTEIN TRUST AGREEMENT F/B**

IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR  
PALM BEACH COUNTY, FLORIDA

IN RE:

Case No.: 50 2012 CP 004391 SB  
**JUDGE MARTIN COLIN**

ESTATE OF SIMON  
BERNSTEIN,

Deceased.

Division: IY

---

**RESPONSE IN OPPOSITION TO THE APPOINTMENT  
OF TED BERNSTEIN AS SUCCESSOR PERSONAL REPRESENTATIVE  
AND MOTION FOR THE APPOINTMENT OF AN INDEPENDENT  
THIRD PARTY AS BOTH SUCCESSOR PERSONAL REPRESENTATIVE AND  
TRUSTEE OF THE SIMON BERNSTEIN TRUST AGREEMENT**

COMES NOW Petitioner, William E. Stansbury ("Stansbury"), a creditor and "Interested Person," pursuant to the §731.201(23) Fla. Stat. (2013), by and through his undersigned counsel, and files this Response in Opposition to the Motion for Appointment of Ted Bernstein as Successor Personal Representative and Motion for the Appointment of an Independent Third Party as Successor Personal Representative and Successor Trustee of the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2014 (the "Revocable Trust."). In support, Petitioner states as follows:

**I. Stansbury has standing to bring this Response and Motion**

1. When removal of a Personal Representative is at issue, Fla. Prob. R. 5.440 specifically provides that, "... **any interested person, by petition**, may commence a proceeding to remove a personal representative. ..." (Emphasis added.) By logical extension an "interested person" would also have standing to petition the court for, and to participate in the proceedings involving, the appointment of a successor fiduciary.

2. The provisions of §731.201(23), Fla. Stat. (2013) define an "interested person" as:

(23) "Interested person" means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved..."

3. Stansbury has filed a claim against the Estate of Simon Bernstein (the "Estate") and has sued the Estate in a separate lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida (the "Stansbury Lawsuit.") A copy of the Statement of Claim is attached as Exhibit "A." A copy of the Second Amended Complaint by Interlineation which forms the basis of the Statement of Claim is attached hereto as Exhibit "B."

4. Stansbury, as a claimant of the Estate, has an interest in ensuring that the successor fiduciary ultimately appointed will act without bias and in the best interests of the creditors and devisees of the Estate. The Fourth District Court of Appeal has recognized that a claimant to an estate is an "interested person" and has standing in a proceeding to approve the personal representative's final accounting and petition for discharge. *See, Arzuman v. Estate of Prince Bander BIN Saud Bin, etc.*, 879 So.2d 675 (Fla. 4<sup>th</sup> DCA 2004).

## **II. Ted Bernstein should not be appointed as Successor Personal Representative**

### **A. Misconduct in the Shirley Bernstein Estate**

5. There are serious allegations of fraud and forgery in the Shirley Bernstein Estate where Ted Bernstein is now the Personal Representative. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein, alleged signatures by him, but on a date after he had passed away.

6. This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court questioned whether the potential parties involved should be read their Miranda Rights. (*See* Transcript of Proceedings, pages 15 and 16, attached as Exhibit "C.")

7. This Court should not appoint Ted Bernstein to serve as Personal Representative in the Estate of Simon Bernstein under circumstances where allegations of fraud and wrongdoing

are unresolved and arise out of the performance of his fiduciary duties in the estate of his mother, Shirley Bernstein.

**B. The "lost" Insurance Trust**

8. At the time of Simon Bernstein's death, it was determined that there existed a life insurance policy issued by Heritage Mutual Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust as beneficiary (the "Insurance Trust"). According to an SS-4 Application for EIN form submitted to the IRS on June 21, 1995, Shirley Bernstein was represented as Trustee of the Insurance Trust. (*See* SS-4 Application for EIN as Exhibit "D.")

9. Notwithstanding the earlier SS-4 EIN form, on November 1, 2012, Robert Spallina, one of the resigning Co-Personal Representatives of this Estate, submitted a claim form to Heritage on behalf of the Insurance Trust for the benefit of the grown children of Simon Bernstein. In doing so, Spallina represented that he was the Trustee of the Insurance Trust. (*See* Exhibit "E") Spallina made this representation despite having informed Heritage by letter shortly thereafter that he was "unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995." (*See* Exhibit "F" attached.) If the Trust instrument cannot be found, the insurance proceeds would be payable to the Simon Bernstein Estate, and as such, could be available to pay creditors of the Estate such as Stansbury.

10. Spallina, with the knowledge of Ted Bernstein, represented that he was "Trustee" of the Insurance Trust in an effort to collect the insurance proceeds on behalf the Insurance Trust and for the benefit of the grown children of Simon Bernstein, so as to circumvent the Simon Bernstein Estate.

11. Thereafter, Heritage refused to pay the life insurance proceeds to anyone without a court order. The alleged Insurance Trust then sued Heritage in the Circuit Court of Cook

County, Illinois (the case has since been removed to Federal Court). In paragraph 2 of the Complaint, the Plaintiff, the Insurance Trust, although apparently still “lost,” alleges that Ted Bernstein is the “trustee” of the Insurance Trust. Yet, there exists no trust document establishing the continued existence of the Insurance Trust, let alone that Ted is the Trustee. As a result, Ted’s representation, like that of Spallina, appears plainly false and should disqualify him from serving as a fiduciary in the Estate.

**C. Ted Bernstein has Conflicts of Interest ---**

**(a) The Insurance Litigation in Chicago**

12. Ted Bernstein, as well as his siblings (other than Eliot Bernstein) - Lisa Sue Friedstein, Pamela Beth Simon, and Jill Iantoni - have a conflict of interest precluding them from faithfully executing the duties of fiduciary on behalf of the Estate.

13. One of the considerations for removal of a Personal Representative as set forth in §733.504(9) (2013) is, “**(9) Holding or acquiring conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole.**”

14. A trail of e-mails indicates that Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni were advocating and scheming to keep the proceeds from the Heritage life insurance policy, as described above in paragraphs 8 thru 11 from being paid to the Estate. The stated purpose of this scheme was to avoid making the life insurance proceeds available to pay creditors of the Estate such as Stansbury. (See, selected e-mail messages, attached hereto as Composite Exhibit “G”.) The residuary beneficiaries of the Will, that is, the grandchildren of Simon Bernstein, would also be prejudiced by such a determination.

15. Section 733.602(1), Fla. Stat. (2013), expressly provides that “. . . A personal representative shall use the authority conferred by this code, the authority in the will, if any, and

the authority of any order of the court, **for the best interests of interested persons, including creditors.**" (Emphasis added.)

16. While the ultimate outcome of the adjudication of the issues surrounding the Heritage life insurance proceeds is uncertain, what is clear is that each of the children of Simon Bernstein, other than Eliot Bernstein, have advocated, and continue to advocate a position that is contrary to the best interests of the Estate, its creditors and beneficiaries. These two conflicting and contrary positions between the interests of the children of Simon Bernstein (other than Eliot) and the duty of the successor fiduciary to act in the best interests of the Estate, including the creditors and beneficiaries, render Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni unqualified to serve as successor fiduciaries. *See Estate of Bell v. Johnson*, 573 So.2d 57 (Fla. 1<sup>st</sup> DCA, 1990) (conflict between personal representative, in that capacity, and as power of attorney, necessitated removal as personal representative).

**(b) Stansbury's Lawsuit Against the Estate**

17. The Stansbury Lawsuit filed against the Estate also named as Defendants Ted Bernstein individually and several entities with which Stansbury, Ted Bernstein and Simon Bernstein were associated. On June 9, 2014, through a mediation agreed upon by the parties, Stansbury settled with Ted and some entity Defendants.

18. Allegations of fraud are made against both Ted Bernstein and Simon Bernstein. The remaining Defendant of significance in the case is the Estate. As a consequence, Ted would have absolutely no objectivity serving as Personal Representative of the Estate when evaluating the Stansbury lawsuit.

**D. The Ted Bernstein and Eliot Bernstein Litigation**

19. The animus and "bad blood" that has surfaced between Ted Bernstein and Eliot Bernstein, and to a lesser extent the other Bernstein siblings, makes the selection of any of the

Bernstein siblings as successor Personal Representative ill-advised. Such an appointment would virtually guarantee that the Court's docket and courtroom will be continuously inundated with motions and other activities initiated by the warring factions, all to the detriment of the beneficiaries and creditors of the Estate such as Stansbury.


**E. The Court Should Appoint an Independent Successor Personal Representative.**

20. Stansbury moves this Court for the appointment of an independent, third party Successor Personal Representative that will administer the Estate in an objective, unbiased and fair manner, as set forth in § 733.5061, Fla. Stat. (2013) and in accordance with the procedure set forth in §733.501, Fla. Stat. (2013). Additionally, Stansbury moves this Court to appoint the same independent Successor Personal Representative to be Successor Trustee of the Simon Bernstein Revocable Trust as well.

21. In connection therewith, Stansbury offers the following individuals that have expressed a willingness to serve as both Successor Personal Representative and Trustee of the Revocable Trust:

- (a) Brian O'Connell, Esq.
- (b) Michael Mopsick, Esq.

22. The resumes setting forth the experience and qualifications of the aforementioned individuals are attached hereto as Exhibits "H" and "T".

  
Peter M. Feaman




## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to parties listed on the attached Service list by U.S. Mail and via e-mail service at [arose@mrachek-law.com](mailto:arose@mrachek-law.com) and [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com) to Alan Rose, Esq., PAGE, MRACHEK, Attorneys for Defendants, Ted Bernstein, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, and at [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com) to John J. Pankauski, Esq., PANKAUSKI LAW FIRM, 120 South Olive Avenue, Suite 701, West Palm Beach, FL 33401; Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv); and William H. Glasko, Esq., Golden Cowan, P.A., PALMETTO BAY LAW CENTER, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com); Benjamin P. Brown, Esq., Matwiczuk & Brown, LLP, 625 N. Flagler Drive, Suite 401, West Palm Beach, FL 33401, [bbrown@matbrolaw.com](mailto:bbrown@matbrolaw.com); John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, [john@jpmorrisseylaw.com](mailto:john@jpmorrisseylaw.com), Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, [ijb@ijblegal.com](mailto:ijb@ijblegal.com), on this 27<sup>th</sup> day of June, 2014.

PETER M. FEAMAN, P.A.  
3615 W. Boynton Beach Blvd.  
Boynton Beach, FL 33436  
Tel: 561-734-5552  
Fax: 561-734-5554  
Service: [service@feamanlaw.com](mailto:service@feamanlaw.com)  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By: \_\_\_\_\_

  
Peter M. Feaman  
Florida Bar No.: 0260347

**IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR  
PALM BEACH COUNTY, FLORIDA**

IN RE:

**Case No. 502012CP004391 SB**

ESTATE OF SIMON  
BERNSTEIN,

Deceased.

**Division: IZ**

**COPY**  
SOUTH COUNTY BRANCH OFFICE  
ORIGINAL RECEIVED

**NOV 06 2012**

SHARON R. SOCK  
CLERK & COMPTROLLER  
PALM BEACH COUNTY

**STATEMENT OF CLAIM BY WILLIAM E. STANSBURY**

The undersigned hereby presents for filing against the above estate this Statement of Claim and alleges:

1. The basis for the claim is the action pending in Palm Beach County, Florida, *Stansbury v. Bernstein, et. al*, Case No. 502012CA 013933XXXX MB (the "Pending Action"). A true and correct copy of the Complaint filed by claimant that initiated the Pending Action is attached hereto as Exhibit "A" and is hereby incorporated by reference herein (the "Complaint").

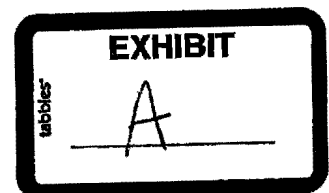
2. The name and address of the claimant are William E. Stansbury, 6920 Caviro Lane, Boynton Beach, Florida 33437, and the name and address of the claimant's attorney is set forth below.

3. The amount of the claim is in excess of \$2.5 million dollars, which the Claimant is entitled to recover under the claims set forth in the Complaint, which amount the Claimant believes is now due.

4. The claim is contingent or unliquidated and uncertain to the extent that the Claimant's claim is dependent on the outcome of the Pending Action. The specific amount of Claimant's claim will be determined in Pending Action and the Claimant expects to recover in excess of \$2.5 million dollars in damages, as well as, but not limited to, treble damages, pre-judgment and post-judgment interest, and costs.

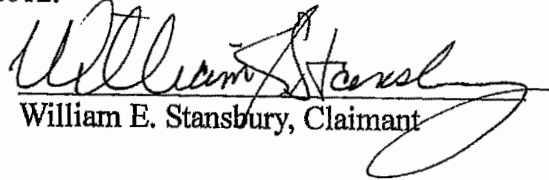
5. The claim is not secured.

*[Signature page follows this page]*

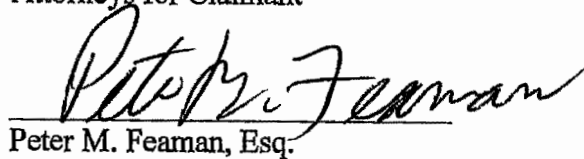


Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on November 6, 2012.

  
William E. Stansbury, Claimant

Attorneys for Claimant

  
Peter M. Feaman, Esq.

Florida Bar No.: 260347

PETER M. FEAMAN, P.A.

3615 West Boynton Beach Blvd.

Boynton Beach, FL 33436

Phone: (561) 734-5552

Facsimile: (561) 734-5554

Primary Electronic Mail Address:

[pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)

Copy mailed to attorney for Personal  
Representative on \_\_\_\_\_  
2012.

**MUST BE FILED IN DUPLICATE**

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,  
Plaintiff,

CASE NO: 50 2012 CA 013933 MB AA

v.

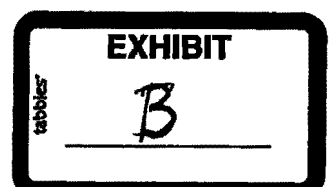
TED S. BERNSTEIN; DONALD TESCHER and  
ROBERT SPALLINA, as co-personal  
representatives of the ESTATE OF SIMON L.  
BERNSTEIN and as co-trustees of the SHIRLEY  
BERNSTEIN TRUST AGREEMENT dated  
May 20, 2008; LIC HOLDINGS, INC.;  
ARBITRAGE INTERNATIONAL MANAGEMENT, LLC,  
f/k/a ARBITRAGE INTERNATIONAL  
HOLDINGS, LLC; BERNSTEIN FAMILY  
REALTY, LLC,  
Defendants.

---

**SECOND AMENDED COMPLAINT BY INTERLINEATION**

WILLIAM E. STANSBURY, by and through undersigned counsel, sues the Defendants  
and states:

1. This is an action for money damages in excess of \$15,000, and for equitable relief.
2. Plaintiff (hereinafter referred to as "STANSBURY") is *sui juris*, and a resident of Palm Beach County, Florida.
3. Defendant TED S. BERNSTEIN ("TED BERNSTEIN"), is *sui juris*, and a resident of Palm Beach County, Florida.
4. SIMON L. BERNSTEIN ("SIMON BERNSTEIN") died on or about September 13, 2012, after the filing of the initial Complaint in this action. At the time of his death, SIMON BERNSTEIN was *sui juris*, and was a resident of Palm Beach County, Florida. Defendants



Donald R. Tescher and Robert L. Spallina are serving as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN (the "ESTATE") which ESTATE is presently open and pending in the Palm Beach County Circuit Court, *In re: Estate of Simon L. Bernstein*, Case No. 502012CP004391XXXXSB (the "Estate Proceeding"). In accordance with Section 733.705, Florida Statutes, STANSBURY hereby brings this independent action against the ESTATE with respect to his Statement of Claim that was filed and objected to in the Estate Proceeding.

5. Defendant, LIC HOLDINGS, INC. ("LIC Holdings") is a Florida corporation with its principal place of business in Palm Beach County, Florida.

6. Defendant, ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, formerly known as ARBITRAGE INTERNATIONAL HOLDINGS, LLC, ("ARBITRAGE") is a Florida limited liability company with its principal place of business in Palm Beach County, Florida.

7. Defendant, BERNSTEIN FAMILY REALTY, LLC is a Florida limited liability company doing business in Palm Beach County.

8. Defendant, the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008 ("SHIRLEY'S TRUST"), owns real property in Palm Beach County, Florida. Based upon information and belief, Donald R. Tescher and Robert L. Spallina are serving as co-trustees of SHIRLEY'S TRUST. This Court has personal jurisdiction over the trustees and the beneficiaries of SHIRLEY'S TRUST under Section 736.0202, Florida Statutes, as the principal place of administration of SHIRLEY'S TRUST is in Palm Beach County, Florida. This court has subject matter jurisdiction over this action under Section 736.0203, Florida Statutes. Venue is proper in Palm Beach County, Florida, under Section 736.0204, Florida Statutes, as the principal place of administration of SHIRLEY'S TRUST is in Palm Beach County, Florida and one or more of the beneficiaries of SHIRLEY'S TRUST reside in Palm Beach County, Florida.

9. The acts and incidents giving rise to the causes of action alleged herein arose in Palm Beach County, Florida.

### **General Allegations**

10. STANSBURY has worked in the insurance industry for virtually all of his adult life. After 30 years, he had become well-known and highly regarded by major insurance companies, their principals and others throughout the insurance industry, at all levels thereof, as well as by professionals, including attorneys, CPA's, financial advisors, wealth managers and others who were involved in serving, or otherwise dealing with insurers, insurance brokers and life insurance products.

11. SIMON BERNSTEIN dealt at sophisticated levels of the insurance industry and specialized in developing and marketing insurance concepts suitable for persons of high net worth to incorporate into their wealth management and estate planning.

12. TED BERNSTEIN, the son of SIMON BERNSTEIN, was also actively involved in selling life insurance products in conjunction with attorneys, CPAs and other professionals, to be incorporated into high net worth individuals' financial and estate planning.

13. TED BERNSTEIN, acting on his behalf and on behalf of, and in concert with, SIMON BERNSTEIN, approached STANSBURY in 2003, urging STANSBURY to spearhead the marketing of a unique insurance concept, newly developed by a prominent law firm, which was designed for use in the financial and estate planning of high net worth individuals.

14. TED BERNSTEIN told STANSBURY that he knew of STANSBURY's expertise and reputation in the insurance and related industries and that STANSBURY was skilled at and accustomed to speaking and marketing insurance products to groups of professionals. He realized that STANSBURY, because of his knowledge, reputation and abilities, would be well suited to market this concept nationwide through prominent and experienced professionals.

15. In 2006, SIMON BERNSTEIN and TED BERNSTEIN (collectively, "BERNSTEIN" or the "BERNSTEINS") formed, as sole shareholders, Defendants LIC Holdings and ARBITRAGE for the purpose of marketing and selling certain life insurance products to high net worth individuals for their wealth management and estate planning needs.

16. STANSBURY agreed to become an employee of LIC Holdings, Inc. and ARBITRAGE and agreed to a salary of 15% of net retained commissions received on all products sold, including renewals. STANSBURY at this time was responsible for, among other duties, calculating, on a monthly basis, the commissions due him in connection with new business generated in the current year and renewals on business generated in previous years.

17. STANSBURY worked with diligence and skill, traveling throughout the United States, generating ever-increasing sales and generating very large commissions. By 2006, nationwide sales were resulting in substantial commissions on new policies and renewal commissions.

18. Also in 2006, SIMON BERNSTEIN, acting on his behalf and on behalf of, and in concert with, TED BERNSTEIN, told STANSBURY that STANSBURY was being rewarded for his efforts and the explosive growth of the business, such that he would receive a 10% ownership interest in LIC Holdings, Inc. SIMON BERNSTEIN and TED BERNSTEIN, collectively, were majority shareholders while STANSBURY was a minority shareholder in LIC Holdings, Inc.

19. STANSBURY has sued both LIC Holdings and ARBITRAGE because the BERNSTEINS represented that his employment relationship was with LIC Holdings, the company in which he owned a 10% interest, but STANSBURY'S W-2 statements were issued by ARBITRAGE as his employer.

20. In February of 2008, SIMON BERNSTEIN, acting on his behalf and on behalf of, and in concert with TED BERNSTEIN, approached STANSBURY and told him his time would

be better spent building the business rather than performing monthly calculations of income. The plan proposed was that, rather than STANSBURY performing computations on a monthly basis as to how much should be paid to him based upon 15% of the net retained commissions derived from both new policies sold and renewals from previous years, the BERNSTEINS and STANSBURY all would forego monthly payouts and defer compensation until the end of 2008, when year-end computations could be made. It was represented that in December, year-end computations would be made and salaries would be paid in December 2008 or January of 2009. It was specifically represented to STANSBURY that:

a) neither SIMON BERNSTEIN, TED BERNSTEIN nor STANSBURY would take any compensation during fiscal year 2008 but rather they all would wait until the year-end accounting was performed in December of 2008 or January, 2009;

b) SIMON BERNSTEIN, TED BERNSTEIN, and STANSBURY would each be paid a minimum salary of \$1,000,000 at year end, and STANSBURY'S salary was to be applied against his earned commissions of 15%. Any compensation due STANSBURY over and above the \$1,000,000 would be paid as a distribution on his stock ownership interest in LIC Holdings.

21. In January of 2008, STANSBURY was paid \$420,018 for commissions earned on some 2007 sales. However, STANSBURY was not, and has never been, paid the commissions due him on sales in 2008 and thereafter, and he was not and has never been paid the renewal commissions due him on sales made in previous years that were paid to LIC Holdings or ARBITRAGE in 2008 and thereafter, other than a nominal payment of \$30,000 made in 2010.

22. When STANSBURY was not paid as agreed in late 2008/2009 and thereafter, SIMON BERNSTEIN and TED BERNSTEIN, on behalf of and in concert with each other, stated to STANSBURY that salary and ownership distributions due and owing to SIMON BERNSTEIN, TED BERNSTEIN and STANSBURY would be deferred to a future time. This



deferral of payment was represented to be important because, as a result of the virtual collapse of the capital lending markets in 2008, it was necessary to retain the funds in the corporate bank accounts to demonstrate to potential lenders the financial stability of the companies.

23. The false statements set forth in paragraphs 18 through 21, above, were made by SIMON BERNSTEIN and TED BERNSTEIN, in concert with each other, with knowledge of their falsity and with the intention of never to fulfilling such promises.

24. Despite the representations to STANSBURY set forth above to the contrary, SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders of LIC Holdings and ARBITRAGE, authorized LIC Holdings and/or ARBITRAGE to pay themselves \$3,756,229.00 and \$5,225,825.00, respectively, in 2008. Contrary to the representations made as set forth in paragraph 20, STANSBURY received no compensation for first year commissions and renewal commissions due him in 2008.

25. The net retained commissions by LIC Holdings and ARBITRAGE, not including renewals, for 2008 were approximately \$13,442,549.00. As such, STANSBURY was entitled to, at the very minimum, 15% of \$13,442,549.00, or \$2,016,382.35.

26. Beginning late in 2007 or early in 2008, and continuing through at least 2012, LIC Holdings and/or ARBITRAGE became the alter ego of SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders, in that they disregarded corporate structure and wrongfully diverted, converted and depleted corporate assets of LIC Holdings and ARBITRAGE for their own personal benefit and the benefit of Bernstein family trusts and other entities as more specifically set forth below. Those trusts have since invested some of these wrongfully diverted and converted corporate assets in real estate, also as more particularly set forth below. The wrongful action of SIMON BERNSTEIN and TED BERNSTEIN in diverting and converting corporate assets rendered LIC Holdings, and possibly ARBITRAGE, insolvent.

27. Throughout 2009, SIMON BERNSTEIN and TED BERNSTEIN continued to make false statements to STANSBURY to hide the fact that LIC Holdings and/or ARBITRAGE was their alter ego, in that they converted corporate property and corporate assets of LIC and/or ARBITRAGE for their own personal benefit in 2008, 2009 and thereafter, all to the exclusion and financial detriment of STANSBURY, all the while fraudulently representing to STANSBURY that no money was being paid as salary or distributions to SIMON BERNSTEIN, TED BERNSTEIN or STANSBURY because it was necessary to hold the funds in the corporate bank accounts to show to potential lenders the financial stability of the company.

28. STANSBURY relied upon these continuing misrepresentations of Defendants to his detriment. Because STANSBURY was told that potential funding sources for the business needed to see that capital of the company was available, he took no action when he did not receive any compensation for 2009 and was paid only \$30,000 in 2010.

29. In order to continue their scheme to defraud, SIMON BERNSTEIN and TED BERNSTEIN failed and refused to account for renewal commissions and failed to supply any financial information to STANSBURY concerning LIC Holdings or ARBITRAGE.

30. In furtherance of their scheme to deprive STANSBURY of salary he had earned and shareholder distributions to which he was entitled, SIMON BERNSTEIN and TED BERNSTEIN intercepted mail addressed to STANSBURY, removing commission checks representing commissions due to STANSBURY, deposited the funds into their own accounts and otherwise converted the funds. SIMON BERNSTEIN and TED BERNSTEIN also opened STANSBURY's mail containing checks payable to him which were unrelated to them and the businesses.

31. In December, 2011 STANSBURY had been battling a painful and debilitating disease that could only be managed through the administration of potentially harmful

prescription medications. On December 22, 2011, the Defendants BERNSTEIN, with knowledge of STANSBURY's health issues and his debilitated condition, decided to take advantage of and deceive STANSBURY further. STANSBURY had for years been given K-1 statements reflecting his 10% ownership of LIC Holdings. At that time, TED BERNSTEIN told STANSBURY that the company accountant had discovered a potential significant taxable event which could cause STANSBURY, as one of the owners of LIC Holdings to pay taxes on phantom income. TED BERNSTEIN promised that if STANSBURY would sign a paper ceding his 10% interest in LIC Holdings, he would not have to pay the tax if in fact the tax was due. TED BERNSTEIN promised he would hold the paper, promising it would not become operative until STANSBURY and the Defendants BERNSTEIN discussed the situation further in the first quarter of 2012.

32. Because of the misrepresentations, willful concealments of material facts, duplicity and deceit practiced by Defendants upon STANSBURY, STANSBURY reasonably believed that Defendants had complied, or intended to comply with their obligations to STANSBURY under the contract between them. STANSBURY, therefore, was prevented from knowing for a period of years that the causes of action asserted herein existed.

33. By the second quarter of 2012, STANSBURY developed the belief that the BERNSTEINS' representations over the years were wholly false and he sought legal counsel.

34. STANSBURY has retained the law firm of Peter M. Feaman, P.A. and has agreed to pay it a reasonable fee for its services rendered herein.

**COUNT I - ACCOUNTING**  
**(Against LIC Holdings and ARBITRAGE, for Accounting)**

35. STANSBURY hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

36. The relationship between STANSBURY and the Defendants, particularly as affected by Defendants' acts described in preceding paragraphs 19 through 27 created a situation where Defendants had sole access to receipts generated by STANSBURY's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to STANSBURY under his arrangement with Defendants.

37. The period of time during which STANSBURY has been deprived of monies due him spans approximately four and a half years. The various sources of revenue to Defendants of monies from which the amounts due STANSBURY may be calculated, the manner in which STANSBURY was to be paid, and the amount due STANSBURY all involve extensive and complicated accounts, and STANSBURY's remedy at law cannot be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff STANSBURY prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, LIC Holdings and ARBITRAGE, and for such orders of Court as will require such Defendants to provide STANSBURY with all records and copies of documents from January 1, 2006 to the present, in order to reveal his right to, and the amount of all sums: (a) received as commissions to which STANSBURY was entitled to a share; (b) due to STANSBURY, whether paid or not; (c) paid to STANSBURY, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the BERNSTEIN Defendants out of monies received as commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid, to be paid, or not to be paid to STANSBURY, together with an award of court costs and such other and further relief as the Court may deem just and proper.

**COUNT II - BREACH OF ORAL CONTRACT**  
**(Against LIC Holdings, Inc., ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN)**

38. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

39. The arrangement between STANSBURY and Defendants, as described in paragraphs 13 through 28 above, constituted a contract between them.

40. An express term of that contract involved the commitment of LIC Holdings and ARBITRAGE to calculate and pay to STANSBURY all sums due to him under the contract, whether as commissions, salary, distributions, expenses or any other reason.

41. The Defendants initially performed the duties required of them under said contract.

42. However, Defendants breached their contract with STANSBURY by withholding from STANSBURY monies due him under the contract for renewal commissions earned in 2007 and commissions and renewal commissions earned in 2008 and thereafter.

43. The withholding of such monies constitutes a material breach of the contract between STANSBURY and LIC Holdings and ARBITRAGE.

44. STANSBURY has sued both LIC Holdings and ARBITRAGE because the BERNSTEINS represented that his employment relationship was with LIC Holdings, the company in which he owned a 10% interest, but STANSBURY'S W-2 statements were issued by ARBITRAGE as his employer.

45. SIMON BERNSTEIN and TED BERNSTEIN are personally liable, jointly and severally, for the material breach of the oral employment contract with STANSBURY as LIC Holdings and/or ARBITRAGE were the alter ego of SIMON BERNSTEIN and TED

BERNSTEIN in that the BERNSTEINS depleted corporate assets for their personal benefit by causing the corporation or corporations to make exorbitant and inappropriate distributions to themselves, family members, and BERNSTEIN family trusts and other entities, at the expense of corporate creditors such as STANSBURY, to wit:

a) SIMON BERNSTEIN and TED BERNSTEIN caused LIC Holdings and/or ARBITRAGE to pay to them at least \$3,756,229.00 and \$5,225,825.00, respectively, in fiscal 2008 during which time STANSBURY, other than the amount referenced in paragraph 21, was paid nothing;

b) According to Palm Beach County public records, in December of 2007 TED BERNSTEIN purchased a property at 880 Berkeley Street, Boca Raton, Florida 33487, for \$4,400,000;

c) According to Palm Beach County public records, on December 28, 2008, TED BERNSTEIN paid off the mortgage in the amount of \$486,400.00 on a property he owned at 15807 Menton Bay Court, Saturnia Isles, Delray Beach, Florida 33446;

d) According to Palm Beach County public records, SIMON BERNSTEIN paid off the mortgage on property he and his wife owned, and subsequently transferred by quitclaim deed on May 20, 2008 to the trustee of SHIRLEY'S TRUST, at 7020 Lions Head Lane, Boca Raton, Florida, 33496. The amount of the mortgage pay-off is unknown, but in 2013 the property was listed for sale at \$2,399,000;

e) According to Palm Beach County public records, on June 18, 2008, BERNSTEIN FAMILY REALTY, LLC acquired a property located at 2753 N.W. 34 Street, Boca Madera Unit 2, Boca Raton, Florida 33432 (the "Boca Madera Property). On July 8, 2008, SIMON BERNSTEIN loaned \$365,000 to BERNSTEIN FAMILY REALTY, LLC. The specific