

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF

PROBATE DIVISION

SIMON BERNSTEIN

File Number 502012CP004391XXXXSB

Deceased.

Division PROBATE

STATEMENT OF CLAIM BY WEST ASSET MANAGEMENT, INC. for AMERICAN EXPRESS

The undersigned hereby presents for filing against the above estate this statement of claim and alleges:

1. The basis for the claim is Account # [REDACTED]

2. The social security or tax identification number of the claimant is [REDACTED]

the name and address of the claimant are WEST ASSET MANAGEMENT, INC. for AMERICAN EXPRESS, 7171 MERCY RD, PO BOX 6183, OMAHA, NE 68106-0183 and the name and address of the claimant's attorney, if any, are as set forth below.

3. The amount of the claim is \$ 34,215.15 which amount is now due, or, if not due, will become due on

4. The claim (is) (is not) contingent or unliquidated. If contingent or unliquidated, the nature of the uncertainty is The claim is not contingent or unliquidated.

5. The claim (is) (is not) secured. If secured, the security consists of The claim is () secured (X) not secured.

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 January 07, 2013

Kem D Deluc

Claimant

Attorney for Claimant

Copy mailed to attorney for the Personal Representative on 01-07-2013

7171 MERCY RD.
PO BOX 6183
OMAHA, NE 68106-0183
(address)

CLERK OF THE CIRCUIT COURT

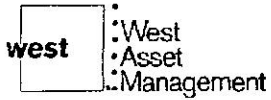
Telephone: 1-800-878-3317

By: *Susan Hoell*

MUST BE FILED IN DUPLICATE

[Print or Type Names Under All Signature Lines]

FILED
PALM BEACH COUNTY FL
JAN 10 PM 2:07

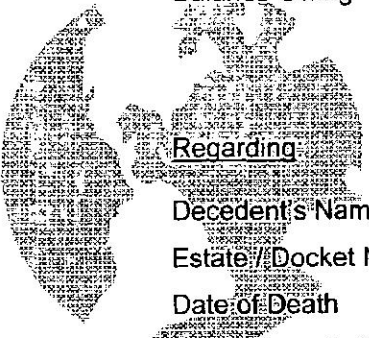


7171 Mercy Road PO Box 6183 Omaha, NE 68106-0183 1-800-878-3317

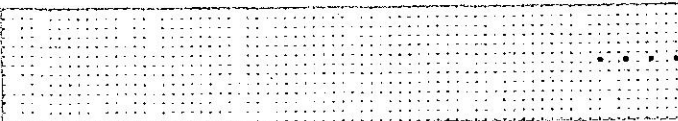
01-04-2013

Reference: Enclosed claim by West Asset Management, Inc. for

Client Name	AMERICAN EXPRESS
Client Account Number	██████████
Balance Owning	\$34,215.15



<u>Regarding</u>	
Decedent's Name	SIMON BERNSTEIN
Estate // Docket Number	502012CP004391XXXXSB
Date of Death	09-13-2012
Social Security Number	



IN THE CIRCUIT COURT FOR PALM MEACH COUNTY, FL

IN RE: ESTATE OF

SIMON L. BERNSTEIN

Deceased.

PROBATE DIVISION

File No.

502012CP004391IZXXXXSB

2013 JAN 16 PM 1:38

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CTY BRANCH-FILED

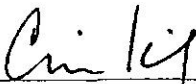
STATEMENT OF CLAIM BY CBIZ GOLDSTEIN LEWIN

The undersigned hereby presents for filing against the above estate this statement of claim and alleges:

1. The basis for the claim is Professional Fees for services rendered.
2. The name and address of the claimant are CBIZ Goldstein Lewin, 1675 N. Military Trail, 5th Floor, Boca Raton, FL 33486 and the name and address of the claimant's attorney, if any, are as set forth below.
3. The amount of the claim is \$1,886.94 which amount is now due.
4. The claim is not contingent or unliquidated.
5. The claim is not secured.

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 January 15, 2013.



Claimant

Copy mailed to attorney for Personal Representative on 1/19, 2013.

CLERK OF THE CIRCUIT COURT

BY: 

MUST BE FILED IN DUPLICATE

**CBIZ Goldstein Lewin &
MHM Goldstein Lewin Division**

PO Box 953152
St. Louis, MO 63195-3152
Ph: 561-994-5050 F: 561-241-0071

Estate of Simon Bernstein
c/o Tescher & Spallina, P.A.
Attn: Robert Spallina
4855 Technology Way, Suite 720
Boca Raton, FL 33431

Statement Date 1/11/2013
Client No. 4001350.0

	Date	Description	Charge	Credit	Balance
		Balance Forward			0.00
92850	11/23/2011	Invoice	5,666.64		5,666.64
	1/30/2012	Payment		3,000.00	2,666.64
	8/31/2012	Credit Memo		779.70	1,886.94
102222	11/12/2012	Invoice	2,861.25		4,748.19
	12/26/2012	Payment		2,861.25	1,886.94
		Current Balance		\$	1,886.94

0 - 30	31 - 60	61 - 90	91 - 120	Over 120	Balance
0.00	0.00	0.00	0.00	1,886.94	\$ 1,886.94

**To ensure proper credit, please reflect invoice number on check, make check payable to:
CBIZ MHM LLC (Boca GL) and remit payment to: PO Box 953152, St. Louis, MO 63195-3152.**

Payments received are posted through January 11, 2013



CBIZ Goldstein Lewin

Simon Bernstein
7020 Lions Head Lane
Boca Raton, FL 33496

Invoice No. 92850
Date 11/23/2011
Client No. 4001350.0
Total Amount Due \$ 5,666.64

TO INSURE PROPER CREDIT, PLEASE WRITE INVOICE NUMBER ON CHECK
AND DETACH THIS STUB AND RETURN WITH YOUR PAYMENT

Professional Services Rendered Through October 31, 2011

Accumulation of information and preparation of 1099's for the year ended December 31, 2010.

Accumulation and analysis of information and preparation of U.S. Individual Income Tax Return (Form 1040) for 2010.

Handling of ongoing IRS outstanding tax for the year ended December 31, 2008.

Print 2008 and 2009 K-1s per client's request.

Prepare Amended 2008 Tax Return per IRS 1045 denial letter.	\$ 7,083.30
Less: Client Courtesy	(1,416.66)
	<u>\$ 5,666.64</u>

0 - 30	31 - 60	61 - 90	91 - 120	Over 120	Balance
5,666.64	0.00	0.00	0.00	0.00	5,666.64

Invoice Due Upon Receipt
Payments Received Are Posted Through Above Invoice Date

Client Name: Simon Bernstein
Invoice No.: 92850

Client No: 4001350
Invoice Date: 11/23/2011

Make check payable to: CBIZ MHM LLC (Boca GL)

Remit payment to: PO Box 953152, St. Louis, MO 63195-3152
Ph: 561.994.5050 □ F: 561.241.0071 □ www.cbizgl.com

A finance charge of 1.5% per month will be added to any unpaid balance over 60 days from invoice date.

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

WILLIAM E. STANSBURY, an individual,

Plaintiff,

v.

CASE NO.: 50 2012CA013933 XXXX(NB)
(AA)

TED S. BERNSTEIN, an individual,
SIMON L. BERNSTEIN, an individual,
LIC HOLDINGS, INC., a Florida
Corporation, **ARBITRAGE**
INTERNATIONAL MARKETING, LLC, a
Florida Corporation f/k/a **ARBITRAGE**
INTERNATIONAL HOLDINGS, LLC.,

Defendants.

FILED
12 SEP 10 PM 2:33
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

MOTION FOR ENLARGEMENT OF TIME

Defendants, **TED S. BERNSTEIN** ("Ted"), **SIMON L. BERNSTEIN** ("Si"), **LIC HOLDINGS, INC.** ("LIC") and **ARBITRAGE INTERNATIONAL MARKETING, LLC**, f/k/a **ARBITRAGE INTERNATIONAL HOLDINGS, LLC** ("Arbitrage") (Ted, Si, LIC and Arbitrage are, collectively, the "Defendants"), pursuant to Fla. R. Civ. P. 1.090(b), move for an enlargement of time to respond to Plaintiff, **WILLIAM E. STANSBURY**'s, complaint, and in support state:

1. On July 31, 2012, Plaintiff served Defendants with his eleven count complaint.
2. On August 20, 2012, shortly after the undersigned's retention as counsel for the Defendants, the undersigned contacted Plaintiff's counsel to request an enlargement of time to respond to the complaint up through and including Wednesday, September 19, 2012.

Unfortunately, Plaintiff's counsel was only authorized by Plaintiff to agree to an enlargement of time up through and including September 7, 2012.

3. Due to other pressing matters and the intervening holiday, the undersigned has been unable to properly devote the time necessary to investigate Plaintiff's allegations, evaluate all potential defenses and claims and formulate a response to the complaint. Accordingly, Defendants seek an enlargement of time, through and including Monday, September 24, 2012, to serve Defendants' response to the complaint.

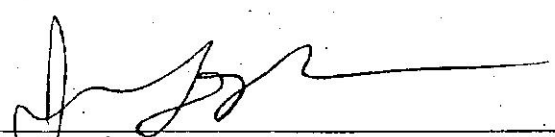
4. This motion is not made for the purpose of delay, or any other improper purpose, and no prejudice will be caused to Plaintiff by the granting of this motion.

5. The undersigned has consulted with Plaintiff's counsel. Unfortunately, Plaintiff refuses to consent to the relief requested herein.

WHEREFORE, Defendants respectfully request entry of an order enlarging the time for the Defendants to serve their response to the complaint through and including Monday, September 24, 2012 and granting such other and further relief this Court deems just and appropriate.

Dated this 7th day of September, 2012.

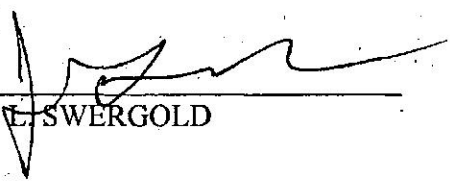
GREENBERG TRAUIG, P.A.
401 E. Las Olas Blvd., Suite 200
Telephone: (954) 765-0500
Facsimile: (954) 765-1477



Jon L. Swergold
Florida Bar No. 0108510
swergoldj@gtlaw.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the has been sent via e-mail and U.S. Mail to: Peter M. Feaman, Esq.(pfeaman@feamanlaw.com), Kenneth D. Stern, Esq. (kdstern@gmail.com), 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436 on this 7th day of September, 2012.



JONATHAN SWERGOLD

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF

File No. 502011CP000653XXXX SB

SHIRLEY BERNSTEIN,

Probate Division

Deceased.


13 JAN -3 PM 3:57
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CTY BRANCH-FILED

ORDER OF DISCHARGE

On the Petition for Discharge of SIMON BERNSTEIN, as personal representative of the Estate of Shirley Bernstein, deceased, the court finding that the estate has been fully administered and properly distributed, that claims of creditors have been paid or otherwise disposed of, that the tax imposed by Chapter 198 of the Florida Statutes, if any, has been paid, and that the personal representative should be discharged, it therefore is

ADJUDGED that the personal representative is discharged, and the surety on the personal representative's bond, if any, is released from further liability.

ORDERED on 1/3, ²⁰¹³~~2012~~



Circuit Judge

cc: Robert L. Spallina, Esquire



FINAL DISPOSITION FORM

THIS FORM IS REQUIRED FOR THE USE OF THE CLERK OF COURT FOR THE PURPOSE OF REPORTING JUDICIAL WORKLOAD DATA PURSUANT TO FLORIDA STATUTE 25.075.

CIRCUIT PROBATE/GUARDIANSHIP COURT
JUDGE MARTIN H. COLIN

IN RE: ESTATE OF

CASE NO. 502011CP000653XXXXSB
DIVISION: IV

SHIRLEY BERNSTEIN

II. MEANS OF FINAL DISPOSITION (PLACE AN "X" IN ONE BOX ONLY)

- Dismissed Before Hearing
- Dismissed After Hearing
- Disposed By Default
- Disposed By Judge
- Disposed By Non-Jury Trial
- Disposed By Jury Trial
- Other:

13 JAN -3 PM 3:57
SHARON R. BOCK, CLERK
PALM BEACH COUNTY FILED
SOUTH CITY BRANCH

DATE: JANUARY 3, 2013.


MARTIN H. COLIN
CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF

PROBATE DIVISION

SIMON BERNSTEIN,

File No. 50 2012 CP 004391

XXXXSB IZ
IZ XXXX-SB

Deceased.

ORDER EXTENDING TIME TO FILE INVENTORY

13 JAN 14 PM 3:05
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
SOUTH PALM BRANCH FILED

THIS CAUSE, having come before the Court upon the Petition of Robert L. Spallina and Donald R. Tescher, as co-personal representatives of the Estate of Simon Bernstein, deceased, for an extension of time to file the Inventory of the estate, and the Court having reviewed the Petition and being otherwise duly advised in the premises it is hereby

ADJUDGED that an extension of time is granted up until today in which to file the Inventory in this cause.

DONE AND ORDERED in Chambers at Delray Beach, Palm Beach County, Florida, this 14 day of January, 2012.

Circuit Judge

cc: Robert L. Spallina, Esquire

N:\WPDATA\etate\depassion_Simon\Plnding\Extend Inventory Ord\wpd

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NOT PROVIDED COURT



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

CASE NO: 502012CA013 933XXXXMB AA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN, SIMON
BERNSTEIN, LIC HOLDINGS, INC., and
ARBITRAGE INTERNATIONAL
MANAGEMENT, L.L.C., f/k/a
ARBITRAGE INTERNATIONAL
HOLDINGS, L.L.C.,

Defendants.

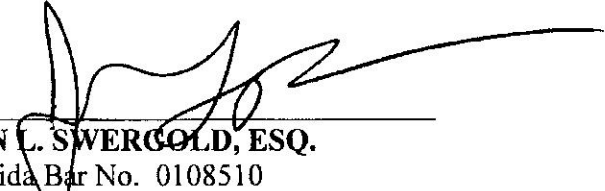
SUGGESTION OF DEATH

FILED
12 SEP 20 PM 2:43
SHARON M. BOON, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

Defendants, TED S. BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., pursuant to Fla. R. Civ. P. 1.260(a), hereby give notice of the death of Defendant, Simon Bernstein. Mr. Bernstein died on September 13, 2012.

Dated this 19 day of September 2012.

GREENBERG TRAUIG, P.A.
401 East Las Olas Boulevard, Suite 2000
Fort Lauderdale, Florida 33301
Telephone: (954) 765-0500
Facsimile: (954) 765-1477

By: 
JON L. SWERGOLD, ESQ.
Florida Bar No. 0108510
swergoldj@gtlaw.com
KRISTINA L. ARNSDORFF, ESQ.
Florida Bar No. 0040596
arnsdorffk@gtlaw.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was sent via e-mail to: pfeaman@feamanlaw.com and kdster@gmail.com, **Peter M. Feaman, Esq., Kenneth D. Stern, Esq.**, 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, on this 19th day of September 2012.



JON L SWERGOLD

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

WILLIAM E. STANSBURY, an individual,

Plaintiff,

CASE NO.: 50 2012CA013933 XXXX(NB)
(AA)

v.

TED S. BERNSTEIN, an individual,
SIMON L. BERNSTEIN, an individual,
LIC HOLDINGS, INC., a Florida
Corporation, **ARBITRAGE**
INTERNATIONAL MARKETING, LLC, a
Florida Corporation f/k/a **ARBITRAGE**
INTERNATIONAL HOLDINGS, LLC.,

Defendants.

FILED
12 SEP 25 PM 2:56
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

SECOND MOTION FOR ENLARGEMENT OF TIME

Defendants, **TED S. BERNSTEIN** ("Ted"), **LIC HOLDINGS, INC.** ("LIC") and **ARBITRAGE INTERNATIONAL MARKETING, LLC**, f/k/a **ARBITRAGE INTERNATIONAL HOLDINGS, LLC** ("AIM") (Ted, LIC and Arbitrage are, collectively, the "Defendants"), pursuant to Fla. R. Civ. P. 1.090(b), move for an additional brief enlargement of time to respond to Plaintiff, **WILLIAM E. STANSBURY**'s, complaint, and in support state:

1. On July 31, 2012, Plaintiff served Defendants with his eleven count complaint.
2. On September 7, 2012, the Defendants filed a motion for an enlargement of time to respond to the complaint through and including Monday, September 24, 2012.

3. On September 19, the Defendants filed a suggestion of death for Defendant Simon Bernstein ("Simon"), who passed away on September 13, 2012.¹ As reflected in the complaint, Simon and Ted were father and son, respectively. The unexpected and sudden passing of Simon has given rise to a myriad of family and business issues for Ted, LIC and AIM. These matters, as well as the Jewish holidays have precluded the undersigned from effectively communicating with the Defendants.

4. Accordingly, the undersigned has been unable to properly complete the necessary investigation of Plaintiff's allegations, evaluate all potential defenses and claims and finalize a response to the complaint. Accordingly, Defendants seek a brief one week enlargement of time, through and including Monday, October 1, 2012, to serve Defendants' response to the complaint.

5. This motion is not made for the purpose of delay, or any other improper purpose, and no prejudice will be caused to Plaintiff by the granting of this motion.

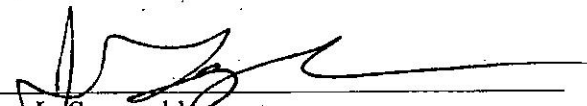
6. The undersigned contacted Plaintiff's counsel to request his consent to the relief sought herein. However, Plaintiff's counsel was unavailable at the time and has not returned the undersigned's call.

¹ The undersigned law firm was retained by Simon prior to his passing and would have filed the instant motion on behalf of Simon had he not passed away. However, the undersigned has not been retained by Simon's estate as of the filing of this motion. In any event, Simon's death has the effect of an abatement and precludes the entry of a default against Simon's estate Floyd v. Wallace, 339 So.2d 653, 654-55 (Fla. 1976).

WHEREFORE, Defendants respectfully request entry of an order enlarging the time for the Defendants to serve their response to the complaint through and including Monday, October 1, 2012 and granting such other and further relief this Court deems just and appropriate.

Dated this 24th day of September, 2012.

GREENBERG TRAUIG, P.A.
401 E. Las Olas Blvd., Suite 200
Telephone: (954) 765-0500
Facsimile: (954) 765-1477



Jon L. Swergold
Florida Bar No. 0108510
swergoldj@gtlaw.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the has been sent via e-mail and U.S. Mail to: Peter M. Feaman, Esq.(pfeaman@feamanlaw.com), Kenneth D. Stern, Esq. (kdstern@gmail.com), 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436 on this 24th day of September, 2012.



JON L. SWERGOLD

FILED

12 OCT -3 PM 2:00

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

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

CASE NO: 502012CA013 933XXXXMB AA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN, SIMON
BERNSTEIN, LIC HOLDINGS, INC., and
ARBITRAGE INTERNATIONAL
MANAGEMENT, L.L.C., f/k/a
ARBITRAGE INTERNATIONAL
HOLDINGS, L.L.C.,

Defendants.

**MOTION TO DISMISS OR, IN THE
ALTERNATIVE, MOTION FOR MORE
DEFINITE STATEMENT**

Defendants, TED S. BERNSTEIN ("Ted"), LIC HOLDINGS, INC. ("LIC"), and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C. ("AIM")¹, by and through their undersigned counsel, and pursuant to Florida Rule of Civil Procedure 1.140(b) and (e), hereby move to dismiss the Complaint filed by Plaintiff, William E. Stansbury ("Plaintiff" or "Stansbury"), for failure to state a cause of action, or, in the alternative, for a more definite statement, and for an award of attorneys' fees, and in support state:

I. INTRODUCTION

1. On July 30, 2012, Plaintiff filed his eleven (11) count Complaint against Defendants arising out of at least two (2) purported oral contracts allegedly entered into between

¹ On September 19, 2012, Defendants Ted, LIC and AIM, pursuant to Fla. R. Civ. P. 1.260(a), served a Suggestion of Death for Defendant, Simon Bernstein ("Simon"). The undersigned law firm was retained by Simon prior to his passing and would have filed the instant motion on behalf of Simon had he not passed away. However, the undersigned has not been retained by Simon's estate as of the filing of this motion. In any event, Simon's death has the effect of an abatement and precludes the entry of a default against Simon's estate. *Floyd v. Wallace*, 339 So. 2d 653, 654-55 (Fla. 1976).

FTL108,918,112 4

Plaintiff and LIC and/or AIM. Plaintiff's Complaint should be dismissed in its entirety because each count fails to allege a cause of action and the Complaint improperly lumps together all four (4) Defendants, in essence alleging that "everyone did everything" -- notwithstanding Plaintiff's own admissions that the alleged oral contracts were entered into by the "Corporate Defendants" (defined in the Complaint as LIC and AIM, collectively)², not the individual Defendants.

2. Further, Plaintiff's Complaint is confusing and is riddled with a multitude of ambiguities, as well as vague and contradictory allegations that make responding to the Complaint virtually impossible. Accordingly, Plaintiff's Complaint should be dismissed in its entirety, or, in the alternative, Plaintiff should be required to file a more definite statement as to any count not dismissed.

II. PLAINTIFF'S ALLEGATIONS

3. Plaintiff alleges, *inter alia*, that in 2003, Ted approached Plaintiff regarding "spearhead[ing] the marketing of an unique insurance concept . . . developed by a prominent law firm . . . designed for use in the financial and estate planning of wealthy individuals." Complaint at ¶ 11.

4. Sometime thereafter, Plaintiff alleges he worked as an independent contractor for the Corporate Defendants, receiving a portion of net retained commissions received by the Corporate Defendants from insurance companies and that the commissions were paid to him in 2005 in the form of two (2) 1099's. *See* Complaint at ¶¶ 13 and 16.

5. Plaintiff alleges that, in 2006, he became an "employee" and verbally agreed to a "salary of the equivalent of 15% of commissions received on all products." Complaint at ¶¶ 13 and 17.

² *See* Complaint at ¶¶ 4, 13 and 16-17. Indeed, as currently pled, it is unclear from the complaint whether Stansbury is alleging he had oral contracts with both AIM and LIC and that each oral contract was amended in "early 2008".

6. Plaintiff admits that in 2006 he “received his agreed salary as an employee” and was paid by AIM. Complaint at ¶ 17.

7. Plaintiff further admits that he “received his agreed salary as an employee” in 2007. Complaint at ¶ 18.

8. Plaintiff alleges that in “early 2008” he agreed to forgo his 15% of net retained commissions salary in exchange for a \$1,000,000 salary and a pro rata (10%) distribution of any profits going forward. See Complaint at ¶¶ 21 and 22.

9. Notwithstanding the allegations of paragraph 19, that Stansbury received his agreed salary as an employee in 2007, Plaintiff alleges that as of the filing of the complaint on July 30, 2012, he has been “deprived of moneys [sic] due him . . . [for] approximately four and a half years.” Complaint at ¶ 22.

III. MOTION TO DISMISS

A. Counts I (Accounting), II (Accounting), III ((Breach of Oral Contract), IV (Breach of Implied Covenant of Good Faith and Fair Dealing), V (Breach of Fiduciary Duty), VII (Fraud), VIII (Equitable Lien), IX (Contract Implied in Law) and X Constructive Trust) of the Complaint are Barred by the Applicable Statute of Limitations and Should be Dismissed

10. Counts I (Accounting), II (Accounting), III (Breach of Oral Contract), IV (Breach of Implied Covenant of Good Faith and Fair Dealing), V (Breach of Fiduciary Duty), VII (Fraud), VIII (Equitable Lien), IX (Contract Implied in Law), and X (Constructive Trust) are barred in whole or in part by the applicable 4-year statute of limitations set forth in Fla. Stat. § 95.11(3).

11. Accepting Plaintiff’s allegations as true for purposes of this Motion only, Plaintiff’s various causes of actions accrued in “early 2008” when Plaintiff’s alleged oral contract with LIC and/or AIM was modified from an agreement to receive a salary of 15% in net

retained commissions to a \$1,000,000 salary and a pro rata (10%) distribution of any profits going forward. Plaintiff concedes that he was paid his alleged agreed-upon commissions in 2005, 2006 and 2007. *See* Complaint at ¶¶ 13 and 16-18. Therefore, Plaintiff's alleged causes of actions can only be based upon the purported breach of the alleged modified oral contract(s) in 2008.

12. While Plaintiff's Complaint fails to specifically identify the precise date the breach of the alleged oral contract(s) occurred, it appears, based on Plaintiff's allegations, that the purported breach would have occurred in "early 2008". *See* Complaint at ¶¶ 22 and 28 (Plaintiff alleges that he has been "deprived of moneys [sic] due him . . . [for] approximately *four and a half years.*") (emphasis added).

13. Consequently, the statute of limitations expired on Plaintiff's various causes of action to the extent based upon claims accruing prior to July 31, 2008. Plaintiff, however, did not file his Complaint until July 30, 2012. Therefore, Counts I, II, III, IV, V, VI, VIII, IX and X should be dismissed as being barred by the statute of limitations.

B. Counts II (Accounting), III (Breach of Oral Contract) IV (Breach of Implied Covenant of Good Faith and Fair Dealing) and Count IX (Contract Implied in Law) Should Also be Dismissed Because Plaintiff Has Not Alleged Sufficient Facts to Assert Claims Against Ted in His Individual Capacity

14. Plaintiff's Complaint fails to specify how or why Ted is personally liable for the payment of an alleged obligation of either LIC and/or AIM to Plaintiff. Indeed, Plaintiff admits that he was an employee of the Corporate Defendants, he was paid by AIM and entered into the alleged oral contract(s), and subsequent modified oral contract(s), with LIC and/or AIM.

15. Plaintiff's theory upon which he attempts to sue Ted is unclear at best. Indeed, Plaintiff never alleges Ted was a party to the alleged oral contract(s) or that he agreed to be

personally responsible for payment to Plaintiff. The Defendants and the Court should not be required to guess as to this fundamental matter, which is conspicuously absent from the Complaint.

16. In order to impose personal liability against Ted for breach of an oral contract(s) with the Corporate Defendants, breach of the implied covenant of good faith and fair dealing relating to the alleged oral contract(s), for an individual accounting, and a contract implied in law, Plaintiff must affirmatively allege that Ted acted in some capacity other than as a mere officer of the Corporate Defendants. See *Superior Garlic International v. E&A Produce Corp.*, 913 So. 2d 645 (Fla. 3d DCA 2005) (claim against president of company was improper where there was no evidence that president acted in a personal capacity rather than as an officer).

17. Additionally, Plaintiff does not allege, nor can he, that any consideration flowed to Ted, individually. Without any consideration, there can be no enforceable contract. *St. Joe Corp. v. McIver*, 875 So. 2d 375 (Fla. 2004) (an oral contract is subject to the basic requirements of contract law, such as offer, acceptance, consideration and sufficient specification of essential terms).

18. Because there is no set of facts under which Plaintiff can state a cause of action against Ted, individually, Count II (Accounting), Count III (Breach of Oral Contract), Count IV (Breach of the Implied Covenant of Good Faith & Fair Dealing) and Count IX (Contract Implied in Law) should be dismissed as to Ted.

C. Counts I (Accounting Against LIC and AIM) and Count II (Accounting Against T. Bernstein and S. Bernstein) Should Also Be Dismissed Because Plaintiff's Allegations Are Inherently Contradictory and Plaintiff Fails to State a Cause of Action

19. In Counts I and II, Plaintiff seeks an accounting, dating back to 2003, against the Corporate Defendants and the individual Defendants, respectively. Aside from the fact that Plaintiff's Complaint is devoid of any allegations that Ted was a party to the alleged oral contract(s) between Plaintiff and one or both of the Corporate Defendants, or any other allegations under which Ted could be held individually liable for breach of the alleged oral contract(s) and a corresponding accounting, Plaintiff admits in paragraphs 16-19 -- which are expressly incorporated by reference into Count I -- that Plaintiff was properly paid through 2007.

20. Further, Plaintiff asserts in paragraph 28 of Count I and paragraph 31 of Count II that he is purportedly owed payment for "four and a half years" under an alleged oral contract. These allegations are both inconsistent with Plaintiff's demand for an accounting in both Counts I and II dating back to 2003 and are vague. See WHEREFORE clauses following ¶¶ 28 and 31. Accordingly, Counts I and II should be dismissed. See *Peacock v. General Motors Acceptance Corp.*, 432 So. 2d 142, 146 (Fla. 1st DCA 1983) ("contradictory allegations within a single count neutralize each other and render the count insufficient on its face", even where they are "incorporated in that count" from a prior count of the complaint).

21. Additionally, Counts I and II should be dismissed because Plaintiff's Complaint fails to allege the requisite elements for an accounting. To state a cause of action for an accounting, Plaintiff must allege that (1) the Plaintiff and Defendants shared a fiduciary relationship or entered a complex transaction and (2) a remedy at law is inadequate. See *Bankers Trust Realty Inc. v. Kluge*, 672 So. 2d 897, 898 (Fla. 3d DCA 1996). Here, although Plaintiff has

inartfully and in confusing fashion alleged that the accounting required to assess what he is purportedly owed under the oral contract(s) is complex, that is irrelevant as the underlying transaction must be complex, which, even accepting Plaintiff's allegations, it is not. See Complaint ¶¶ 28 and 31. Moreover, Plaintiff's allegation that his "remedy at law could not be as full, adequate and expeditious as it is in equity" does not meet the second element required under *Kluge*. Plaintiff's failure to clearly plead and allege ultimate facts for either element warrants dismissal of Counts I and II.

D. Count IV (Breach of Implied Covenant of Good Faith and Fair Dealing) Should Be Dismissed Because It Fails to State a Claim and is Duplicative of Count III (Breach of Oral Contract)

22. "[A] claim for breach of the implied covenant of good faith and fair dealing cannot be maintained under Florida law absent an allegation that an express term of the contract has been breached. A duty of good faith must relate to the performance of an *express* term of the contract and is not an abstract and independent term of a contract which may be asserted as a source of breach . . ." *Insurance Concepts and Design, Inc. v. Healthplan Services, Inc.*, 785 So. 2d 1232, 1234 -1235 (Fla. 4th DCA 2001) (emphasis added).

23. "The duty of good faith does not attach until the Plaintiff can establish a [specific] term of the contract that [the defendant] was obligated to perform. *Id.*; see *Onuss Ortak Nokta Uluslararası Haberleşme Sistem Servis Bilgisayar Yazılım Danışmanlık Ve Dis Ticaret v. Terminal Exch., LLC*, No. 09-80720, 2010 U.S. Dist. LEXIS 22216, at *9 (S.D. Fla. Mar. 10, 2010) (applying Florida law) ("The breach of implied covenant of good faith and fair dealing is not an independent cause of action but attaches to the performance of a *specific* contractual obligation.") (emphasis added). Citing then New Hampshire Supreme Court Justice Souter, the

court in *Cox v. CSX Intermodal, Inc.*, 732 So. 2d 1092 (Fla. 1st DCA 1999) explained the proper circumstances for applying the implied obligation of good faith and fair dealing.

[U]nder an agreement that appears by word or silence to invest one party with a degree of discretion in performance sufficient to deprive another party of a substantial portion of the agreement's value, the parties' intent to be bound by an enforceable contract raises an implied obligation of good faith to observe reasonable limits in exercising that discretion, consistent with the parties purpose or purposes in contracting.

Id. at 1097. The *Cox* Court concluded "where the terms of the contract afford a party substantial discretion to promote that party's self-interest, the duty to act in good faith nevertheless limits that party's ability to act capriciously to contravene the reasonable contractual expectations of the other party." *Id.* at 1097-98.

24. In Count IV of the Complaint, Plaintiff fails to allege an express term of the contract for which Defendants³ purportedly breached their implied covenant of good faith and fair dealing. Instead, Plaintiff generally alleges the terms of the alleged oral contract(s) and then concludes the Count by summarily stating: "Defendants willfully breached the said express [terms] of the contract."

25. It is insufficient, however, for Plaintiff to conclusorily allege that Defendants breached the terms of the contract. Plaintiff must pinpoint the express term of the contract upon which the purported cause of action relates. Accordingly, Count IV of the Complaint should be dismissed on this ground alone.

26. Count IV should also be dismissed as duplicative of Count III (Breach of Oral Contract). Florida law provides that "a breach of the implied covenant of good faith and fair

³ While Plaintiff's Complaint fails to identify which of the four (4) Defendants Plaintiff is suing in Count IV and prays for judgment against "Plaintiffs" in the WHEREFORE clause to Count IV, Plaintiff's breach of implied covenant of good faith and fair dealing claim is subject to dismissal against Ted individually for the reasons set forth in III.B. *supra*.

dealing cannot be advanced when the allegations underlying that claim are duplicative of the allegations supporting the breach of contract claim.” *Onuss*, at *10 (S.D. Fla. Mar. 10, 2010); *see Enola Contr. Servs. v. URS Group, Inc.*, No. 5:08cv2-RS-EMT, 2008 U.S. Dist. LEXIS 33441, at *18 (N.D. Fla. Apr. 23, 2008) (applying Florida law) (dismissing with prejudice breach of good faith and fair dealing claim where such claim was “indistinguishable from” and “subsumed within” the breach of contract claim); *see also Shibata v. Lim*, 133 F. Supp. 2d 1311, 1321-1322 (M.D. Fla. 2000) (applying Florida law) (dismissing breach of implied covenant of good faith and fair dealing claim because there was “no difference between the factual underpinnings of [the] breach of contract claim and [the] claim for breach of the implied covenant”).

27. Here, Plaintiff’s Breach of Implied Covenant of Good Faith and Fair Dealing alleges that “Defendants willfully breached the [following] said express [terms] of the contract”: “that Plaintiff would be constantly apprised, either through being permitted to calculate all amounts due the Defendants [sic] out of commissions, or through being advised of all receipts of commissions and the disposition thereof, or the amounts due to Plaintiff for any reason under the terms of the contract; and (b) that Plaintiff would be fully and promptly paid all such amounts due him.” Complaint at ¶¶ 42-43.⁴

28. These allegations, however, are nearly identical to the allegations supporting Plaintiff’s breach of oral contract claim in Count III. *See, e.g.*, Count III at ¶ 34 (“An express term of that contract involved the commitment of Defendants to calculate, and to pay to Plaintiff,

⁴ Plaintiff alleges that as of early 2008, his salary was no longer equal to 15 per cent of commissions, but instead consisted of a base salary of \$1 million plus his proportionate interest in any profits. Complaint at ¶ 21. Inasmuch as the statute of limitations for a breach of implied covenant of good faith and fair dealing is 4 years, the conduct supporting the claim must have occurred within the 4 year period. Here, Plaintiff’s allegations in Count IV as to the alleged breach by the Defendants (calculating commissions and keeping Plaintiff informed of all receipts) cannot give rise to a breach of the implied covenant of good faith and fair dealing as by his own admission, Plaintiff was no longer being compensated based upon a calculation of commissions as of July 31, 2008 -- 4 years prior to the filing of the Complaint. Accordingly, Count IV should be dismissed.

fully and timely, all sums due to him under the parties' contract, whether as commissions, salary, distributions, expenses or any other reason.") and ¶ 36 (" [] Defendants willfully and maliciously agreed to breach their contract with Plaintiff by withholding from Plaintiff moneys due him under the contract."). Such allegations already form the basis of Plaintiff's breach of oral contract claim in Count II and, therefore, cannot support a separate cause of action for breach of good faith and fair dealing. Consequently, Count IV of Plaintiff's Complaint should be dismissed.

E. Count V (Breach of Fiduciary Duty), Count VI (Civil Theft) and Count VII (Fraud) Are Barred by the Economic Loss Rule

29. "The economic loss rule is a judicially created doctrine that sets forth the circumstances under which a tort action is prohibited if the only damages suffered are economic losses." *Indemnity Ins. Co. of N. Am. v. Am. Aviation, Inc.*, 891 So. 2d 532, 536 (Fla. 2004); *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871 (Fla. 2007) (noting that "the economic loss doctrine determines what cause of action is available to recover economic losses-tort or contract").

30. Specifically, the economic loss doctrine applies where "the parties are in contractual privity and one party seeks to recover damages in tort *for matters arising from the contract.*" *Indemnity Ins. Co. of N. Am.*, 891 So. 2d at 536 (emphasis added). The purpose of the doctrine is to "protect the integrity of contract," and to prevent contract law from "drown[ing] in a sea of tort." *Id.* at 537-38, 544.

31. The doctrine is designed to "prevent parties to a contract from circumventing the allocation of losses set forth in the contract by bringing an action for economic loss in tort." *Id.* at 536. In other words, "[n]o cause of action in tort can arise from a breach of a duty *existing by*

virtue of a contract.” *Weimar v. Yacht Club Point Estates, Inc.*, 223 So. 2d 100, 103 (Fla. 4th DCA 1969) (emphasis added). The economic loss rule provides that “without some conduct resulting in personal injury or property damage, there can be no independent tort flowing from a contractual breach which would justify a tort claim solely for economic losses.” *HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 685 So. 2d 1238, 1239 (Fla. 1996).

32. Simply stated, “a cause of action for breach of fiduciary duty will not lie where the claim of breach is dependent upon the existence of a contractual relationship between the parties.” *Detwiler v. Bank of Central Florida*, 736 So. 2d 757, 759 (Fla. 5th DCA 1999).

33. Count V (Breach of Fiduciary Duty) and Count VII (Fraud) of Plaintiff’s Complaint are barred by the economic loss rule because Plaintiff cites *the exact same allegations of fact in support of his breach of oral contract claim.*

34. Specifically, Plaintiff alleges in Count V that he “trusted Defendants to make proper, accurate and complete calculations, as Plaintiff had done, and to pay Plaintiff accordingly.” Complaint at ¶ 43.⁵ In Count VII at paragraph 58, Plaintiff incorporates the same allegations asserted in his breach of fiduciary duty claim into his fraud claim. Nearly identical allegations are cited in support of Plaintiff’s breach of oral contract claim. *See* Complaint at ¶¶ 34-36. Thus, Plaintiff’s breach of fiduciary duty and fraud claims arise out of the *same conduct* that constitutes the purported breach the alleged oral contract. As such, Counts V and VII are barred by the economic loss rule and should be dismissed.

35. Moreover, “[m]isrepresentations relating to the breaching party’s performance of a contract do not give rise to an independent cause of action in tort, because such misrepresentations are interwoven and indistinct from the heart of the contractual agreement.”

⁵ The numbered paragraphs of Count V of the Complaint are improperly numbered and contain paragraph numbers that are duplicative of the numbered paragraphs of Count IV.

Hotels of Key Largo, Inc. v. RHI Hotels, Inc., 694 So. 2d 74 (Fla. 3d DCA 1997) (Hotel franchisee's claim of fraud against franchisor barred by economic loss doctrine where defendant alleged to have failed to perform contract). Here, Plaintiff's fraud claim clearly relates to the purported failure of the Defendants to perform the alleged contract. See Complaint at ¶¶54-58. Indeed, as noted above, Plaintiff's prayer for his fraud claim reveals that this claim is really a breach of contract claim in sheep's clothing, providing "WHEREFORE, Plaintiff prays for judgment . . . for the full amount of moneys due to Plaintiff under the terms of their contract, . . ."

36. Finally, the economic loss rule applies to statutory causes of action, which are characterized as statutory torts. *Sarkis v. Pafford Oil Co., Inc.*, 697 So. 2d 524, 527 (Fla. 1st DCA 1997) (Civil theft claim barred by economic loss rule). See also *Gambolati v. Sarkisian*, 622 So. 2d 47 (Fla. 4th DCA 1993) and *Gilman Yacht Sales v. First National Bank of Chicago*, 600 So. 2d 1131 (Fla. 4th DCA 1992). Accordingly, Plaintiff's civil theft claim is barred by the economic loss rule and must be dismissed.

F. Counts V (Breach of Fiduciary Duty) and VII (Fraud) Should be Dismissed Because Plaintiff's Alleged Damages, if Any, Result from the Breach of a Purported Contract Rather than From Fraud

37. Additionally, the damages Plaintiff seeks in Counts V and VII are contractual damages -- "the full amount of moneys due to Plaintiff under the terms of their contract." See WHEREFORE clause following paragraph 47 of the Complaint and WHEREFORE clause following paragraph 58. "[N]o cause of action for fraud exists unless there is damage *due to fraud* that is separate from damages that may result from any subsequent contractual breach." *La Pesca Grande Charters, Inc. v. Moran*, 704 So. 2d 710 (Fla. 5th DCA 1998) (emphasis in

original). Here, at most, any damage to Plaintiff, which Defendants deny, stems from the purported breach of the alleged contract. Accordingly, Counts V and VII should be dismissed.

G. Count V (Breach of Fiduciary Duty) Should Be Dismissed Because Plaintiff Has Failed to State a Cause of Action

38. Although Count V fails to specify which of the four (4) Defendants Plaintiff is suing for breach of fiduciary duty and demands judgment against "Plaintiffs" -- all of which is further evidence of the highly confusing, vague and ambiguous nature of Plaintiff's Complaint -- Count V should also be dismissed because it fails to state a cause of action for breach of fiduciary duty.

39. To state a claim for breach of fiduciary duty, Plaintiff must plead, and allege ultimate supporting facts demonstrating, the following elements: (1) Plaintiff and Defendants share a relationship whereby: (a) Plaintiff reposes trust and confidence in Defendants, and (b) Defendants undertake such trust and assume a duty to advise, counsel and/or protect Plaintiff; (2) Defendants breach their duties to Plaintiff; and (3) Plaintiff suffers damages. *Taylor Woodrow Homes Florida, Inc. v. 4/46-A Corp.*, 850 So. 2d 536, 540-541 (Fla. 5th DCA 2003).

40. To the extent Plaintiff is asserting Count V against the Corporate Defendants, Plaintiff has wholly failed to allege any of the requisite elements for a breach of fiduciary duty claim and, therefore, Count V should be dismissed as against AIM and LIC. Moreover, an employer does not owe a general fiduciary duty to its employees. *See, e.g., Eden v. St. Luke's-Roosevelt Hosp. Ctr.*, 96 AD.3d 614 (N.Y. App. Div. 2012) ("Neither an agreement by an employer to share profits with an employee as compensation for the latter's services nor a contract 'of mere hiring and providing for compensation in a particular manner supposedly

tending to induce greater energy and faithfulness on the part of the employee' creates a fiduciary relationship between the employer and employee.") (internal citations omitted).

41. To the extent Plaintiff seeks to assert Count V against Ted, Plaintiff's Complaint fails to allege how Ted, a minority shareholder of the Corporate Defendants, owed any duty to Plaintiff. Plaintiff cannot plead a viable fiduciary relationship by merely alleging a bestowal of trust and confidence in Ted. "A party must allege some degree of dependency on one side and some degree of undertaking on the other side to advise, counsel, and *protect the weaker party*." *Watkins v. NCNB Nat'l Bank of Fla., N.A.*, 622 So. 2d 1063, 1065 (Fla. 3d DCA 1993) (emphasis added).

42. Plaintiff does not -- and cannot allege -- that he was the "weaker party" in his relationship with Ted because Plaintiff admits that he was a sophisticated, knowledgeable and highly regarded business person in the insurance industry. See Complaint at ¶ 8. The only affiliation between Plaintiff and Ted, besides being in an alleged "social relationship",⁶ was that of business associates, which is in and of itself insufficient to support a fiduciary duty claim. See *Orlinsky v. Patraka*, 971 So. 2d 796, 800 (Fla. 3d DCA 2007) ("the only relation between Orlinsky and Patraka, besides being brothers-in-law, was that of business associates. Patraka has not cited any case where a general fiduciary duty has been found in the context of two business associates.").

43. Here, because Ted did not owe a fiduciary duty to Plaintiff, Count V of Plaintiff's Complaint must be dismissed.

⁶ Complaint at Count V, ¶ 42.

H. Count VI (Civil Theft) Should Be Dismissed Because Plaintiff Has Failed to State a Cause of Action

44. In Florida, civil theft is a statutory form of conversion. *Sarkis v. Pafford Oil Co.*, 697 So. 2d 524, 528 (1st DCA 1997). In order to state a claim for civil theft, a complaint must allege that the defendant knowingly obtained or used, or endeavored to obtain or to use the plaintiff's property with the intent to temporarily or permanently deprive the plaintiff of a right to property or a benefit from the property; or the defendant appropriated the plaintiff's property for use by the defendant or another person who does not have a right to use the property. See *Palmer v. Gotta Have It Golf Collectibles, Inc.*, 106 F. Supp. 2d 1289, 1303 (S.D. Fla. 2000) (interpreting Florida's civil theft statute). "Further, it is necessary to show not only that defendant obtained or endeavored to obtain the plaintiff's property, but that he did so with felonious intent to commit theft." *Id.* (internal quotations omitted).

45. The Fourth District Court of Appeal has held that where the property at issue is also the subject of a contract -- as is the case here -- there must be an intricate sophisticated scheme of deceit and theft to maintain a separate count for civil theft. *Gersh v. Coffman*, 769 So. 2d 407, 409 (Fla. 4th DCA 2000). Plaintiff's complaint is devoid of any allegations detailing or even suggesting a "sophisticated scheme of deceit and theft". Accordingly, Count VI should be dismissed.

46. Further, in order to maintain a claim for civil theft, the property that is alleged to have been converted must consist of specific money capable of identification. *Belford Trucking Co. v. Zagar*, 243 So. 2d 646, 648 (Fla. 4th DCA 1970). Additionally, "[a] debt which may be discharged by the payment of money in general cannot form the basis for conversion." *Gambolati v. Sarkisian* 622 So. 2d 47, 50 (Fla. 4th DCA 1993). Here, Plaintiff alleges generally

that he did not receive certain compensation rather than an entitlement to *specific* dollars capable of identification. Indeed, in the Complaint, Plaintiff admits he received his salary for 2007. See Complaint at ¶ 18. Thus, the only other period within the five year statute of limitations, per Florida Statute § 772.11, would be in 2008 -- the period in which he claims he had a contract to be paid a salary of \$1 million plus his proportionate interest in any profits. See Complaint at ¶ 21. By its very terms, the alleged contract does not relate to *specific* funds capable of identification as required under Florida law to state a viable claim for civil theft. *Mazza v. Rose Media Group, Inc.*, 937 So. 2d 307, 310 (Fla. 4th DCA 2006). Accordingly, Count VI should be dismissed.⁷

I. Count VII (Fraud) Must be Dismissed Because Plaintiff Fails to Properly Plead the Required Elements to State a Claim for Fraud

47. To state a claim for fraud, a pleader must allege “[a] false representation of a material fact, made with knowledge of its falsity, to a person ignorant thereof, with intention that it shall be acted upon, followed by reliance upon and by action thereon amounting to *substantial change of position*, is a fraud of which the law will take cognizance.” *Biscayne Boulevard Properties, Inc. v. Graham*, 65 So. 2d 858 (Fla. 1953) (emphasis added). “For fraud and deceit to be actionable, there must have been a false representation of a material fact made for the purpose of inducing *another to change position, which change in position was occasioned by reliance on the false representation* to the damage of the one to whom the representation was made.” *Goodman v. Strassburg*, 139 So. 2d 163 (Fla. 3d DCA 1962)(emphasis added). Here, although Plaintiff alleges he relied upon “false statements and the withholding of material

⁷ Inasmuch as Plaintiff’s civil theft claim is nothing more than a breach of contract claim, Plaintiff’s civil theft claim is not viable. As such, Defendants are entitled, as a matter of law, to their attorneys’ fees under Florida Statutes § 772.11 and § 812.035(7).

information”, he fails to allege that he has changed his position in any way. *See* Complaint at ¶ 57. As a result, Count VII should be dismissed.

48. Further, Count VII should be dismissed for the additional reason that Plaintiff has failed to plead fraud with particularity, as required by Fla. R. Civ. P. 1.120(b). “The factual basis for a claim of fraud must be pled with particularity and must specifically identify misrepresentations or omissions of fact, as well as time, place or manner in which they were made.” *Cedars Healthcare Group, Ltd. v. Mehta*, 16 So. 3d 914, 917 (Fla. 3d DCA 2009).

49. Here, Plaintiff fails to allege with particularity the who, what, when and how underlying his purported fraud claim. Instead, Plaintiff lumps all four (4) Defendants together and summarily alleges that Defendants “made false statements to him and withheld information from him.” *See* Complaint at ¶ 54. There is no allegation with any particularity as to the substance of any false statement(s) or the time frame or the context in which any alleged statement(s) were made or omitted when there was a duty to speak.

50. Plaintiff’s vague allegations regarding purported false statements and withheld information falls short of the heightened fraud pleading requirements under Rule 1.120(b) and is insufficient to support a claim for fraud.

J. Count VIII (Equitable Lien) and Count X (Constructive Trust) Should Be Dismissed For Failure to State a Cause of Action

51. In paragraphs 60 and 61 of Count VIII and paragraph 67 of Count X, Plaintiff alleges he was entitled to a share of “commissions received by Defendants.” However, in paragraph 21, as reincorporated in Count VIII by paragraph 59 and paragraph 66 in Count X, Plaintiff alleges his compensation changed in “early 2008” and he was no longer entitled to a

share of any commissions.⁸ Thus, Counts VIII and X are internally inconsistent, rendering Counts VIII and X subject to dismissal. See *Peacock v. General Motors Acceptance Corp.*, 432 So. 2d 142, 146 (Fla. 1st DCA 1983) (“contradictory allegations within a single count neutralize each other and render the count insufficient on its face”, even where they are “incorporated in that count” from a prior count of the complaint).

52. Even assuming Plaintiff’s allegations were not inconsistent and self-defeating, Plaintiff has failed to properly plead the elements required for the imposition of an equitable lien. Under Florida law, “the basis of equitable liens may be estoppel or unjust enrichment.” *Golden v. Woodward*, 15 So.3d 664 (Fla. 1st DCA 2009). In Count VIII, Plaintiff appears to be proceeding under a theory of unjust enrichment, however, Plaintiff has failed to properly plead the elements of an unjust enrichment claim to support an equitable lien claim.⁹ Instead, Plaintiff merely alleges an equitable lien should be imposed “out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings.” See Complaint at ¶ 61.

53. Further, Plaintiff has failed to properly state a claim for the imposition of a constructive trust.¹⁰ A constructive trust may be imposed only where there is a wrongful taking of the property of another. *Finkelstein v. Southeast Bank, N.A.*, 490 So. 2d 976, 984 (Fla. 4th DCA 1986). To establish a claim for the imposition of a constructive trust, a plaintiff must

⁸ As discussed above, the statute of limitations prevents Plaintiff from seeking an equitable lien over commissions purportedly due and payable to him prior to “early 2008”, when his compensation allegedly changed.

⁹ The elements of a claim for unjust enrichment are: “(1) plaintiff has conferred a benefit on the defendant, who has knowledge thereof; (2) defendant voluntarily accepts and retains the benefit conferred; and (3) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying the value thereof to the plaintiff.” *Hillman Const. Corp. V. Wainer*, 636 So. 2d 576, 577 (Fla. 4th DCA 1994).

¹⁰ Plaintiff’s allegations in Count VIII (Equitable Lien) and IX Constructive Trust are virtually indistinguishable. While Plaintiff’s Complaint fails to identify which of the four (4) Defendants Plaintiff is suing in Counts VIII and X and prays for judgment against “Plaintiffs” in the WHEREFORE clause to both counts, Plaintiff’s Equitable Lien and Constructive Trust claims are subject to dismissal at least against Defendant Ted, individually, for the reasons set forth in III.B. *supra*.

prove: “(1) a promise, express or implied; (2) a transfer of the property and reliance thereon; (3) a confidential relationship; and (4) unjust enrichment.” *Abreu v. Amaro*, 534 So. 2d 771, 772 (Fla. 3d DCA 1988).

54. Here, Plaintiff was never the legal holder of the property for which he seeks to have the Court impose a constructive trust, thereby subjecting Count X to dismissal. At most, Plaintiff was entitled to a percentage of the commissions, well prior to his compensation allegedly changing in “early 2008” and the running of the statute of limitations. See Complaint at ¶ 21. Plaintiff’s allegations admit that Plaintiff never owned the commissions he now claims he is entitled to have a constructive trust placed over.¹¹ Thus, Plaintiff’s claim for imposition of a constructive trust should be dismissed.

55. Moreover, to obtain a constructive trust, the *res* over which the trust is sought must be specifically identifiable property. *Trend Setter Villas of Deercreek v. Villas on the Green, Inc.*, 569 So. 2d 766, 768 (Fla. 4th DCA 1990). Here, Plaintiff alleges generally that he did not receive certain compensation rather than an entitlement to *specific* dollars capable of identification. Plaintiff’s allegations admit that he was entitled to payment generally, rather than to receive specific dollars. Thus, Plaintiff cannot state a viable claim for the imposition of a constructive trust. Accordingly, Count X should be dismissed.

**K. Counts VIII (Equitable Lien) and IX (Contract Implied in Law)
Should be Dismissed for Failure to State a Cause of Action**

56. In pleading an unjust enrichment claim, where an express contract exists, a claim for unjust enrichment will fail.¹² Similarly, where an express contract exists, a claim for an

¹¹ Once again, it is insufficient for Plaintiff to broadly lump the Defendants together as he does throughout Count X. Plaintiff fails to allege to which of the Defendants he purportedly transferred any property.

¹² Among the elements required for pleading a claim for unjust enrichment is that the plaintiff “conferred a benefit upon the defendant, who has knowledge thereof.” *Hillman* 636 So. 2d at 577. Here, Plaintiff broadly alleges he

equitable lien premised upon allegations of unjust enrichment must also fail. *Diamond "S" Development Corp. v. Mercantile Bank*, 989 So. 2d 696 (Fla. 1st DCA 2008). Here, paragraph 59 of Count VIII reincorporates the allegations of paragraph 21, which allege an express contract. Similarly, paragraph 62 of Count IX reincorporates the allegations of paragraph 21.¹³ Thus, Plaintiff's Counts VIII and IX must be dismissed.

L. Count XI (Indemnification) Should Be Dismissed As Premature and For Failure to State a Cause of Action

57. In Count X, Plaintiff seeks indemnification from Defendants from *potential future claims* by insurance companies which may seek a refund of commissions allegedly paid to Plaintiff. Although it is unclear as to whether Count XI is a claim for common law indemnification or statutory indemnification, Count XI is premature under either theory of recovery and, therefore, should be dismissed.

58. "In order for a common law indemnity claim to stand, a two-pronged test must be satisfied: (1) the indemnitee must be faultless and (2) the indemnitee's liability must be solely vicarious for the wrongdoing of another." *Zeiger Crane Rentals, Inc. v. Double A Indus., Inc.*, 16 So. 3d 907, 911 (Fla. 4th DCA 2009) (citing *Gen. Portland Land Dev. Co. v. Stevens*, 395 So. 2d 1296, 1299 (Fla. 4th DCA 1981)). A common law indemnity claim is *premature* if a judgment has not been entered. *Mellish Enters., Inc. v. Weatherford Int'l, Inc.*, 678 So. 2d 913,

conferred upon Defendants the benefit of "possessing and controlling the paperwork revealing commissions received and by agreeing that Defendants would assume the function of calculating amounts due the parties...." However, in paragraph 62, Plaintiff incorporates paragraph 6 into Count IX. Paragraph 6 alleges, in relevant part, that Ted and Simon "both own and control all of the corporate Defendants." Taking this allegation regarding the ownership and control of the Corporate Defendants as true for the purposes of this motion, as the shareholder/managing members of the Corporate Defendants, Ted (and Simon) were undoubtedly entitled to "possess and control the paperwork of the Corporate Defendants" and to "calculat[e] the amounts due the parties." Plaintiff's suggestion that he somehow broadly conferred a benefit upon *all* the Defendants, particularly Ted, turns the rights and benefits of corporate ownership on its head and ignores corporate law. Accordingly, because Plaintiff has not conferred a benefit upon the Defendants, collectively, or individually, Count IX should be dismissed.

¹³ While Plaintiff seeks judgment against all of the Defendants in Count IX, Plaintiff's Contract Implied In Law claim is subject to dismissal against Ted individually for the reasons set forth in III.B. *supra*.

914 (Fla. 4th DCA. 1996) ("The entry of a judgment provides the prerequisite for an indemnification action, not payment of the judgment.") (citing *Flagship Nat'l Bank v. Gray Distrib. Sys., Inc.*, 485 So. 2d 1336, 1342 (Fla. 3d DCA 1986)).

59. Here, assuming that Count XI is a common law indemnification claim, the claim is premature and subject to dismissal because a judgment has not been entered against Plaintiff, nor has Plaintiff made such an allegation.

60. Similarly, statutory indemnification, which is governed by Section 607.0850(3), Florida Statutes, states:

To the extent that a director, officer, employee, or agent of a corporation has ***been successful on the merits or otherwise in defense of any proceeding*** referred to in subsection (1) or subsection (2), or in defense of any claim, issue, or matter therein, ***he or she shall be indemnified against expenses actually and reasonably incurred by him or her in connection therewith.***

(emphasis added).

61. Plaintiff is currently not "a party to any proceeding" as required in subsections (1) and (2) of the statute, nor is Plaintiff currently defending a proceeding which may result in indemnification under subsection (3). Accordingly, Count XI should be dismissed as premature.

62. Further, with respect to Defendant Ted, Plaintiff has failed to allege how Ted could be personally liable to indemnify Plaintiff. Plaintiff does not allege that he entered into any contract or agreement whereby Ted agreed to indemnify and hold Plaintiff harmless. Moreover, to the extent Count XI is a claim for statutory indemnification, such a claim would not cover Defendant Ted, a mere shareholder/officer of the Corporate Defendants.

IV. ALTERNATIVE MOTION FOR MORE DEFINITE STATEMENT

63. In the event the Court is not inclined to grant any portion of Defendants' Motion to Dismiss, Defendants Ted, LIC and AIM move for a more definite statement.

64. Florida R. Civ. P. 1.140(e) provides that "[i]f a pleading . . . is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, that party may move for a more definite statement before interposing a responsive pleading." *See also Conklin v. Bpyd*, 189 So. 2d 401, 403 (Fla. 1st DCA 1996) (holding that the "function of a motion for a more definite statement is to require that a vague, indefinite or ambiguous pleading be so amended so as to enable the party required to respond thereto, to intelligently discern the issues to be litigated and to properly frame its answer or reply.").

65. As set forth above, Plaintiff's Complaint is so vague, confusing, contradictory and meandering that it is virtually impossible to prepare a response to the allegations.

66. Among other things, Plaintiff lumps all four (4) Defendants -- which are separate and distinct individuals and legal entities -- together in his allegations, essentially alleging that everyone did everything. This type of pleading makes it virtually impossible for each of the Defendants to frame an appropriate response. Plaintiff's improper grouping of all of the Defendants in this action fails to distinguish each Defendant's particular conduct, fails to put each Defendant on adequate notice of the claims asserted against them and thereby fails to meet basic pleading requirements.

67. Moreover, Plaintiff fails to allege the which of the Corporate Defendants were parties to the purported oral contract(s) which serve the basis for Plaintiff's suit. In fact, it is unclear from the Complaint whether Plaintiff contends that multiple alleged oral contracts were

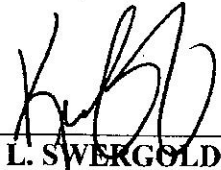
entered into. Plaintiff also fails to outline the material terms of the alleged oral contract(s) and fails to allege when the purported breach(es) occurred.

68. At the very least, Plaintiff should be required to provide a more definite statement of his allegations against each specific Defendant and a more definite statement regarding the parties and terms of the alleged oral contract(s) upon which this action is purportedly based.

WHEREFORE, Defendants, TED S. BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., respectfully request entry of an Order: (i) granting this Motion and dismissing Plaintiff's Complaint in its entirety; (ii) awarding Defendants' their reasonable attorneys' fees and costs pursuant to Fla. Stat. §§ 772.11 and 812.035(7); (iii) or, in the alternative, requiring Plaintiff file a more definite statement as to any count not dismissed, and (iv) for such other relief as this Court deems just and proper.

Dated this 1st day of October, 2012.

GREENBERG TRAUIG, P.A.
401 East Las Olas Boulevard, Suite 2000
Fort Lauderdale, Florida 33301
Telephone: (954) 765-0500
Facsimile: (954) 765-1477

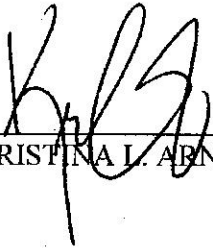
By: 
JON L. SWERGOLD
Florida Bar No. 0108510
swergoldj@gtlaw.com

✓ **KRISTINA L. ARNSDORFF**
Florida Bar No. 0040596
arnsdorffk@gtlaw.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail upon: **Peter M. Feaman, Esq.** and **Kenneth D. Stern, Esq.**, pfeaman@feamanlaw.com, kdsterm@gmail.com, 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, on this 1st day of October, 2012.



KRISTINA L. ARNSDORFF

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

WILLIAM E. STANSBURY,

CASE NO. 502012CA013 933XXXXMB AA

Plaintiff,

vs.

TED S. BERNSTEIN, SIMON
BERNSTEIN, LIC HOLDINGS, INC., and
ARBITRAGE INTERNATIONAL
MANAGEMENT, L.L.C., f/k/a
ARBITRAGE INTERNATIONAL
HOLDINGS, L.L.C.,

Defendants.

NOTICE OF TAKING DEPOSITION

DUCES TECUM

FILED
12 OCT 16 PM 11:22
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 4

TO: **RECORDS CUSTODIAN
PETER M. FEAMAN, P.A
3615 BOYNTON BEACH BLVD.
BOYNTON BEACH, FL 33436**

PLEASE TAKE NOTICE that at the date, time, and place specified below, the Defendants will take the following deposition:

Deponent	Date and Time	Location
Peter M. Feaman, Esquire	October 19, 2012 @ 10:00 a.m.	Greenberg Traurig, P.A. 5100 Town Center Circle Suite 400 Boca Raton, FL 33486

upon oral examination, before a Notary Public in and for the State of Florida, or any other officer duly authorized to administer oaths by the laws of the state. The deposition will continue from hour to hour and from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, or both of the foregoing, or such other purposes as are permitted under the applicable and governing rules.

NOTICE TO DISABLED PERSONS

In accordance with the Americans with Disabilities Act, all persons who are disabled and who need special accommodations to participate in this proceeding should contact the attorney whose name appears on this Notice not later than five (5) business days prior to the proceeding.

Respectfully submitted,

GREENBERG TRAUERIG, P.A.

Attorneys for Defendants

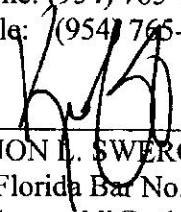
401 East Las Olas Boulevard, Suite 2000

Fort Lauderdale, Florida 33301-4223

Telephone: (954) 765 -0500

Facsimile: (954) 765-1477

By:



JON L. SWERGOLD

Florida Bar No. 108510

swergoldj@gtlaw.com

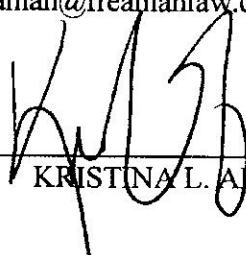
✓ KRISTINA L. ARNSDORFF

Florida Bar No. 40596

arnsdorffk@gtlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by electronic mail and U.S. Mail to Peter M. Freaman, P.A., Peter M. Freaman, Esquire, 3615 Boynton Beach Blvd., Boynton Beach, FL 33436, pfreaman@freamanlaw.com this 12th day of October, 2012.



KRISTINA L. ARNSDORFF

FTL108,937,731v1 141289.010100

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

CASE NO: 502012CA013 933XXXXMBA AA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN, SIMON BERNSTEIN,
LIC HOLDINGS, INC., and ARBITRAGE
INTERNATIONAL MANAGEMENT, L.L.C.,
f/k/a ARBITRAGE INTERNATIONAL
HOLDINGS, L.L.C.,

Defendants.

SUBPOENA DUCES TECUM
FOR DEPOSITION

FILED
12 OCT 16 PM 1:22
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 4

THE STATE OF FLORIDA:

To: **RECORDS CUSTODIAN**
PETER M. FEAMAN, P.A
3615 BOYNTON BEACH BLVD.
BOYNTON BEACH, FL 33436

YOU ARE HEREBY COMMANDED to appear before a person authorized by law to take deposition at the law offices of Greenberg Traurig, P.A., 5100 Town Center Circle, Suite 400, Boca Raton, Florida 33486 on **October 19, 2012 at 10:00 a.m.**, and to have with you at said time and place any and all documents identified on SCHEDULE A attached to this subpoena which are in your possession, custody or control. All of the documents described in Schedule "A" which are in your possession, custody or control must be preserved and not destroyed. These items will be inspected and may be copied at that time. You will not be required to surrender the original items.

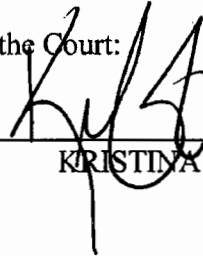
If you fail to comply with this Subpoena, you may be in contempt of Court.

You are subpoenaed by the attorney whose name appears on this subpoena and unless excused from this subpoena by the attorney or the Court, you shall respond to this subpoena as directed.

****IMPORTANT:** IF YOU WITHHOLD ANY INFORMATION THAT IS REQUESTED IN THIS SUBPOENA BY CLAIMING THAT IT IS PRIVILEGED OR SUBJECT TO PROTECTION AS TRIAL PREPARATION MATERIAL, THEN PURSUANT TO Fla. R. Civ. P. 1.280(b)(5), YOU SHALL MAKE THE CLAIM OF PRIVILEGE EXPRESSLY AND DESCRIBE THE NATURE OF THE DOCUMENT, COMMUNICATIONS, OR THINGS NOT PRODUCED OR DISCLOSED IN A MANNER THAT, WITHOUT REVEALING INFORMATION ITSELF PRIVILEGED OR PROTECTED, WILL ENABLE THE UNDERSIGNED TO ASSESS THE APPLICABILITY OF THE PRIVILEGE OR PROTECTION. IF YOU FAIL TO PRODUCE AND PROVIDE THE REQUIRED PRIVILEGE LOG, YOU MAY BE IN CONTEMPT OF COURT.

DATED ON this 12th day of October, 2012.

For the Court:



KRISTINA ARNSDORFF

JON L. SWERGOLD
Florida Bar No. 0108510
KRISTINA L. ARNSDORFF
Florida Bar No. 0040596
GREENBERG TRAUERIG, P.A.
Attorneys for Defendant
401 East Las Olas Blvd., Suite 2000
Fort Lauderdale, FL 33301
Telephone: (954) 765-0500
Facsimile: (954) 765-1477

NOTICE TO DISABLED PERSONS

In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this proceeding because of that disability should contact the attorney whose name appears on this Notice not later than five (5) business days prior to the proceeding.

FTL108,932,674v1 141289.010100

SCHEDULE "A"

I. INSTRUCTIONS

1. You shall specify which documents are produced in response to each of the numbered paragraphs. If any document herein requested was formerly in your possession, custody, or control and is no longer in your possession or has been lost or destroyed, you are requested to submit in lieu of each document a written statement that:

- a. describes in detail the nature of the document and its contents;
- b. identifies the person who prepared or authored the document and, if applicable, the person to whom the document was sent;
- c. specifies the date on which the document was prepared or transmitted or both; and
- d. specifies, if possible, the date on which the document left your possession, or was lost or destroyed, and if destroyed, the conditions of or reasons for such destruction and the persons requesting and performing the destruction.

2. If you object to fully identifying a document or oral communication because of a privilege, you must nevertheless provide the following information, unless divulging the information would disclose the privileged information:

- a. the nature of the privilege claimed (including work product);
- b. if the privilege being asserted is in connection with a claim or privilege governed by state law, the state law privilege rule being invoked;
- c. the date of the document or oral communication;
- d. if a document: its type (correspondence, memorandum, facsimile, etc.), custodian, location and such other information sufficient to identify the document for a subpoena duces tecum or a document request, including where appropriate the author, addressee and, if not apparent, the relationship between the author and addressee;
- e. if an oral communication: the place where it was made, the names of the persons present while it was made and, if not apparent, the relationship of the persons present to the declarant; and
- f. the general subject matter of the document or oral communication.

3. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa. The masculine form of a noun or pronoun shall be considered to include within its meaning the feminine form of the noun or pronoun, and vice versa.

4. Regardless of the tense employed, all verbs shall be read as applying to the past, present and future as is necessary to make any paragraph more, rather than less, inclusive.

II. DEFINITIONS

1. "You," or "your" shall refer to PETER M. FEAMAN, P.A., its representatives, agents, affiliates, attorneys, officers, employees and all persons acting or purporting to act on its behalf.

2. "Stansbury" shall refer to WILLIAM ("BILL") STANSBURY and his representatives, agents, affiliates, attorneys, employees and all persons acting or purporting to act on his behalf.

3. "Communication" shall mean any oral or written statement, dialogue, colloquialism, discussion, conversation, agreement, or other transfer of thoughts or ideas between persons by any means.

4. "Document" or "documents" as used herein shall mean the original and any copy, regardless of its origin and location, of all writings of any kind whatsoever including, but not limited to, all abstracts, accounting journals, accounting ledgers, advertisements, affidavits, agendas, agreements or proposed agreements, analyses, appointment books, appraisals, articles of incorporation, balance sheets, bank checks, bank deposit or withdrawal slips, bank creditor debit memoranda, bank statements, blueprints, books, books of account, budgets, bulletins, bylaws, canceled checks, charts, checks, codes, communications, communications with government bodies, computer data or printouts, conferences, contracts, correspondence, electronic mail, data processing cards, data sheets, desk calendars, details, diagrams, diaries, disks or data compilations from which information can be obtained or translated, drafts, drawings, electromagnetic tapes, files, films, financial calculations, financial projections, financial statements, graphs, handwritten notes or comments however produced or reproduced, indexes, insertions, instructions, internal accounting records, interoffice communications, invoices, ledgers, letters, lists, logbooks, manuals, memoranda, microfilm, minutes of meetings, motion pictures, newspaper or magazine articles, networks, nonconforming copies which contain deletions, notations or records of meetings, notes, notices of wire transfer of funds, outlines, pamphlets, papers, passbooks, periodicals, photocopies, photographs, pictures, plans, preliminary drafts, press releases, proposals, publications, punch cards, raw and refined data, receipts, recommendations, records, records of conferences or conversations or meetings, records of payment, reports, resolutions, results of investigations, schedules, schematics, sepias, shipping papers, slides, specifications, speeches, statements of account, studies, summaries, surveys, tape recordings, tax returns, telegrams, telephone logs and records, telephone and other conversations or communications, teletypes, telexes, transcripts, transcripts of tape recordings, video tapes, voice records, vouchers, work papers, worksheets, written notations, and any and all other papers similar to any of the foregoing. Any document containing thereon or attached thereto any alterations, comments, notes or other material not included in the copies or originals or referred to in the preceding definition shall be deemed a separate document within said definition. Any document shall include all exhibits, schedules or other writings affected by or referenced in any such document or other writings necessary to complete the information contained therein or make it not misleading.

5. "And" and "or" as used herein are terms of inclusion and not of exclusion, and shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request for production of documents any document or information that might otherwise be construed to be outside its scope.

6. "Any" means one or more.

7. "Describe," "discuss," "analyze," "describing," "discussion," or "analyzing," mean any document that, in whole or in part, characterizes, delineates, explicates, deliberates, evaluates, appraises, assesses or provides a general explanation of the specified subject.

8. "Person" means the plural as well as the singular and shall include any association, company, firm, governmental agency or body, institute, joint venture, natural person, partnership, sole proprietorship, or other legal entity, whether privately or publicly owned or controlled, for-profit or not-for-profit, or partially or fully government owned or controlled.

9. "Reflecting," "relating to," or "referring to" means expressly stated in, mentioned, described, making reference to or cross-reflecting to, naming, quoting or summarizing statements made by, attached or otherwise physically connected to, or printed in or on any Document, or otherwise containing information which discloses the identity or location of the Persons or items referenced to in the Requests.

10. "All" means "any" and "all."

III. DOCUMENTS TO BE PRODUCED

1. Copies of all checks provided to you by Stansbury drawn by any insurance company as referenced in Peter Feaman's letter of June 20, 2012, a copy of which is attached hereto.
2. Any and all trust account records created and/or maintained by you reflecting deposits and/or withdrawals made by you of any insurance company checks provided to you by Stansbury.
3. Any and all documents reflecting checks received by Stansbury drawn by any insurance company that have not been deposited by you into your trust account.
4. All trust account banking records reflecting any deposits and/or withdrawals made by you of any insurance company checks provided to you by Stansbury.
5. All communications of any kind whatsoever between and among Stansbury and Phoenix Life Insurance Company.
6. All communications of any kind whatsoever between and among Stansbury and TransAmerica Life Insurance Company
7. All communications of any kind whatsoever between and among Stansbury and any life insurance company relating to the payment of commissions.
8. All communications of any kind whatsoever between and among Stansbury and any life insurance company where "Stansbury is listed as the qualifying agent" and who Stansbury has informed that "all future renewal commissions paid to him personally be sent to Mr. Stansbury at his home address," as referenced in Peter Feaman's June 20, 2012 letter, a copy of which is attached hereto.

The Law Offices
of
PETER M. FEAMAN, P.A.
Strategic Counselor. Proven Advocate.™



Main Office:
3615 Boynton Beach Blvd.
Boynton Beach, FL 33436

Branch Office:
7900 Glades Road
Boca Raton, FL 33434

Peter M. Feaman, Esq.
Nancy E. Guffey, Esq.
Of Counsel

Telephone: (561) 734-5552
Facsimile: (561) 734-5554
pfeaman@feamanlaw.com

June 20, 2012

Via Certified Mail, Return Receipt Requested

PERSONAL and CONFIDENTIAL

Mr. Ted Bernstein, President
LIC Holdings, Inc.
950 Peninsula Corp Circle
Suite 3010
Boca Raton, FL 33487

Re: William (Bill) Stansbury

Dear Mr. Bernstein:

The undersigned represents William (Bill) Stansbury and we are writing this letter on his behalf. Mr. Stansbury received your proposed letter agreement reflecting LIC Holdings' proposal to indemnify its shareholders concerning policies sold under the Cambridge Financing Program. As a result of your proposal, Mr. Stansbury has reviewed with me in detail his dealings with you and your companies over the past 4 to 5 years.

After reviewing the facts with Mr. Stansbury, some of which will be summarized below, I was shocked that he had not consulted legal counsel until now. Be that as it may, and based upon the facts presented to us, we believe you have engaged in fraud, civil theft, breaches of fiduciary duties, and breach of contract, just to name a few. The purpose of this letter is to a). respond to your indemnity proposal and b). request that you pass this letter on to your counsel immediately in the off-chance that these very serious matters can be resolved prior to the filing of legal action. The issues can be summarized as follows:

1. The first issue concerns you and your company's failure to pay salary compensation to Mr. Stansbury. Mr. Stansbury has been making inquiries concerning this for the past 5 months, but to no avail. Mr. Stansbury's claim for unpaid salary arises from three categories:

a. Failure to pay salary based on net retained commissions.

i. Based upon reports prepared by your company for the period of 2007 through 2011, LIC Holdings, Inc. and/or Arbitrage International Holdings, n/k/a Arbitrage International Management, LLC, received \$35,384,246.00 in net retained commissions. According to Mr. Stansbury's salary arrangement, he is entitled to 15% of those net retained commissions, which amounts to \$5,307,636.90. During this time period, Mr. Stansbury's salary compensation was \$2,844,910.00. The shortfall in salary owed to Mr. Stansbury is \$2,462,726.90.

ii. There is salary compensation owed to Mr. Stansbury as a result of bridge loans in 2008. You received a \$2,000,000.00 settlement in 2010 resulting from the resolution of a lawsuit involving Global Secured Capital. Mr. Stansbury is entitled to 15% of those funds, which is \$300,000.00.

iii. In addition, you received \$507,891.00 in commissions in connection with the Biviano matter. Mr. Stansbury is entitled to 15% of those funds, which is \$76,183.65.

iv. In April of 2012, you received three commissions totaling approximately \$200,000.00 in the Levine, Wiss and Berley matters. Mr. Stansbury has been requesting payment of this for weeks, again to no avail. Mr. Stansbury is due salary compensation for these items in the amount of \$30,000.00.

Therefore, Mr. Stansbury's total claim for salary arising out of net retained commissions is approximately \$2,868,910.55.

The liability for payment of this salary is not limited to LIC Holdings, Inc. or Arbitrage International Management, LLC. This liability also flows to you individually as a result of your breaches of your fiduciary duty owed to Mr. Stansbury and utter failure to abide by corporate governance standards, which conduct is more particularly described below.

b. Mr. Stansbury is also due unpaid salary based on 15% of all renewal commissions since 2008. Mr. Stansbury's salary claim for renewal commissions cannot as yet be determined with specificity due to the fact that you and your office have been opening mail directed to Mr. Stansbury and negotiating checks made payable to him by falsifying his endorsement and depositing those checks into accounts which only you control. This conduct constitutes civil theft and breach of fiduciary duty. We believe this claim amounts to hundreds of thousands of dollars.

c. Salary compensation for 2008. Mr. Stansbury has recently learned that you and Mr. Simon Bernstein received \$8,982,124.00 in salary in 2008. By contrast, Mr. Stansbury received \$420,018.00, paid to him in January 2008, based on policies sold in 2007. He received zero (no salary compensation) for his 2008 production. It is obvious that you and Simon treated your corporations as personal ATM machines, while completely ignoring your fiduciary

responsibilities to your employee and minority shareholder, Mr. Stansbury. It further appears that after the exorbitant salaries were paid to you, you then loaned the money back to the corporation at an interest rate significantly above market rates in order to meet the cash flow needs of the various entities, again, clearly disregarding your corporate governance responsibilities.

2. Indemnification issues.

Mr. Stansbury has been served with three lawsuits from Phoenix Insurance Company and one from Mr. Wright seeking indemnification as a result of agent misconduct which was in no way attributable to the conduct of Mr. Stansbury. Although all of these matters have been settled, because he was the qualifying agent of record for other policies, he could be the subject of future litigation for refunds of commissions paid. All of these commissions were paid over to you or your companies.

The Indemnification Agreement which you sent to Mr. Stansbury is completely insufficient. You have a duty as a matter of law to indemnify Mr. Stansbury. Your offer of future indemnity is contingent upon "all" commissions that have been received by LIC's present or past shareholders be turned over to LIC. This is nothing short of extortion. Further, your second paragraph states that LIC is "presently insolvent" and has a "negative net worth." You then conclude with the sentence that with the indemnification agreement in place, LIC "may" have sufficient funds to meet its current obligations. Therefore, a simple indemnification from LIC Holdings to Mr. Stansbury is insufficient. Any such indemnification would have to be personally guaranteed by you and Mr. Simon Bernstein.

3. Unauthorized interception of U.S. Mail.

I have been given the understanding that your office has been opening mail directed to Mr. Stansbury personally. This is a federal offense and also constitutes a breach of the fiduciary duty you owe to Mr. Stansbury as an employee and minority shareholder.

There has been no accounting to Mr. Stansbury for any of the checks which may have been sent to him personally on which his signature has been forged, the checks cashed and placed out of the reach of Mr. Stansbury. In 2012, Mr. Stansbury has been receiving checks from Phoenix Life Insurance Company and TransAmerica Life Insurance Company. Mr. Stansbury has been holding these checks. They have now been remitted to the undersigned as attorney for Mr. Stansbury. This office is holding these funds in a separate interest-bearing trust account pending the resolution of this matter.

With regard to all of the other insurance companies for whom Mr. Stansbury is listed as the qualifying agent, he has now informed those companies that all future renewal commissions paid to him personally be sent to Mr. Stansbury at his home address. These funds will then be remitted to the undersigned counsel of record for Mr. Stansbury. We will place these funds in a separate interest-bearing trust account as well. Any attempts by you to contact these insurance

companies will be considered a tortious interference of his business relationship and such activity will be added as a claim in any future legal proceedings.

4. Shareholder status.

Mr. Stansbury has been a 10% shareholder of LIC Holdings, Inc., pursuant to the terms of a Shareholders Agreement. On behalf of Mr. Stansbury, demand is hereby made, pursuant to Florida Statute 607.1602, for inspection of the corporate records including the following:

- I. Minutes of the Board of Directors meetings from January 1, 2008 to the present.
- II. Minutes of Shareholders' meetings from January 1, 2008 to the present.
- III. Records of any actions taken by the Shareholders and/or the Board of Directors without a meeting, from January 1, 2008 to the present.
- IV. Accounting and financial records of LIC Holdings, Inc., Arbitrage International Management, LLC, formerly known as Arbitrage International Holdings, LLC, and all other subsidiary or affiliated companies under your control, including, without limitation, income tax returns, general ledgers, balance sheets, profit and loss statements, stock books, bank statements, loan agreements or guarantees, and any other financial books and records from January 1, 2008 to the present.

Mr. Stansbury is seeking to inspect these records in good faith and for the purpose of determining if misappropriation of corporate assets for improper purposes has previously taken or is presently taking place.

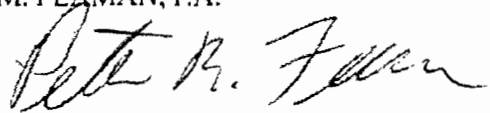
I have been made aware of a letter dated December 22, 2011 in which Mr. Stansbury purportedly "ceded" his shares of stock in LIC Holdings, Inc. back to the company. This letter was obtained under false pretenses and is not recognized by Mr. Stansbury as validly conveying his ownership interest in LIC Holdings, Inc.

Please have your legal counsel contact us within ten (10) days. Should we fail to receive a response within that time, Mr. Stansbury will take legal action to protect his rights and interests.

Very truly yours,

PETER M. FEAMAN, P.A.

By:


Peter M. Feaman

PMF/mk
cc: William Stansbury

IN THE CIRCUIT COURT OF THE
15TH 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; SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and ARBITRAGE
INTERNATIONAL MANAGEMENT, LLC,
f/k/a ARBITRAGE INTERNATIONAL
HOLDINGS, LLC.

Defendants.

FILED
2012 OCT 26 PM 1:39
SHARON R. BOCK, CLERK
PALM BEACH COUNTY
CIRCUIT CIVIL

**OBJECTIONS TO SUBPOENA DUCES TECUM FOR DEPOSITION AND
MOTION FOR PROTECTIVE ORDER**

COMES NOW the Law Firm of Peter M. Feaman, P.A., by and through Peter M. Feaman, Esquire and Plaintiff, WILLIAM E. STANSBURY, by and through undersigned counsel, and objects to the Subpoena Duces Tecum for Deposition served on Peter M. Feaman, P.A., as follows:

General Objection

Requests for any documents should be propounded in accordance with the Florida Rules of Civil Procedure. A subpoena duces tecum upon Plaintiff's law firm is an attempt to bypass the discovery Rules of Civil Procedure. As such, Plaintiff and Peter M. Feaman, P.A. object to all items requested.

Without waiving the aforesaid objection as to all matters, Plaintiff's counsel agrees to produce those items requested in Requests #1 through #4 in the subpoena duces tecum. All other items are objected to as set forth below.

1. Peter M. Feaman, P.A. objects to Request #5, as any such documents would have come into its possession by virtue of the attorney-client relationship between it and WILLIAM E.

STANSBURY, and such documents, if any, are privileged documents supplied to it by the client in anticipation of litigation.

2. Peter M. Feaman, P.A. objects to Request #6, as any such documents would have come into its possession by virtue of the attorney-client relationship between it and WILLIAM E. STANSBURY, and such documents, if any, are privileged documents supplied to it by the client in anticipation of litigation.

3. Peter M. Feaman, P.A. objects to Request #7, as any such documents would have come into its possession by virtue of the attorney-client relationship between it and WILLIAM E. STANSBURY, and such documents, if any, are privileged documents supplied to it by the client in anticipation of litigation.

4. Peter M. Feaman, P.A. objects to Request #8, as any such documents would have come into its possession by virtue of the attorney-client relationship between it and WILLIAM E. STANSBURY, and such documents, if any, are privileged documents supplied to it by the client in anticipation of litigation.

WHEREFORE, Plaintiff WILLIAM STANSBURY and Peter M. Feaman, P.A. request this Honorable Court to enter a Protective Order as set forth herein.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail at swergoldj@gtlaw.com; arnsdorffk@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 this 24TH day of OCTOBER, 2012.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: /s/ Peter M. Feaman
Peter M. Feaman
Florida Bar No.: 0260347

IN THE CIRCUIT COURT OF THE
15TH 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; SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and ARBITRAGE
INTERNATIONAL MANAGEMENT, LLC,
f/k/a ARBITRAGE INTERNATIONAL
HOLDINGS, LLC.
Defendants.

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FILED
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL

**RESPONSE OF PLAINTIFF WILLIAM E. STANSBURY
TO DEFENDANTS' MOTION TO DISMISS OR, IN THE
ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT**

Plaintiff WILLIAM E. STANSBURY, through undersigned counsel, hereby responds to Defendants' Motion to Dismiss or, in the Alternative, Motion for More Definite Statement, and states:

1. **General Response**

When considering a Motion to Dismiss, the standard to be applied by the trial court is that every allegation must be accepted as true, and every inference must be drawn in favor of the Plaintiff; the pleader is only required to set forth "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." *See*, Rule 1.110(b), Fla. R.Civ. P.

The facts pled in the Complaint that support the various legal theories set forth in each Count are contained in paragraphs 8 through 25 of the Complaint. They establish that:

- Plaintiff was an employee and minority owner of LIC Holdings, Inc. (LIC); he was promised but not paid compensation that he was due for the years 2008 through 2011;

and he was denied promised profit distributions on his 10% ownership interest. *See*, paragraphs 13, 18, 20 21 and 22.

- That the officers of Defendants LIC and Arbitrage International Management (AIM), Simon and Ted Bernstein, made false and misleading representations to Plaintiff with respect to the compensation and distributions due him by falsely stating, among other things, that Defendants Bernstein as well as Plaintiff were not receiving full compensation when, in fact, Defendants Bernstein were being fully paid. *See*, paragraphs 21, 22 and 25.
- This concealment and other representations, and reliance thereon, induced Plaintiff to delay pursuing his rights until he did so by the filing of the Complaint in 2012. *See*, paragraph 25.

Plaintiff's Complaint clearly sets forth the ultimate facts supporting Plaintiff's claims against the Defendants. The Defendants' assertion that the Plaintiff's factual allegations as "confusing," "riddled with ambiguities," "vague," and "contradictory" (which they are not) is simply wrong.

2. **The Statute of Limitations Does Not Bar Plaintiff's Claims.** Defendants seek to dismiss the Counts alleging Accounting (Counts I and II), Breach of Oral Contract (Count III), Breach of Implied Covenant of Good Faith and Fair Dealing (Count IV), Breach of Fiduciary Duty (Count V), Fraud (Count VII), Equitable Lien (Count VIII), Contract Implied in Law (Count IX) and Constructive Trust (Count X) on the ground that these claims are barred by the four-year statute of limitations found in §95.11(3) Fla. Stat. (2012). Defendants contend the limitations period began to run prior to July 31, 2008 based solely on Plaintiff's allegation that Simon Bernstein made certain representations to him in "early 2008" (Complaint, Par. 21) and that Plaintiff represented that he had been deprived of his money due him for "approximately four and a half years" (Complaint, Par. 28). These statements, according to the Defendants,

somehow indicate that Plaintiff was aware of his claims prior to July 31, 2008, and thus they are now time barred.

Defendants' argument is fatally flawed for several reasons:

(a) These averments in the Complaint are clearly retrospective recollections made by Plaintiff as to the sequence of events that ultimately gave rise to his claims. They do not suggest that, at the time, Plaintiff realized, or should have realized, that any conduct by the Defendants was actionable.

(b) Defendants ignore the allegations of Paragraph 22 of the Complaint:

22. Through misrepresentations made from 2008 through the date of filing of this Complaint, Defendants knowingly made false statements to Plaintiff to hide their scheme to withhold from Plaintiff money to which he was entitled. For example, at times they claimed that money being received was not being paid as salary or distributions to either of Defendants BERNSTEIN but was being withheld and placed in a company account, for eventual distribution. **As Plaintiff and Defendants could afford to wait until year's end to be paid their distributions, and as Defendants BERNSTEIN assured Plaintiff that the payment arrangement would apply to all three equally, Plaintiff did not question the truthfulness of their representations** (emphasis added).

In light of these allegations, three things are readily apparent. First, Plaintiff has alleged that, due to the representations of the Bernstein Defendants, he was persuaded to wait until the end of the year 2008 to be paid. As a result, the statute of limitations would not begin to run, at the earliest, until sometime after January 1, 2009 when he was not paid as promised. Therefore, these claims are timely filed. Secondly, Plaintiff is alleging he was induced to his detriment into delaying action on the Defendants failure to pay him by the false and fraudulent misrepresentations of the Bernsteins. Fraudulent misrepresentations operate to toll the statute of limitations. *See, San Pedro v. San Pedro*, 910 So. 2d 426, 430 (Fla. 4th DCA 2005). Further, if there is some question as to when the applicable statute of limitations began to run in this case,

the commencement date is a fact question for the trier of fact to resolve. *See, J.A. Cantor Associates, Inc. v. Brenner*, 363 So. 2d 204 (Fla. 3d DCA 1978).

For the foregoing reasons, Defendant's Motion to Dismiss based on the statute of limitations should be denied.

3. **Allegations Against Ted Bernstein Personally for Accounting**

The allegations contained in paragraphs 11 through 25 of the Complaint clearly establish that the Bernstein Defendants and Ted Bernstein in particular, engaged in a campaign of misrepresentation and deceit with respect to their interaction and dealings with Plaintiff on compensation and ownership distribution issues. The Plaintiff admits, however, at least at this time, that the allegations against Ted Bernstein individually, as to an Accounting, as set forth in Count II, may be premature. As such, Plaintiff agrees to voluntarily dismiss that Count, without prejudice, at this time.

4. **Dismissal of Count I for an Accounting Against LIC and AIM is Not Warranted.**

The test in *Bankers Trust Realty, Inc. v. Kluger*, 672 So. 2d 897 (Fla. 3d DCA 1996), as set forth in Defendants' Motion, requires Plaintiff to allege that: 1) Plaintiff and Defendant shared a fiduciary relationship **OR** entered a complex transaction, and 2) a remedy at law is inadequate. Plaintiff contends that the parties entered into a complex transaction, and Plaintiff has alleged the existence of a fiduciary relationship (*see*, Count V). Plaintiff has also alleged that a remedy at law is inadequate (*see*, Count I, par. 28). As such, Plaintiff has met the pleading requirements of *Kluger* and has stated a cause of action for an accounting against the Corporate Defendants.

5. **Plaintiff's claim for Breach of Implied Covenant of Good Faith and Fair Dealing (Count IV) Will Be Dismissed at This Time without Prejudice**

6. **Breach of Fiduciary Duty (Count V), Civil Theft (Count VI) and Fraud (Count VII) Are Not Barred by the Economic Loss Rule**

Claims for Breach of Fiduciary Duty and Civil Theft are causes of action arising under statutory law. The alleged Breach of fiduciary duty claim made by Plaintiff against the Defendants is supported by Florida law, including the fiduciary obligations of corporate officers and directors, which are specifically set forth in Florida Statutes §607, *et seq.* Civil Theft is articulated in Florida Statutes §772.11 (Complaint, Par. 48). The Plaintiff's Complaint has clearly stated a claim under that statute. The Supreme Court of Florida has unequivocally stated that the economic loss rule cannot be used to eliminate statutory causes of action. *See, Comptech International, Inc. v. Milam Commerce Park, LTD*, 753 So. 2d 1219 (Fla. 1999). Moreover, the economic loss rule does not abolish the cause of action for breach of fiduciary duty, even if there is an underlying contract. *See, Invo Florida, Inc. v. Somerset Venturer, Inc.*, 751 So. 2d 1263 (Fla. 3d DCA 2000).

As to Plaintiff's fraud claim against Defendants, the economic loss rule does not bar tort actions where a legal duty independent of the contract itself has been violated. *HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 685 So. 2d 1238, 1239 (Fla. 1996). In addition to the contract claims alleged, Plaintiff has specifically alleged that the Defendants deceived him into surrendering his 10% ownership interest in LIC. The fraudulent misrepresentations and subsequent reliance by plaintiff constitute an independent claim that is not related to the contract. Therefore, the fraud claim is not barred by the economic loss rule.

7. **The Breach of Fiduciary Duty (Count V) and Fraud (Count VII) Claims Should Not Be Dismissed.**

For the reasons set forth in paragraphs 8 and 9 below, the Plaintiff's breach of fiduciary duty and fraud claims against the Defendants should clearly not be dismissed.

8. **The Breach of Fiduciary Duty Claim (Count V) States a Cause of Action.**

Florida law provides that corporate officers and directors owe a duty of loyalty and a duty of care to the corporation and its shareholders. *Cohen v. Hattaway*, 595 So.2d 105 (Fla. 5th DCA 1992). In particular, Fla. Stat. § 607.0830 provides:

- (1) A director shall discharge his or her duties as a director ...
 - (a) In good faith;
 - (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (c) In a manner he or she reasonably believes to be in the best interests of the corporation.

These fiduciary duties are generally described as the duties of care and the duty of loyalty. See, *In re Aqua Clear Technologies, Inc.*, 361 B.R. 567, 575 (Bankr. S.D. Fla. 2007). Each of these duties is of equal and independent significance. *Id.* The duty of care requires the directors of a company to act on an informed basis. *Id.* The duty of loyalty requires the officer or director to act in good faith and in the best interests of the company. Fla. Stat. § 607.0830(1)(c); *In re Aqua Clear Technologies, Inc.*, 361 B.R. 567. A corporate officer or director breaches the duty of loyalty if that person “depart[s] from his corporate responsibility and start[s] serving himself.” *In re Aqua Clear Technologies, Inc.*, 361 B.R. at 575, citing *Intercarga Internacional de Carga, S.A. v. Harper Group, Inc.*, 659 So.2d 1208, 1210 (Fla. 3d DCA 1995). An officer or director may be held “strictly accountable and liable if corporate funds or property are wasted or mismanaged due to their inattention to their duties.” *Id.*

In this case, the Complaint specifically alleges that Simon and Ted Bernstein owned and controlled the corporate Defendants (LIC and AIM), worked closely together with respect thereto, and were one another's alter egos. (Complaint, Par. 6) As such, the Bernsteins are (or were at the time the claims arose – Simon Bernstein is now deceased) clearly both "officers and directors" of the corporate Defendants and exclusively made all decisions regarding the operations of these corporate Defendants. The Complaint also alleges that both Bernsteins made false and misleading misrepresentations to Plaintiff, an employee and minority shareholder of Defendant LIC, relating to Plaintiff's compensation and distributions on his ownership interest, and the Bernsteins falsely stated that their compensation was being withheld and maintained by the corporation, the same as Plaintiff's, when in reality they had paid themselves. (Complaint, Pars. 20, 22) It has also been alleged that the Bernsteins intercepted mail addressed to the Plaintiff and converted checks intended for Plaintiff for their own personal use or the use of the corporate Defendants. (Complaint, Par. 23) All these allegations were expressly incorporated by reference into Count V. (Complaint, Par. 41) This conduct clearly establishes a claim for breach of fiduciary duty as to the Bernsteins. As officers/directors, they failed to act in good faith and in the best interests of the company or its employee/minority shareholder, the Plaintiff, and breached their duty of loyalty when they departed from their corporate responsibilities and started serving themselves. Accordingly, Defendants' Motion to Dismiss the claim for breach of fiduciary duty should be denied.

9. **The Civil Theft Claim (Count VI) States a Cause of Action.**

As stated in Paragraph 8, above, the Complaint alleges that the Bernsteins intercepted mail addressed to the Plaintiff and converted checks intended for Plaintiff for their own personal use or the use of the corporate Defendants. (Complaint, Par. 23). All these allegations were

expressly incorporated by reference into the Civil Theft claim, Count VI (Complaint, Par. 49) and were included in the all-inclusive references contained in Par. 50. Paragraph 51 makes specific reference to the Defendants' criminal intent consistent with *Palmer v. Gotta Have It Golf Collectibles, Inc.*, 106 F. Supp.2d 1289 (S.D. Fla. 2000) a case cited and relied on by Defendants at p. 15 of Defendants' Motion. While not using the specific language "sophisticated scheme of deceit and theft," that is the gist of Plaintiff's claim as alleged in Paragraph 51 and in the Fraud claim, Count VII (Par. 58). Finally, other than the general allegation relating to the failure to pay due compensation, the allegation of specific, identifiable checks made payable to Plaintiff that were converted by the Bernstein defendants is sufficient to meet the "specific money capable of identification" requirement of *Belford Trucking Company v. Zagar*, 243 So. 2d 646, 648 (Fla. 4th DCA 1970), and cited in the Defendants' Motion at p. 15. For these reasons, the Motion to Dismiss the Civil Theft count should be denied.

10. **The Fraud Claim (Count VII) States a Cause of Action**

In order to sufficiently plead a fraud claim in Florida, the pleader must allege: a) a false representation of fact, known by the party making it to be false at the time it was made; (b) that the representation was made for the purpose of inducing another to act in reliance on it; (c) actual reliance on the representation; and (d) resulting in damage to the plaintiff. *Essex Ins. Co., Inc. v. Universal Entertainment & Skating Center, Inc.*, 665 So. 2d 360 (Fla. 5th DCA 1995). *See also, Peninsular Fla. Dist. Council of Assemblies of God v. Pan American Investment and Development Corp.*, 450 So. 2d 1231 (Fla. 4th DCA 1984).

In this case, Plaintiff's Complaint has alleged sufficient, particular facts to state a cause of action for fraud. Paragraphs 11 through 25 set out in detail the misrepresentations and falsehoods stated by the Bernstein Defendants in their interaction and business discussions with Plaintiff, all of which were incorporated by reference into the Count VII by Par. 53. Of

particular interest is Paragraph 24, which alleges how Defendants deceived Plaintiff into surrendering his 10% interest in LIC, which he did. It is also alleged that the Defendants intended for Plaintiff to rely on the false statements (or omissions of fact), that these statements or omissions were material, that Plaintiff relied on these falsehoods and was damaged thereby. See, Complaint, Pars. 47, 56, 57. Plaintiff was damaged by these false representations when he was denied his due compensation and, more importantly, when he surrendered his ownership interest in the LIC. The Motion to Dismiss as to Count VII should be denied.

11. **The Equitable Lien (Count VIII), Constructive Trust (Count X), the Contract Implied in Law (Count VIII), and the Indemnification (Count XI) Claim Will Be Dismissed At This Time Without Prejudice.**

WHEREFORE, Plaintiff requests this Honorable Court to deny Defendants' Motion to Dismiss as to Counts I, III, V, VI and VII, and such other relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at swergoldj@gtlaw.com; arnsdorffk@gtlaw.com; steffesi@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301; and at kdstern@gmail.com to Kenneth D. Stern, Esq., Kenneth D. Stern, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436 this 8th day of January, 2013.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: 

Peter M. Feaman

Florida Bar No.: 0260347

IN THE CIRCUIT COURT OF THE
15TH 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; SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and ARBITRAGE
INTERNATIONAL MANAGEMENT, LLC,
f/k/a ARBITRAGE INTERNATIONAL
HOLDINGS, LLC.

Defendants.

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MOTION FOR DISQUALIFICATION

COMES NOW WILLIAM E. STANSBURY, by and through his undersigned counsel and moves for disqualification of Defendants' counsel and states as follows:

1. Counsel for Defendants is Jon Swergold of the law firm of Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, Florida.
2. In a 2010 action in this Circuit, Plaintiff WILLIAM E. STANSBURY, was represented by Jon Swergold of Greenberg Traurig, P.A. in the matter of *Wright v. Helmer, et al*, Case No.: 50 2012 CA 017249 MB AN.
3. In that action, Jon Swergold represented both Mr. Stansbury, the Plaintiff in this action, and ARBITRAGE INTERNATIONAL MARKETING, INC., in matters arising out of certain insurance business transactions, some of which form the basis of the Complaint in this case.
4. Rule 4-1.9 of the Rules Regulating the Florida Bar governs conflicts of interest with former clients. The Rule provides:

"A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent;

(b) use information relating to the representation to the disadvantage of the former client except as these rules would permit with respect to a client or when the information has become generally known."

5. It is undisputed that Greenberg Traurig represented Stansbury in the 2010 action of *Wright v. Helmer, et al, supra*.

6. The comment to Rule 4-1.9 provides:

"When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited."

7. Any doubt as to what disclosures may have been made by Plaintiff, STANSBURY to Defendants' counsel when he represented STANSBURY must be resolved in favor of the presumption that confidential information was disclosed and therefore in favor of disqualification. *See, McPartland v. ISI Investment Services*, 890 F. Sup. 1029 (MD Fla. 1995); *Brent v. Smathers*, 529 So.2d 1267 (Fla. 3d DCA 1988); and *Metcalf v. Metcalf*, 785 So.2d 747 (Fla. 5th DCA 2001).

8. Notes to Rule 4-1.9 indicate that this Rule creates an "irrefutable presumption that confidences were disclosed." *See, Gatton v. Health Coal, Inc.*, 745 So.2d 510 (Fla. 3rd DCA 1999); and *Hopper v. Frank*, 16 F. 2d 92 (5th Cir. 1994).

9. Rule 4-1.9 also imposes upon a lawyer a duty of loyalty. Rule 4-1.7 of Rules Regulating the Florida Bar and a comment thereunder states that "common representation does not diminish the rights of each client in the lawyer-client relationship. Each has a right to loyal and diligent representation ... and the protection of Rule 4-1.9..."

WHEREFORE, Plaintiff respectfully requests this Honorable Court to grant his Motion for Disqualification of Defendants' counsel for the reasons set forth herein, and for any such other relief as this Court would deem just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail at swergoldj@gtlaw.com; arnsdorffk@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 this 12TH day of NOVEMBER, 2012.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
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By: /s/ Peter M. Feaman
Peter M. Feaman
Florida Bar No.: 260347

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

CASE NO: 502012CA013933 XXXX MB AA

v.

TED S. BERNSTEIN; SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and ARBITRAGE
INTERNATIONAL MANAGEMENT, LLC,
f/k/a ARBITRAGE INTERNATIONAL
HOLDINGS, LLC.

Defendants.

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PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANT LIC HOLDINGS, INC.**

Plaintiff, WILLIAM E. STANSBURY ("STANSBURY"), through undersigned counsel, pursuant to Fla. R. Civ. P. 1.350, hereby propounds the attached First Request for Production of Documents upon Defendant, LIC HOLDINGS, INC., requiring said Defendant to produce copies of the materials and items described on the attached list at, or by mailing a copy to Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, on or before thirty (30) days after service of this Request for Production of Documents.

Preliminary Statement

As used in this Discovery request, the following terms will have the following meanings:

"Plaintiff," "WILLIAM STANSBURY," or "STANSBURY" means the Plaintiff, and includes any person or entity acting on his behalf.

"Defendant," "LIC HOLDINGS," "you," or "your" means Defendant, LIC HOLDINGS, INC., and includes any person or entity acting on behalf of such party, including, but not limited to, attorneys and their associates and employees, investigators, agents, employees, representatives, or others who are in possession of or who may have obtained information for or on its behalf.

“Defendants” means the Defendants to this action, to wit: TED S. BERNSTEIN, SIMON BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC, including any person or entity acting on behalf of such party or parties, including, but not limited to, attorneys and their associates and employees, investigators, agents, employees, representatives, or others who are in possession of or who may have obtained information for or on their behalf.

The terms “all records,” “all documents,” “all documentation,” and “all communications” mean every record, document, or communication as defined herein known to you and every such record, document, or communication which can be located or discovered by reasonably diligent efforts.

The term “communication” shall mean every manner or means of disclosure, transfer or exchange, and every disclosure, transfer or exchange of information whether orally or face-to-face or by telephone, letter, mail, personal delivery, facsimile transmission, electronic mail, (e-mail) document or otherwise.

The term “document,” “documents,” “documentation,” “record,” and “records” shall mean all written, typed, printed, reported, recorded or graphic matter, and all photographic matters or sound reproduction tapes records, or other devices, however produced, reproduced, or stored, now or formerly within your actual or constructive possession, custody or control. “Document” or “documents” shall include, but are not limited to, all telegrams, telexes, cables, telephone records, telephone bills, memoranda (circulated and uncirculated), market studies, correspondence, reports, studies, compilations of data, filings, files, internal policies or rules or regulations, minutes, agenda, requests, records, charts, lists, analyses, graphs, diagrams, schematics, blueprints, specifications, worksheets, change orders, drawings, cost estimates, books, expense reports, notebooks, notes, diaries, appointment books, calendars, recordings, transcriptions, computerized data in any media, including but not limited to: discs, CD-ROMs, or e-mails; file cards, computer printouts, microfilm, microfiche, videotapes, media articles or reports, accounts, books and records, ledgers, journals and other financial records, audits, instructions, questionnaires, profit and loss statements, financial statements, annual reports, state and federal tax returns, checkbooks, canceled checks, billings, contracts or agreements or releases, and any drafts, copies, or reproductions of the foregoing; and any copy of the foregoing upon which any notations in any form have been made which do not appear on the originals; and any copy of the foregoing upon which any language, notation or comments, in any form, which appear on the original or any other copy have been deleted, highlighted, altered or edited.

The term “communication” and “communications, as used herein, shall include any utterance heard or overheard, whether in person, by telephone, radio or otherwise, statement, dialogue, discussion, conversation or agreement, as well as every document and every other mode of intentionally conveying meaning.

“Identify,” “identity” or “identification,” when referring to a person, shall mean that you shall state the person’s (a) full name, (b) current or last known business address and telephone number, (c) current or last known residential address and telephone number, (d) current or last known employer and employer’s address, (e) current or last known occupation or position title.

“Identify,” “identity” or “identification,” when used in reference to a document, documents, documentation, record, and/or records means to state the date, author (or originator),

title, type (or subject matter) and custodian of the document, or other sufficient description of it in order to identify it for production in this suit, and each and every word contained in that document. If any document identified is no longer in your care, custody or control, state the disposition of such document. If a privilege is claimed with respect to any document, state the nature of the privilege claimed, and identify each person who has received the documents or a copy of it. Attachment of a true, correct copy of any document to your answers to these discovery requests shall constitute sufficient identification of any document.

“Person” or “individual” means any natural person, individual, proprietorship, partnership, corporation, association, joint proprietorship, joint venture, firm, other business enterprise, governmental body, or other entity.

A communication or document “relating” to any given subject means any communication or document that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

Unless otherwise stated, the documents requested shall be for the past ten (10) years.

Instructions

If any Request for Production is objected to on the grounds of privilege or otherwise, set forth fully each objection, stating the facts upon which you rely as the basis for the objection, and describe:

The nature of the document or communication not produced or disclosed;

The name and title of the author;

The name and title of each person to whom the document or communication was addressed, including all people to whom a copy was sent;

The date;

The number of pages;

A description of the subject matter sufficient, without waiving the claimed privilege or protection, to allow the requesting party to assess the applicability of the privilege or protection;

The privilege or protection claimed;

The paragraph(s) of this Request for Production to which the document or communication is responsive; and

The location of the original and each copy of the document or communication as of the date of the response to this Request for Production.

If you claim that any document requests is subject to privilege, please provide all documents responsive to the Request to the extent not privileged and comply with Instruction No. 1 as to the remainder of the Request.

If documents responsive to any of the Requests have been destroyed or discarded, identify the document as follows:

The date of the document;

The author or maker of the document;

The person to whom and from whom the document was sent;

The subject matter of the document;

The date on which the document was destroyed or discarded;

The reason for the destruction or discard; and

The person authorizing and/or carrying out said destruction or discard.

When producing the documents, please keep all documents segregated by the file in which the documents are contained and indicate the name of the file in which the documents are contained and name of the documents being produced. In the event such files or documents have been removed for the purposes of this action or other purpose, please state the name and address of the person who removed the file, the title of the file and each sub-file, if any, maintained within the file, and the present location of the file.

As used herein the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall include each of the other genders.

All documents produced shall be originals unless otherwise indicated. If your "original" is a photocopy (or other copy), then the photocopy you have should be produced as your original. You should produce the original documents in the form, order and manner in which they are maintained in your files or the files of other persons under your control. In this connection, and for purposes of illustration, documents are to be produced in the file folder and file cartons in which they have been maintained or stored, clipped, stapled, or otherwise arranged in the same form and manner as they were found. In the alternative, you should segregate all documents according to the specifications of this Request and shall organize and label each group of documents with the appropriate specifications prior to production. If any document is responsive to more than one specification of this Request, it should be labeled to reflect each specification to which it is responsive.

This Request for Production calls for production of all responsive documents in the possession, custody, or control of you, your agents, or representatives without regard to physical location of said documents. Control means in your possession, custody or control, or under your direction, and included in the possession, custody, or control of those under the direction of you and your employees, subordinates, counsel, accountant, consultant, expert, parent or affiliated corporation, and any person purporting to act on your behalf.

Please mark each document to indicate the paragraph to which the document corresponds. In the event you do not have "possession, custody or control" of any of the documents requested, state this fact, specifying the paragraph concerned. Additionally, if you do not have "possession, custody, or control" of any of the documents requested, but you know that they are in the possession or custody of other parties, give a brief description of the document(s), and the name and address of the party thought to be in possession thereof.

In producing copies of any documents, produce copies of both the front and back of each document, where the backside contains writing, printing, stamping, or notations.

DOCUMENTS TO BE PRODUCED

1. All documents, including e-mails, that show, evidence, or reflect any and all communications between you or anyone acting on your behalf related to or from the Plaintiff from January 1, 2007 to present.

2. All documents, including e-mails, that show, evidence, or reflect any and all communications between you and any of the Defendants that mention the Plaintiff, from January 1, 2007 to present.

3. All documents, including e-mails, that show, evidence, or reflect any and all communications between you and any of the Defendants that are related to the Plaintiff, from January 1, 2007 to present.

4. All documents that show, evidence, or reflect any business relationships you have or had with the Plaintiff since January 1, 2007 to the present.

5. All documents that show, evidence, or reflect any compensation, monies, or payment of any nature, made by you or any of the Defendants to the Plaintiff from January 1, 2007 to the present.

6. All documents that show, evidence, or reflect any compensation, monies, or payment of any nature, that is owed by you or any of the Defendants to the Plaintiff from January 1, 2007 to present.

7. All documents, including, but not limited to, internal memoranda, e-mails, or any other writings, related to payments by you or by any of the Defendants to any agents, employees, officers, independent contractors, or any other person or entity performing work on behalf of any of the Defendants.

8. All documents that show, evidence, or reflect any person or entity that has or has had an ownership interest in Defendant LIC HOLDINGS, INC. in the past 6 years.

9. All documents that show, evidence, or reflect any and all officers of LIC HOLDINGS, INC. in the past 6 years.
10. All records of payments made for cell phone usage from January 1, 2007 to present.
11. All records concerning medical expenses paid for any person including but not limited to Rachel Walker since January 1, 2007.
12. List of all employees and their compensation since January 1, 2007.
13. List of all participants in any Defined Benefit Pension Plan.
14. Copies of all 1099's from 2007 to present.
15. All statements concerning any profit-sharing plan, including the names of all participants.
16. Records of any and all payments to Plaintiff since January 1, 2007 to present.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail at swergoldj@gtlaw.com; arnsdorffk@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 this 5th day of November, 2012.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: /s/ Peter M. Feaman
Peter M. Feaman
Florida Bar No.: 0260347

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

CASE NO: 502012CA013 933XXXXMB AA

WILLIAM E. STANSBURY,

Plaintiff,

vs.

TED S. BERNSTEIN, SIMON
BERNSTEIN, LIC HOLDINGS, INC., and
ARBITRAGE INTERNATIONAL
MANAGEMENT, L.L.C., f/k/a
ARBITRAGE INTERNATIONAL
HOLDINGS, L.L.C.,

Defendants.

AMENDED NOTICE OF DESIGNATION
OF PRIMARY AND SECONDARY
E-MAIL ADDRESSES

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
RECORDS & PROBATE 3

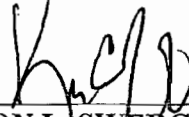
JAN 14 PM 12:05

FILED

Defendants, TED S. BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., by and through undersigned counsel, and in accordance with Florida Rule of Civil Procedure 1.080 (as amended effective September 1, 2012) and new Florida Rule of Judicial Administration 2.516 (as enacted effective September 1, 2012), hereby designate undersigned counsel's primary and secondary electronic mail addresses in the above styled cause and respectfully requests that the copies of all orders, process, pleadings and other documents filed or served in this matter be served at the primary and secondary e-mail addresses listed below, with such service complying by new Rule 2.516(b)(1)(E). Initiating documents shall be served by hard copy in addition to e-mail service required by new Rule 2.516(b)(1)(A).

Primary: swergoldj@gtlaw.com, ciaffik@gtlaw.com
Secondary: steffesj@gtlaw.com, FLService@gtlaw.com

Respectfully submitted,



JON L. SWERGOLD
Florida Bar No. 0108510
swergoldj@gtlaw.com

✓ **KRISTINA L. CIAFFI**
Florida Bar No. 0040596
ciaffik@gtlaw.com

GREENBERG TRAUIG, P.A.
401 East Las Olas Boulevard, Suite 2000
Fort Lauderdale, Florida 33301
Telephone: (954) 765-0500
Facsimile: (954) 765-1477
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail to: pfeaman@feamanlaw.com and kdstern@gmail.com, **Peter M. Feaman, Esq., Kenneth D. Stern, Esq.**, 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, on this 11th day of January, 2013



KRISTINA L. CIAFFI

FTL 109,054,638.1 - 141289.010100

IN THE CIRCUIT COURT OF THE
15TH 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; SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and ARBITRAGE
INTERNATIONAL MANAGEMENT, LLC,
f/k/a ARBITRAGE INTERNATIONAL
HOLDINGS, LLC.
Defendants.

FILED
2013 JAN 14 PM 4:15
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 5

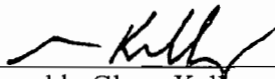
ORDER ON DEFENDANTS' MOTION FOR PROTECTIVE ORDER

THIS CAUSE came on to be heard before this Honorable Court on Monday, January 14, 2013, upon Defendants' Motion for Protective Order and the Court having reviewed the file, heard argument of counsel and being duly advised in the premises, it is hereby

ORDERED and ADJUDGED:

1. Defendants' Motion is hereby denied.
2. Twenty days to respond.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida on this 14th day of January, 2013.


Honorable Glenn Kelley
Circuit Judge

Copies to:

Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort
Lauderdale, FL 33301; swergoldj@gtlaw.com;

Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach,
FL; pfeaman@feamanlaw.com.

Copies furnished by e-mail

IN THE CIRCUIT COURT OF THE
15TH 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; SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and ARBITRAGE
INTERNATIONAL MANAGEMENT, LLC,
f/k/a ARBITRAGE INTERNATIONAL
HOLDINGS, LLC.

Defendants.

FILED
2013 JAN 17 AM 11:24
SHARON R. BOGAK, CLERK
PALM BEACH COUNTY, FL
CIVIL DIVISION

ORDER SETTING HEARING

The following matter has been specially set for hearing before Judge Glenn D. Kelley in
Courtroom 11A of the Palm Beach County Courthouse, 205 North Dixie Highway, West Palm
Beach, FL 33401.

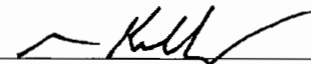
DATE: March 25, 2013

TIME: ~~9:30~~ 10:30 a.m. (time allotted: 30 minutes)

MATTER: MOTION FOR DISQUALIFICATION

**NOTE: THIS HEARING IS SPECIALLY SET BY COURT ORDER AND CANNOT BE
CANCELLED OR RESET EXCEPT BY COURT ORDER. ALL MEMORANDA MUST
BE SUBMITTED TO JUDGE'S CHAMBERS NO LATER THAN FIVE (5) DAYS PRIOR
TO HEARING.**

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida
this 16th day of January, 2013.


Honorable Glenn Kelley
Circuit Judge

Copies to:

Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort
Lauderdale, FL 33301; swergoldj@gtlaw.com;
Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach,
FL; pfeaman@feamanlaw.com.

Copies furnished by e-mail

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

"Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha programado es menos de 7 días; si usted tiene discapacitación del oído o de la voz, llame al 711."

"Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Germaine English, kòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711."

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: STANDING ORDER ON
SPECIALLY SET MOTIONS

CIVIL DIVISION "AA"

_____ /
This motion has been specially set by Court Order and cannot be canceled except by further Court Order.

It is the intent of this Court to dispose of the subject matter of the specially set motion on the date and time appearing on the order. Accordingly, counsel must either: (1) argue the motion on the date and time set for the hearing; (2) submit an agreed order disposing of the motion; or (3) show good cause why the hearing should be canceled. Any request to cancel a hearing for good cause shall be made by motion and shall be set for hearing on the Court's Uniform Motion Calendar.

All memoranda and/or case authority shall be delivered to my office and to all parties no later than five business days in advance of the hearing and no sooner than ten days prior to the hearing and should designate the date and time of the hearing which they reference.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this 4th day of September, 2012.



JUDGE GLENN D. KELLEY
CIRCUIT COURT JUDGE

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

CASE NO. 502012CA013933XXXXMB

WILLIAM E. STANSBURY,

Division: AA-Kelley

Plaintiff,

v.

TED S. BERSTEIN;
SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and
ARBITRAGE INTERNATIONAL
MANAGEMENT, L.L.C., f/k/a
ARBITRAGE INTERNATIONAL
HOLDINGS, L.L.C.

Defendants.

FILED
2012 NOV -6 PM 12:01
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 8

MOTION FOR SUBSTITUTION OF PARTY

Plaintiff, WILLIAM E. STANSBURY ("Plaintiff"), by and through his undersigned counsel and pursuant to Rule 1.260(a) of the Florida Rules of Civil Procedure, hereby moves this Court for entry of an Order substituting the personal representative of the ESTATE OF SIMON BERNSTEIN (the "Estate") in place of SIMON BERNSTEIN (the "Decedent") as a party to this action, and in support thereof state as follows:

1. On or about July 30, 2012, Plaintiff filed the Complaint that initiated this action against the defendants named therein, including the Decedent.
2. The Decedent died on September 13, 2012. A Suggest of Death statement was served by Defendants in this action on or about September 19, 2012. The personal representative

of the Estate is now the proper party to this action, and the Decedent is no longer a proper party to this action.

WHEREFORE, Plaintiff, WILLIAM E. STANSBURY, respectfully requests (i) that this Court substitute the personal representative of the ESTATE OF SIMON BERNSTEIN in place of the Decedent as a party to this action, and (ii) such further relief as the Court deems just and equitable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail at swergoldj@gtlaw.com; arnsdorffk@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 and at kdstern@gmail.com to Plaintiff's co-counsel, Kenneth D. Stern, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, this 5th day of November, 2012.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com

By: /s/ Peter M. Feaman
Peter M. Feaman
Florida Bar No.: 0260347

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

Plaintiff,

CASE NO: 502012CA013933 XXXX MB AA

v.

TED S. BERNSTEIN; SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and ARBITRAGE
INTERNATIONAL MANAGEMENT, LLC,
f/k/a ARBITRAGE INTERNATIONAL
HOLDINGS, LLC.

Defendants.

FILED
12 NOV -9 PM 3:36
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANT TED S. BERNSTEIN**

Plaintiff, WILLIAM E. STANSBURY ("STANSBURY"), through undersigned counsel, pursuant to Fla. R. Civ. P. 1.350, hereby propounds the attached First Request for Production of Documents upon Defendant, TED S. BERNSTEIN, requiring said Defendant to produce copies of the materials and items described on the attached list at, or by mailing a copy to Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, on or before thirty (30) days after service of this Request for Production of Documents.

Preliminary Statement

As used in this Discovery request, the following terms will have the following meanings:

"Plaintiff," "WILLIAM STANSBURY," or "STANSBURY" means the Plaintiff, or any person or entity acting on his behalf.

"Defendant," "TED BERNSTEIN," "you," or "your" means Defendant, TED S. BERNSTEIN, and includes any person or entity acting on behalf of such party, including, but not limited to, attorneys and their associates and employees, investigators, agents, employees, representatives, or others who are in possession of or who may have obtained information for or on his behalf.

"Defendants" means the Defendants to this action, to wit: TED S. BERNSTEIN, SIMON BERNSTEIN, LIC HOLDINGS, INC., and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, LLC, including any person or entity acting on behalf of such party or parties, including, but not limited to, attorneys and their associates and employees, investigators, agents, employees, representatives, or others who are in possession of or who may have obtained information for or on their behalf.

The terms "all records," "all documents," "all documentation," and "all communications" mean every record, document, or communication as defined herein known to you and every such record, document, or communication which can be located or discovered by reasonably diligent efforts.

The term "communication" shall mean every manner or means of disclosure, transfer or exchange, and every disclosure, transfer or exchange of information whether orally or face-to-face or by telephone, letter, mail, personal delivery, facsimile transmission, electronic mail, (e-mail) document or otherwise.

The term "document," "documents," "documentation," "record," and "records" shall mean all written, typed, printed, reported, recorded or graphic matter, and all photographic matters or sound reproduction tapes records, or other devices, however produced, reproduced, or stored, now or formerly within your actual or constructive possession, custody or control. "Document" or "documents" shall include, but are not limited to, all telegrams, telexes, cables, telephone records, telephone bills, memoranda (circulated and uncirculated), market studies, correspondence, reports, studies, compilations of data, filings, files, internal policies or rules or regulations, minutes, agenda, requests, records, charts, lists, analyses, graphs, diagrams, schematics, blueprints, specifications, worksheets, change orders, drawings, cost estimates, books, expense reports, notebooks, notes, diaries, appointment books, calendars, recordings, transcriptions, computerized data in any media, including but not limited to: discs, CD-ROMs, or e-mails; file cards, computer printouts, microfilm, microfiche, videotapes, media articles or reports, accounts, books and records, ledgers, journals and other financial records, audits, instructions, questionnaires, profit and loss statements, financial statements, annual reports, state and federal tax returns, checkbooks, canceled checks, billings, contracts or agreements or releases, and any drafts, copies, or reproductions of the foregoing; and any copy of the foregoing upon which any notations in any form have been made which do not appear on the originals; and any copy of the foregoing upon which any language, notation or comments, in any form, which appear on the original or any other copy have been deleted, highlighted, altered or edited.

The term "communication" and "communications, as used herein, shall include any utterance heard or overheard, whether in person, by telephone, radio or otherwise, statement, dialogue, discussion, conversation or agreement, as well as every document and every other mode of intentionally conveying meaning.

"Identify," "identity" or "identification," when referring to a person, shall mean that you shall state the person's (a) full name, (b) current or last known business address and telephone number, (c) current or last known residential address and telephone number, (d) current or last known employer and employer's address, (e) current or last known occupation or position title.

"Identify," "identity" or "identification," when used in reference to a document, documents, documentation, record, and/or records means to state the date, author (or originator),

title, type (or subject matter) and custodian of the document, or other sufficient description of it in order to identify it for production in this suit, and each and every word contained in that document. If any document identified is no longer in your care, custody or control, state the disposition of such document. If a privilege is claimed with respect to any document, state the nature of the privilege claimed, and identify each person who has received the documents or a copy of it. Attachment of a true, correct copy of any document to your answers to these discovery requests shall constitute sufficient identification of any document.

“Person” or “individual” means any natural person, individual, proprietorship, partnership, corporation, association, joint proprietorship, joint venture, firm, other business enterprise, governmental body, or other entity.

A communication or document “relating” to any given subject means any communication or document that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including without limitation, documents concerning the preparation of other documents.

Unless otherwise stated, the documents requested shall be for the past ten (10) years.

Instructions

If any Request for Production is objected to on the grounds of privilege or otherwise, set forth fully each objection, stating the facts upon which you rely as the basis for the objection, and describe:

The nature of the document or communication not produced or disclosed;

The name and title of the author;

The name and title of each person to whom the document or communication was addressed, including all people to whom a copy was sent;

The date;

The number of pages;

A description of the subject matter sufficient, without waiving the claimed privilege or protection, to allow the requesting party to assess the applicability of the privilege or protection;

The privilege or protection claimed;

The paragraph(s) of this Request for Production to which the document or communication is responsive; and

The location of the original and each copy of the document or communication as of the date of the response to this Request for Production.

If you claim that any document requests is subject to privilege, please provide all documents responsive to the Request to the extent not privileged and comply with Instruction No. 1 as to the remainder of the Request.

If documents responsive to any of the Requests have been destroyed or discarded, identify the document as follows:

The date of the document;

The author or maker of the document;

The person to whom and from whom the document was sent;

The subject matter of the document;

The date on which the document was destroyed or discarded;

The reason for the destruction or discard; and

The person authorizing and/or carrying out said destruction or discard.

When producing the documents, please keep all documents segregated by the file in which the documents are contained and indicate the name of the file in which the documents are contained and name of the documents being produced. In the event such files or documents have been removed for the purposes of this action or other purpose, please state the name and address of the person who removed the file, the title of the file and each sub-file, if any, maintained within the file, and the present location of the file.

As used herein the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall include each of the other genders.

All documents produced shall be originals unless otherwise indicated. If your "original" is a photocopy (or other copy), then the photocopy you have should be produced as your original. You should produce the original documents in the form, order and manner in which they are maintained in your files or the files of other persons under your control. In this connection, and for purposes of illustration, documents are to be produced in the file folder and file cartons in which they have been maintained or stored, clipped, stapled, or otherwise arranged in the same form and manner as they were found. In the alternative, you should segregate all documents according to the specifications of this Request and shall organize and label each group of documents with the appropriate specifications prior to production. If any document is responsive to more than one specification of this Request, it should be labeled to reflect each specification to which it is responsive.

This Request for Production calls for production of all responsive documents in the possession, custody, or control of you, your agents, or representatives without regard to physical location of said documents. Control means in your possession, custody or control, or under your direction, and included in the possession, custody, or control of those under the direction of you and your employees, subordinates, counsel, accountant, consultant, expert, parent or affiliated corporation, and any person purporting to act on your behalf.

Please mark each document to indicate the paragraph to which the document corresponds. In the event you do not have "possession, custody or control" of any of the documents requested, state this fact, specifying the paragraph concerned. Additionally, if you do not have "possession, custody, or control" of any of the documents requested, but you know that they are in the possession or custody of other parties, give a brief description of the document(s), and the name and address of the party thought to be in possession thereof.

In producing copies of any documents, produce copies of both the front and back of each document, where the backside contains writing, printing, stamping, or notations.

DOCUMENTS TO BE PRODUCED

1. All documents, including e-mails, that show, evidence, or reflect any and all communications between you or anyone acting on your behalf related to or from the Plaintiff from January 1, 2007 to present.

2. All documents, including e-mails, that show, evidence, or reflect any and all communications between you and any of the Defendants that mention the Plaintiff, from January 1, 2007 to present.

3. All documents, including e-mails, that show, evidence, or reflect any and all communications between you and any of the Defendants that are related to the Plaintiff, from January 1, 2007 to present.

4. All documents that show, evidence, or reflect any business relationships you have or had with the Plaintiff since January 1, 2007 to the present.

5. All documents that show, evidence, or reflect any compensation, monies, or payment of any nature, made by you or any of the Defendants to the Plaintiff from January 1, 2007 to the present.

6. All documents that show, evidence, or reflect any compensation, monies, or payment of any nature, that is owed by you or any of the Defendants to the Plaintiff from January 1, 2007 to present.

7. All documents, including, but not limited to, internal memoranda, e-mails, or any other writings, related to payments by you or by any of the Defendants to any agents, employees, officers, independent contractors, or any other person or entity performing work on behalf of any of the Defendants.

8. All documents that show, evidence, or reflect any person or entity that has or has had an ownership interest in Defendant ARBITRAGE and/or LIC HOLDINGS, INC. in the past 6 years.
9. All documents that show, evidence, or reflect any and all officers of ARBITRAGE and/or LIC HOLDINGS, INC. in the past 6 years.
10. All records of payments made for cell phone usage from January 1, 2007 to present.
11. All records concerning medical expenses paid for any person including but not limited to Rachel Walker since January 1, 2007.
12. List of all employees and their compensation since January 1, 2007.
13. List of all participants in any Defined Benefit Pension Plan.
14. Copies of all 1099's from 2007 to present.
15. All statements concerning any profit-sharing plan, including the names of all participants.
16. Records of any and all payments to Plaintiff since January 1, 2007 to present.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail at swergoldj@gtlaw.com; arnsdorffk@gtlaw.com; steffesj@gtlaw.com; and FLService@gtlaw.com to Jon Swergold, Esq., Greenberg Traurig, P.A., 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301 this 5th day of November, 2012.

PETER M. FEAMAN, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
pfeaman@feamanlaw.com
By: /s/ Peter M. Feaman
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

WILLIAM E. STANSBURY, an individual,

Plaintiff,

v.

CASE NO.: 50 2012CA013933 XXXX(NB)
(AA)

TED S. BERNSTEIN, an individual,
SIMON L. BERNSTEIN, an individual,
LIC HOLDINGS, INC., a Florida
Corporation, **ARBITRAGE**
INTERNATIONAL MARKETING, LLC, a
Florida Corporation f/k/a **ARBITRAGE**
INTERNATIONAL HOLDINGS, LLC.,

Defendants.

FILED
12 DEC 11 PM 2:20
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 6

MOTION FOR PROTECTIVE ORDER

Defendants, **TED S. BERNSTEIN** (“Ted”), **LIC HOLDINGS, INC.** (“LIC”) and **ARBITRAGE INTERNATIONAL MARKETING, LLC**, f/k/a **ARBITRAGE INTERNATIONAL HOLDINGS, LLC** (“Arbitrage”) (Ted, LIC and Arbitrage are, collectively, the “Defendants”), pursuant to Florida Rule of Civil Procedure 1.280(c), move for entry of a protective order relative to the First Requests for Production served by Plaintiff William E. Stansbury (“Stansbury”), and in support states:

1. On July 31, 2012, Plaintiff served Defendants with his eleven count Complaint.
2. On October 1, 2012, Defendants filed their Motion to Dismiss or, in the Alternative, Motion for More Definite Statement (the “Motion to Dismiss”).
3. On November 5, 2012, Stansbury served separate Requests for Production directed to each of the Defendants (collectively, the “Discovery Requests”).

4. On November 12, 2012, just one week later, Stansbury served a Motion for Disqualification of Defendants' counsel, Jon L. Swergold, Esq. and the law firm of Greenberg Traurig, P.A. (the "DQ Motion"). Defendants intend to oppose the DQ Motion, as it is without any merit.

5. A hearing on the Motion to Dismiss is scheduled for January 14, 2012.

6. A hearing on the DQ Motion has not been scheduled.

7. Florida courts have discretion in granting protective orders pending the resolution of motions to dismiss. Feigin v. Hosp. Staffing Serv., Inc., 569 So. 2d 941 (Fla. 4th DCA 1990).

8. Until the DQ Motion and the Motion to Dismiss are resolved, it would be inappropriate for the Defendants' counsel to respond to the Discovery Requests, a task that will undoubtedly take significant time and expense given the overly broad and burdensome nature of the Discovery Requests. More importantly, until Stansbury actually states a viable claim, it is unfair to require the Defendants to incur the cost of responding to the Discovery Requests.

WHEREFORE, Defendants respectfully requests entry of an Order (i) protecting Defendants from having to respond to Stansbury's Discovery Requests until thirty (30) days following the latter of (a) the Court's denial of Defendant's Motion to Dismiss or (b) Stansbury's filing of viable claims in an amended complaint, and (ii) granting such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

GREENBERG TRAURIG, P.A.
401 East Las Olas Boulevard
Suite 2000
Fort Lauderdale, Florida 33301
Telephone: (954) 765-0500
Facsimile: (954) 765-1477

By: 

Jon L. Swergold
Fla. Bar No. 108510
swergoldj@gtlaw.com
Kristina L. Ciaffi
Florida Bar No. 0040596
ciaffik@gtlaw.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the has been sent via e-mail and U.S. Mail to: Peter M. Feaman, Esq.(pfeaman@feamanlaw.com), Kenneth D. Stern, Esq. (kdstern@gmail.com), 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436 on this 10th day of December, 2012.


KRISTINA L. CIAFFI

FTL109,012,575 1