

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

CIVIL DIVISION

Plaintiff,

CASE NO: 502012CA013933 MB AA

DIVISION: BLANC

vs.

**TED S. BERNSTEIN; DONALD TESCHER
and ROBERT SPALLINA, as Co-Personal
Representatives of the ESTATE OF SIMON
L. BERNSTEIN and as Co-Trustees of the
SHIRLEY BERNSTEIN TRUST AGREEMENT
dated May 20, 2008; LIC HOLDINGS, INC.;
ARBITRAGE INTERNATIONAL
MANAGEMENT, LLC, f/k/a ARBITRAGE
INTERNATIONAL HOLDINGS, LLC;
BERNSTEIN FAMILY REALTY, LLC,**

Defendants.

**ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM
TO SECOND AMENDED COMPLAINT**

COME NOW, Defendants, Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon L. Bernstein (hereinafter the "Defendants"), by and through their undersigned counsel and hereby files this their Answer, Affirmative Defenses and Counterclaim to Second Amended Complaint and in support thereof state, as follows:

ANSWER

1. Paragraph 1 is admitted solely for jurisdictional purposes.
2. The Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 2.

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3. Paragraph 3 is Admitted.
4. Paragraph 4 is admitted solely to the extent of the record in the Estate of Simon L. Bernstein, Case No. 502012CP004391.
5. Paragraph 5 is Admitted.
6. Paragraph 6 is Admitted.
7. Paragraph 7 is Admitted.
8. Paragraph 8 is Denied.
9. Paragraph 9 is admitted solely for jurisdictional purposes.
10. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 10.
11. Paragraph 11 is Admitted.
12. Paragraph 12 is Admitted.
13. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 13.
14. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 14.
15. Paragraph 15 is Admitted.
16. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 16.
17. Defendants are presently without sufficient knowledge to either admit or deny the

allegations in paragraph 17.

18. Paragraph 18 is admitted solely to the extent that the Plaintiff, at some point in time, became a 10% shareholder.

19. Paragraph 19 is Denied.

20. Paragraph 20 is Denied.

21. Paragraph 21 is Denied.

22. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 22.

23. Paragraph 23 is Denied.

24. Paragraph 24 is Denied.

25. Paragraph 25 is Denied.

26. Paragraph 26 is Denied.

27. Paragraph 27 is Denied.

28. Paragraph 28 is Denied.

29. Paragraph 29 is Denied.

30. Paragraph 30 is Denied.

31. Paragraph 31 is admitted solely to the extent that the Plaintiff, at some point in time, was no longer a 10% shareholder.

32. Paragraph 32 is Denied.

33. Paragraph 33 is Denied.

34. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 34.

COUNT I

35. No response is required from the Defendants with respect to paragraph 35.

36. No response is required from the Defendants with respect to paragraph 36.

37. No response is required from the Defendants with respect to paragraph 37.

COUNT II

38. Defendants reaver and incorporated herein their responses 1-37 above.

39. Paragraph 39 is Denied.

40. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 40.

41. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 41.

42. Paragraph 42 is Denied.

43. Paragraph 43 is Denied.

44. Paragraph 44 is Denied.

45. Paragraph 45 is Denied.

46. Paragraph 46 is Denied.

COUNT III

47. Defendants reaver and incorporate herein their responses 1-46 above.

48. Defendants are presently without sufficient knowledge to either admit or deny the allegations in paragraph 48.

49. Paragraph 49 is Denied.

50. Paragraph 50 is Denied.

51. Paragraph 51 is Denied.

52. Paragraph 52 is Denied.

COUNT IV

53. No response is required from the Defendants with respect to paragraph 53.

54. No response is required from the Defendants with respect to paragraph 54.

55. No response is required from the Defendants with respect to paragraph 55.

56. No response is required from the Defendants with respect to paragraph 56.

57. No response is required from the Defendants with respect to paragraph 57.

COUNT V

58. Defendants reaver and incorporate herein their responses 1-57 above.

59. Paragraph 59 is Denied.

60. Paragraph 60 is Denied.

61. Paragraph 61 is Denied.

62. Paragraph 62 is Denied.

63. Paragraph 63 is Denied.

COUNT VI (STATED AS V IN THE SECOND AMENDED COMPLAINT)

- 64. No response is required from the Defendants with respect to paragraph 64.
- 65. No response is required from the Defendants with respect to paragraph 65.
- 66. No response is required from the Defendants with respect to paragraph 66.
- 67. No response is required from the Defendants with respect to paragraph 67.
- 68. No response is required from the Defendants with respect to paragraph 68.
- 69. No response is required from the Defendants with respect to paragraph 69.

COUNT VII

- 70. Defendants reaver and incorporate herein their responses 1-69 above.
- 71. Paragraph 71 is Denied.

COUNT VIII

- 72. Defendants reaver and incorporate herein their responses 1-71 above.
- 73. Paragraph 73 is Denied.
- 74. Paragraph 74 is Denied.
- 75. Paragraph 75 is Denied.
- 76. Paragraph 76 is Denied.
- 77. Paragraph 77 is Denied.
- 78. Paragraph 78 is Denied.

COUNT IX

- 79. Defendants reaver and incorporate herein their responses 1-78 above.

- 80. Paragraph 80 is Denied.
- 81. Paragraph 81 is Denied.
- 82. Paragraph 82 is Denied.
- 83. Paragraph 83 is Denied.
- 84. Paragraph 84 is Denied.

COUNT X

- 85. Defendants reaver and incorporate herein their responses 1-84 above.

AS TO ALL COUNTS

- 86. All other allegations not specifically admitted are denied.

AFFIRMATIVE DEFENSES

1. As and for the Defendants First Affirmative Defense, Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and/or laches.

2. As and for the Defendants Second Affirmative Defense, Plaintiff's claims are barred in whole or in part by the statute of frauds.

3. As and for the Defendants Third Affirmative Defense, Plaintiff's claims are barred in whole or in part because Plaintiff lacks standing to pursue derivative claims because he is no longer a shareholder in LIC and lacks standing to pursue other claims because is no longer an employee of LIC or Arbitrage.

4. As and for the Defendants Fourth Affirmative Defense, Plaintiff's claims are barred in whole or in part by because Plaintiff has misjoined causes of action held in different capacities,

and therefore, the Complaint is improper and, at a minimum, certain claims must be dismissed such that Plaintiff pursues only those claims he has in one capacity.

5. As and for the Defendants Fifth Affirmative Defense, Plaintiff's claims are barred in whole or in part by the doctrine of waiver. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies and was aware of the alleged actions which form the basis of his claim, and waived any claims against Defendants.

6. As and for the Defendants Sixth Affirmative Defense, Plaintiff's claims are barred in whole or in part by the doctrine of ratification. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and the alleged actions which form the basis of his claim, and ratified such alleged actions.

7. As and for the Defendants Seventh Affirmative Defense, Plaintiff's claims are barred in whole or in part by the doctrine of estoppel. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore is estopped to assert any claims against Defendants.

8. As and for the Defendants Eighth Affirmative Defense, Plaintiff's claims are barred in whole or in part by the doctrine of acquiescence. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the

companies, and was aware of the alleged actions which form the basis of his claim, and therefore acquiesced in the conduct about which he now complains.

9. As and for the Defendants Ninth Affirmative Defense, Plaintiff's claims against Simon L. Bernstein (hereinafter the "Decedent") are barred in whole or in part by the corporate shield doctrine. All of the actions allegedly taken by the Decedent were actions taken on behalf of a legal entity (corporation or limited liability company), and not on behalf of himself individually, and therefore, any claims against the Decedent individually are barred.

10. As and for the Defendants Tenth Affirmative Defense, Plaintiff has failed to comply with the requirements of section 607.07401 of the Florida Statutes.

11. As and for the Defendants Eleventh Affirmative Defense, Plaintiff failed to properly include all or a portion of the relief requested in the Second Amended Complaint within his Claim filed in the Decedent's probate proceedings. As such, those Claims are now barred and the Plaintiff is estopped from pursuing same as the three (3) month statutory period for filing Claims against the Estate has expired.

12. As and for the Defendants Twelfth Affirmative Defense, the Plaintiff has failed to state a cause of action against the Decedent for a Constructive Trust. The Plaintiff has failed to plead the four (4) required elements of a promise, reliance, confidential relationship and unjust enrichment. As such, Count X must be dismissed.

WHEREFORE, having answered the Complaint, Defendants demand judgment in their favor, together with an award of costs and, pursuant to any applicable contract or statute,

attorneys' fees, and such other relief as the Court determines just and equitable.

COUNTERCLAIM

Counter-Plaintiff, the Estate of Simon L. Bernstein (hereinafter the "Estate"), sues Defendant, William E. Stansbury ("Stansbury"), and states:

1. The Estate is being administered in Palm Beach County, Florida.
2. Stansbury is a resident of Palm Beach County, Florida.
3. At all material times referenced herein during the lifetime of Simon L. Bernstein, he was an officer and shareholder of Arbitrage and LIC Holdings, Inc.
4. As part of his work for Arbitrage and its affiliated company, LIC Holdings, Inc., Stansbury was listed as the licensed insurance agent of record on various contracts and policies of insurance with various insurance companies, under which those insurance companies would make payments of commissions and renewals due to Arbitrage only by way of a check payable in many cases to Stansbury individually.
5. Pursuant to the agreement of the parties, Stansbury was to deliver all such checks to Arbitrage, because all receipts for commissions, renewals or other revenue received by Stansbury for contracts or policies generated during the time of his employment were property of his employer.
6. Upon information and belief, before the time that Stansbury voluntarily terminated his employment with Arbitrage, Stansbury received and collected checks made payable to him, but which properly belonged to Arbitrage, and retained those funds for his sole and exclusive use

and benefit.

7. Further, after Stansbury voluntarily terminated his employment with Arbitrage, Stansbury continued to receive checks made payable to him, but which properly belonged to Arbitrage, and Stansbury retained the benefit of such checks for his sole and exclusive use and benefit. In addition, for some period of time after he voluntarily terminated his employment, Stansbury has been depositing certain checks into the trust account of his attorney, Peter Feaman.

8. All conditions precedent to the bringing of his action have been met, satisfied or waived.

COUNT I - BREACH OF CONTRACT

9. The Estate realleges paragraphs 1 through 8 above.

10. This is an action for breach of contract and seeks damages in excess of \$15,000, exclusive of interest, costs and attorneys' fees.

11. Pursuant to the agreement between Arbitrage and Stansbury, Stansbury was required to deliver to Arbitrage all checks made payable to him for contracts or policies of insurance which relate to work done during the time of Stansbury's employment.

12. For the vast majority of the duration of Stansbury's employment, Stansbury complied with the parties' oral agreement and, as far as Arbitrage is presently aware, Stansbury did in fact deliver to Arbitrage all checks he received. However, upon information and belief, Stansbury may have withheld checks from Arbitrage at various times.

13. At some point before the voluntary termination of his employment, and for all

times after the voluntary termination of his employment, Stansbury has retained for himself and refused to turn over to Arbitrage checks received by him, payable to him individually, but which otherwise should have been turned over to Arbitrage.

14. By his actions in retaining checks payable to him but which should have been turned over to Arbitrage, Stansbury has breached his agreement with Arbitrage.

15. As a direct and proximate result of Stansbury breach of the parties' agreement, Arbitrage and consequently the Estate have been damaged in an amount to be determined through discovery and at trial, including the amount held in the attorney trust account of Peter Feaman.

WHEREFORE, the Estate demands judgment in its favor against Stansbury for compensatory damages, together with an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief as is just.

COUNT II - DECLARATORY JUDGMENT

16. The Estate realleges paragraphs 1 through 8 and 10 through 15 above.

17. This is an action for a declaratory judgment and for supplemental relief.

18. There is a genuine and immediate dispute between the parties as to the entitlement to certain Checks which are made payable to Stansbury individually, but which properly belong to Arbitrage as the commissions and renewals received for contracts and policies of insurance, and other revenues of Arbitrage which are payable directly to Stansbury individually.

19. There is a bona fide, actual, present and practical need for the declaration.

20. The declaration deals with a present, ascertained or ascertainable state of facts or

present controversy as to a state of facts regarding who is entitled to the Checks held by Stansbury or his counsel.

21. An immunity, power, privilege or right of Arbitrage is dependent upon the facts or the law applicable to the facts.

22. Stansbury has, or reasonably may have, an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law.

23. The antagonistic and adverse interests are all properly before the Court.

24. The relief sought is not merely the giving of legal advice or the answer to questions propounded from curiosity.

25. Based upon the foregoing, the Estate seeks a declaration that Stansbury is required to turn over to Arbitrage all checks received by him, which are payable to Stansbury individually, but which relate to contracts or policies of insurance, or other revenues generated by Arbitrage or by Stansbury while he was employed by Arbitrage.

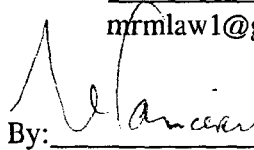
26. Moreover, the Estate requests a declaratory judgment that it is entitled to all funds currently being held in the attorney trust account of Peter Feaman, which represent Checks received by Stansbury which are made payable to Stansbury individually, but which otherwise properly belong to Arbitrage.

27. The Estate also seeks a declaration that its rights to all such funds are superior to the rights and claims of Stansbury.

WHEREFORE, the Estate seeks a declaratory judgment as to its rights to the personal

property described above, together with supplemental relief to the extent necessary, an award of costs and, pursuant to any applicable statute or contract, an award of attorneys' fees, and such other relief the Court determines just and equitable.

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By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to all parties on the following Service List, this 24th day of September, 2013.



Mark R. Manceri, Esq.