

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO: 502012CP004391XXXXSB

IN RE: THE ESTATE OF SIMON L. BERNSTEIN

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PROCEEDINGS BEFORE
HONORABLE MARTIN COLIN

DATE: MAY 23, 2014

TIME: 9:00 a.m. to 10:00 a.m.

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1 APPEARANCES:
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 3 APPEARING ON BEHALF OF WILLIAM STANSBURY:
 4 MR. PETER M. FEAMAN, ESQ.
 MR. JEFFREY T. ROYER, ESQ.
 5 PETER M. FEAMAN, P.A.
 3695 W. Boynton Beach Blvd., Suite 9
 6 Boynton Beach, FL 33436
 7
 8 APPEARING OF BEHALF OF TED BERNSTEIN:
 9 MR. ALAN ROSE, ESQ.
 PAGE MRACHEK
 10 505 S. Flagler Drive
 West Palm Beach, FL 33401
 11
 12 APPEARING ON BEHALF OF FOUR ADULT
 GRANDCHILDREN:
 13 JOHN P. MORRISSEY, ESQ.
 JOHN P. MORRISSEY, P.A.
 14 330 Clematis Street, Suite 213
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 15
 16 APPEARING AS THE CURATOR:
 17 BENJAMIN BROWN, ESQ.
 MATWICZYK & BROWN, LLP
 18 625 N. Flagler Drive, Suite 401
 West Palm Beach, FL 33401
 19
 20 APPEARING PRO SE:
 21 ELIOT BERNSTEIN
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 23
 24
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1 one -- sort of an important issue that came up
 2 last night.
 3 THE COURT: Go ahead.
 4 MR. ROSE: It will take 30 seconds.
 5 Ted Bernstein sent me an email. And he
 6 replied to an email, and accidently the email
 7 went to Eliot Bernstein. It was
 8 attorney-client privileged communication
 9 directly to me from my client Ted Bernstein.
 10 The email went to Eliot Bernstein. Under Rule
 11 1.285 I sent to Mr. Eliot Bernstein an email
 12 immediately asking him to delete or return the
 13 privileged materials.
 14 I discussed the issue with Mr. Eliot
 15 Bernstein this morning and he advised me that
 16 he has emailed the document to 2,000 people.
 17 He's had a history of posting things on
 18 the internet. Because it's attorney-client
 19 privileged information it's very sensitive and
 20 I'd request the Court to instruct him to comply
 21 with Rule 1.285. It was a reply to an email
 22 that had a bunch of names and accidently it
 23 went to him. Mr. Bernstein advised me
 24 immediately and I advised Eliot immediately.
 25 THE COURT: Mr. Bernstein, did you get an

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 2 BE IT REMEMBERED, that the following
 3 proceedings were taken in the above-styled cause
 4 before Honorable MARTIN COLIN at the Palm Beach
 5 County Courthouse, 200 West Atlantic Avenue, in the
 6 City of Delray Beach, County of Palm Beach, State of
 7 Florida, on Friday, the 23rd day of May, 2014, to
 8 wit:
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 10 THE COURT: Good morning. Let me get my
 11 computer on. We're here in the Bernstein case.
 12 Appearances.
 13 MR. BERNSTEIN: Eliot Bernstein, pro se.
 14 MR. FEAMAN: Peter Feaman on behalf of
 15 William Stansbury. And from my office, Jeff
 16 Royer.
 17 MR. MORRISSEY: John Morrissey on behalf
 18 of four of the adult grandchildren.
 19 MR. ROSE: Alan Rose on behalf of Ted
 20 Bernstein.
 21 MR. BROWN: Ben Brown as curator of the
 22 estate.
 23 THE COURT: All right. What do we have
 24 for today?
 25 MR. ROSE: Before we get to that, I have

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1 email from counsel?
 2 MR. BERNSTEIN: I did not get his email.
 3 I got an email from my brother addressed to me
 4 only. I read it, as usual when I get something
 5 bizarre that's attacking and threatening me, or
 6 whatever. It was from Ted Bernstein to Eliot
 7 Bernstein.
 8 THE COURT: It was from --
 9 MR. BERNSTEIN: Ted Bernstein to Eliot
 10 Bernstein.
 11 THE COURT: Not from the lawyer?
 12 MR. BERNSTEIN: No. He misrepresents
 13 everything.
 14 THE COURT: We'll take it up at the end.
 15 There's other things scheduled. If you
 16 remember, we'll take it up.
 17 MR. ROSE: Fine.
 18 THE COURT: Go ahead.
 19 MR. FEAMAN: May it please the Court.
 20 Peter Feaman, Your Honor, on behalf of William
 21 Stansbury, interested person in the estate.
 22 This is Mr. Stansbury's petition for the
 23 appointment of an administrator ad litem which
 24 has been submitted to Your Honor together with
 25 a supplement to the petition to the requested

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1 relief.

2 We're asking this Court to appoint

3 Mr. Stansbury as an administrator ad litem of

4 the estate for the sole purpose of making an

5 appearance on behalf of the estate in some

6 litigation that is currently pending in

7 Illinois involving a life insurance policy on

8 Simon Bernstein's life, the deceased, with a

9 death benefit of \$1.7 million.

10 That litigation has been pending for over

11 a year from what I can tell, or about a year.

12 And it has not involved the estate which is

13 very interesting because the documents that

14 I've recently obtained since the filing of our

15 motion, Your Honor, we found out that insurance

16 policy, according to internal records of the

17 insurance company, is actually owned by the

18 deceased Simon Bernstein. So arguably not only

19 is it an asset of the estate, that insurance

20 policy, and the proceeds therefrom, but any

21 litigation concerning the distribution of those

22 proceeds should be in this court, Your Honor.

23 Now that's jumping ahead. But the point

24 is that we're dealing with an asset of the

25 estate and, therefore, this court has every

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1 interest in seeing that the estate's assets are

2 marshaled. The first step for that, Your

3 Honor, would be to appoint an administrator ad

4 litem to at least intervene in that federal

5 court action that's up in Illinois.

6 The former personal representatives of

7 this estate, Your Honor, were doing everything

8 they could to keep the money out of the estate

9 from that life insurance policy. They have

10 alleged that the beneficiary is the life

11 insurance trust. The problem is nobody can

12 find the original life insurance trust. Nobody

13 can find even a copy of the life insurance

14 trust. And the records that we show show that

15 the beneficiaries are not, in fact, a life

16 insurance trust. But the first beneficiary,

17 according to Heritage, which is the insurance

18 company, is LaSalle National Trust. The second

19 beneficiary is the Simon Bernstein Trust,

20 whatever that is. But it's not the Simon

21 Bernstein Irrevocable Insurance Trust that is

22 being alleged up in Illinois.

23 Now if there's no clear beneficiary, as

24 Your Honor is aware, then the life insurance

25 proceeds would go to the estate and become an

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1 asset, or liquid assets for the estate. Now

2 that money presently has been put into the

3 registry of the court up in Illinois by the

4 insurance company. They were first requested

5 by the personal representatives of this estate,

6 the former, to pay it to others. And the

7 insurance company said we don't have any

8 documentation to justify that. So they just

9 impleaded the funds.

10 The litigation has been pending, and

11 despite the fact that the estate is the owner

12 of the policy, the estate has never been

13 represented in that action. Now the estate has

14 a high probability of success, we believe, in

15 this case. Because if they're going to try to

16 establish a lost instrument without the

17 original or without a copy it's going to be

18 based, I assume, on oral testimony from people.

19 And that is a high burden. Interestingly we

20 found out at first, on this so-called insurance

21 trust, Mr. Spallina (phonetic), who was the

22 personal representative, formerly, of this

23 estate, represented to the insurance company

24 that he was the trustee of this insurance

25 trust. When that didn't work, Your Honor -- we

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1 have a document that we'll show to the court up

2 in Chicago -- when that didn't work they're now

3 in court up there saying that Mr. Ted Bernstein

4 is the trustee, or successor trustee, of that

5 insurance trust. Yet there is no copy of that

6 trust before the court in any fashion. The

7 plaintiffs in that lawsuit are now not only the

8 insurance trust, the so-called insurance trust,

9 it's now all the adult children of Mr. Simon

10 Bernstein. Interestingly enough, Your Honor

11 the adult children are not beneficiaries of

12 this estate, Your Honor. It's the ten

13 grandchildren who are the residual

14 beneficiaries as a result of the pour-over

15 provision of the will that leaves all the

16 liquid assets in a trust. The beneficiaries of

17 that trust are the ten grandchildren. So the

18 adults, the adult children of Mr. Simon

19 Bernstein, have every incentive, Your Honor, to

20 see that the estate is not inherited with these

21 life insurance proceeds because if they succeed

22 in this action in Illinois then the adult

23 children inherit or receive the proceeds of the

24 life insurance not the ten grandchildren over

25 whom you have jurisdiction as the beneficiaries

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1 in this estate.
 2 The curator, Your Honor, has no objection.
 3 Mr. Brown --
 4 THE COURT: Let me stop and hear from Mr.
 5 Brown. What's your position on their motion?
 6 MR. BROWN: I'm not taking a position on
 7 the motion, Your Honor. I can get into it
 8 further, I don't really want to interrupt
 9 Mr. Feaman. But it would seem to me that if
 10 the main estate creditor wants to try to
 11 intervene in Chicago on behalf of the estate to
 12 bring assets into the estate without looking to
 13 the estate for current payment of his fees, in
 14 other words, if he finally succeeds then he can
 15 then come back to this Court and ask to have
 16 his fees reimbursed, then that would seem to be
 17 a benefit to the estate as far as marshaling
 18 the assets of the estate and, of course, the
 19 curator and/or personal representative has a
 20 duty to the creditors also to try to marshal
 21 the assets of the estate.
 22 THE COURT: I got your position.
 23 Mr. Rose?
 24 MR. ROSE: Our position is pretty simple.
 25 And I -- this is an evidentiary hearing --

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1 THE COURT: It's an opening to tell me
 2 what's going on. I just want your position.
 3 MR. ROSE: Tetra (phonetic) and Spallina,
 4 who were the prior PRs, believe that the claim
 5 to the insurance policy by the estate had no
 6 merit because of their discussions with their
 7 client, because of their investigation of
 8 facts. These people have no evidence to
 9 support -- they have no parol evidence. This
 10 is a fight over an insurance policy that only
 11 beneficiary -- there's no dispute that the
 12 beneficiary the insurance company has on
 13 record, there was a prior beneficiary which was
 14 a company pension plan that the company is
 15 dissolved, and that's out -- the only
 16 contingent beneficiary, and there's an
 17 affidavit that's been filed attached to one of
 18 their motions in this Court where the insurance
 19 company says the only other beneficiary ever
 20 named was the Simon Bernstein Irrevocable Life
 21 Insurance Trust. There's a shorthand in a
 22 computer system, where somebody shorthanded it
 23 in the computer, and the affidavit in the
 24 insurance company addressing that which says
 25 that's shorthand, but in our forms the only

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1 beneficiary ever listed is this irrevocable
 2 life insurance trust, their only piece of
 3 evidence supporting their claim is that the
 4 insurance trust cannot be found. But the trust
 5 did exist. It has a tax ID number from -- a
 6 federal tax ID number. There's numerous
 7 references to it between different lawyers and
 8 nobody can find the trust document now. That's
 9 an issue that's going to be resolved in
 10 Illinois. But they have no evidence -- other
 11 than the fact that the trust doesn't exist --
 12 they don't have any parol evidence. They don't
 13 have any documents. They don't have anything
 14 on behalf of the estate.
 15 Our concern is they're going to spend the
 16 precious few estate assets that are remaining
 17 to go to Illinois and fight an issue that has
 18 no merit, can subject the estate to a claim,
 19 you know, for fees or indemnification or
 20 prevailing party attorney's fees award.
 21 The policy was owned by Simon Bernstein.
 22 That means it's included in his taxable estate.
 23 But it does not mean it's owned in his probate
 24 estate. The beneficiary is the beneficiary.
 25 The policy proceeds are in Illinois. They've

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1 been deposited into the court --
 2 THE COURT: What's the issue that the
 3 Illinois judge is being asked to decide?
 4 MR. ROSE: Being asked to decide, among
 5 competing claims, to the proceeds of this race.
 6 Eliot Bernstein is there asserting the exact
 7 position that Mr. Stansbury wants to go there
 8 to assert. Eliot is asserting that the money
 9 should go to the estate and not the irrevocable
 10 life insurance trust. That issue is going to
 11 require, you know, a summary judgment or a
 12 trial with parol evidence to determine who the
 13 beneficiary is of that policy.
 14 Mr. Stansbury has gone there to intervene
 15 and was denied by the judge the right to
 16 intervene in the case already once.
 17 Our main concern really is twofold. The
 18 expense on both -- what's actively being spent.
 19 We want to make sure no estate funds are being
 20 expended to pursue this. In an estate that
 21 has a very limited amount of funds here --
 22 THE COURT: Mr. Feaman says that his
 23 client will not seek fees for his role as
 24 administrator ad litem unless and until a
 25 recovery might take place and then he'll make

<p style="text-align: right;">14</p> <p>1 an application with funds then available, 2 meaning the \$1.7 million would then apparently 3 come into the estate. 4 MR. ROSE: I haven't heard testimony to 5 that effect yet. 6 THE COURT: That's a representation. 7 MR. ROSE: He'd also need to represent 8 that he would indemnify and hold the estate 9 harmless if there's any adverse action as a 10 result of him intervening in that case and 11 losing either an award of attorneys fees or -- 12 THE COURT: I'm not sure about that part 13 yet. I got your position. 14 MR. ROSE: And then the final point is 15 Mr. Stansbury is a potential creditor of the 16 estate. To the extent he goes and -- even if 17 he would win that lawsuit and bring money into 18 the estate I don't think it's fair to let him 19 get a -- I don't know what his fee arrangement 20 would be. 21 THE COURT: I'd hear that. Under the 22 statute he has to prove that he provided a 23 benefit to the estate. 24 MR. ROSE: We don't even know if his claim 25 will still exist --</p>	<p style="text-align: right;">16</p> <p>1 MR. MORRISSEY: He attempted to intervene 2 individually and was denied. He was denied 3 because -- I've attached the order. I filed an 4 opposition and attached the order. And I can 5 read from a couple of sections of the order to 6 indicate and let Your Honor know why he was 7 denied. 8 THE COURT: Hold on. I see it here. 9 MR. MORRISSEY: The court there went 10 through an extensive analysis, legal standard 11 and analysis in its order speaking of 12 intervention as a right, and permissive 13 intervention. And the court said, "The fact 14 that you might anticipate a benefit from a 15 judgment in favor of one of the parties to a 16 lawsuit, maybe, for example, you're a creditor 17 of one of them, does not entitle you to 18 intervene in their lawsuit." That is really 19 the position that Mr. Stansbury is in. The 20 court went on, "Here Stansbury's claimed 21 interest is merely an economic interest that is 22 too remote for purposes of the rule because the 23 estate is not a party to this lawsuit. And 24 Stansbury does not assert that he or the estate 25 are beneficiaries to the life insurance</p>
<p style="text-align: right;">15</p> <p>1 THE COURT: It may or may not. 2 Mr. Morrissey? 3 MR. MORRISSEY: To address first the last 4 point why should Mr. Stansbury not be allowed 5 to act even though his fees may or may not come 6 at the end. Well, he's a claimant. He's not a 7 creditor. There's a distinction here. As a 8 claimant he might not be privy, or should not 9 be privy, to certain information because he 10 doesn't have a judgment. He's not one of the 11 eight classes of people. If he's allowed to 12 intervene as a claimant in the Illinois action 13 he may, in fact, become privy to certain 14 information that we, or the estate, does not 15 want him to become privy to because we may end 16 up having to negotiate with a claimant to 17 satisfy a claim. We don't want him privy to 18 certain information. We don't want him 19 intervening in actions, and certainly in 20 actions that he's already sought intervention 21 and been denied. 22 THE COURT: Was he denied because he 23 didn't have standing because he hadn't been 24 appointed as an administrator? Is that the 25 reason why he was denied?</p>	<p style="text-align: right;">17</p> <p>1 proceeds nor the Bernstein Trust." 2 THE COURT: You represent, Mr. Morrissey, 3 who? 4 MR. MORRISSEY: I represent the four 5 grandchildren. 6 THE COURT: Who, according to Mr. Feaman, 7 may benefit if this money comes to the estate? 8 MR. MORRISSEY: Correct. 9 THE COURT: So the way the case is being 10 litigated now -- is the only plaintiff the 11 Simon Bernstein Irrevocable Insurance Trust vs. 12 the life insurance company? 13 MR. MORRISSEY: Well -- 14 THE COURT: That's the way the style of 15 the case is. Are there more plaintiffs than 16 that? 17 MR. FEAMAN: They amended subsequently and 18 joined the adult -- four of the five of the 19 adult children were joined as plaintiffs. 20 THE COURT: And who is representing them? 21 MR. FEAMAN: Somebody up in Chicago in 22 that action. 23 THE COURT: Okay. 24 MR. ROSE: I think technically the lawsuit 25 was started by the trust against the insurance</p>

<p style="text-align: right;">18</p> <p>1 company. The insurance company filed an 2 interpleaded, probably by counterclaim. My 3 understanding is, subject to someone correcting 4 me, the insurance company was granted 5 interpleader. They put the funds in the 6 registry of the court. The insurance company 7 is out of the case and even though you have the 8 original style what's left is people asserting 9 a claim to the proceeds. 10 Eliot is there, I think, advocating the 11 claim on behalf of the estate -- 12 THE COURT: Eliot is pro se. I want -- we 13 recognize that. From Mr. Morrissey's point of 14 view, do you take a position that your clients, 15 the grandchildren, may have an interest in 16 these monies? 17 MR. MORRISSEY: No -- well, our position 18 is the following -- 19 THE COURT: That question first. 20 MR. MORRISSEY: Our position -- no, on 21 behalf of the four grandchildren. 22 THE COURT: You waive any -- on behalf of 23 those children you waive any claim to that 24 money? 25 MR. MORRISSEY: I'm not going to waive on</p>	<p style="text-align: right;">20</p> <p>1 I think they're just -- the battle I think is 2 between Eliot who is asserting that these funds 3 should come into this estate -- 4 THE COURT: Eliot was allowed to 5 intervene? 6 MR. BERNSTEIN: I got sued in the case, 7 Your Honor, because they had gone behind my 8 back to try to steal this policy -- around you 9 too -- and they were told by the insurance 10 company, when Robert Spallina submitted what I 11 allege is a fraudulent insurance claim, and 12 they were told by the insurance company that 13 the claim was denied and they needed a probate 14 court order from you to approve the beneficiary 15 scheme they were proposing using some mashugana 16 lost trust -- 17 THE COURT: Eliot, you're named as a 18 cross-plaintiff, so you are -- 19 MR. BERNSTEIN: Now I've somehow become a 20 plaintiff -- a defendant that you showed me 21 last week, or two weeks ago, when you handed me 22 that order. I haven't quite figured out how 23 I'm the named defendant. 24 Your Honor, I'm representing their -- my 25 children's interests.</p>
<p style="text-align: right;">19</p> <p>1 the record. 2 THE COURT: You have to stand on one side 3 of the fence or the other on that. 4 MR. MORRISSEY: Quite honestly, I haven't 5 asked them that question. I can't waive 6 something on behalf of my clients when I 7 haven't asked them that question point blank. 8 THE COURT: All right. So you have -- who 9 -- the Simon Bernstein Irrevocable Trust is 10 represented by Chicago -- 11 MR. BERNSTEIN: Adam Simon who is the 12 brother to David Simon who is married to my 13 sister Pam Simon who stands to benefit if the 14 money goes through Illinois. 15 THE COURT: Illinois counsel, okay. And 16 the four children are represented by one 17 lawyer? 18 MR. FEAMAN: That's Adam Simon. 19 THE COURT: Because of the impleading of 20 the funds the battle right now is between the 21 trust and these four children because those are 22 the parties that are now competing for the 23 money? 24 MR. ROSE: I don't think -- I don't know 25 if the four children are technically parties.</p>	<p style="text-align: right;">21</p> <p>1 THE COURT: Hold it. I'm reading 2 something. I see a entity in the style of the 3 case up there called the Simon Bernstein Trust, 4 N.A. What's that? Is that something different 5 than the Simon Bernstein Irrevocable Trust? 6 MR. ROSE: It's in the affidavit that was 7 filed, I think attached to Mr. Brown's recent 8 petition for instructions, but... In the 9 insurance company's computer they shorthanded 10 the name of the trust. The beneficiary is the 11 Simon Bernstein Irrevocable Life Insurance 12 Trust which is the -- 13 THE COURT: Ted Bernstein is an individual 14 in this suit now. And who is representing him? 15 MR. ROSE: I don't know that he is an 16 individual. If he's an individual he's 17 represented by Adam Simon. 18 THE COURT: I'm reading it. That's where 19 I get it. They're individually and/or as 20 purported trustee of the irrevocable trust. 21 Eliot is a cross-plaintiff -- that's where 22 you're named, Eliot -- vs. Ted, individually 23 and as trustee of the irrevocable trust. And 24 then a bunch of other people and entities are 25 cross-defendants. Right now the competing</p>

<p style="text-align: right;">22</p> <p>1 parties in Illinois are the irrevocable trust 2 and Eliot. Is that basically it -- 3 MR. ROSE: Yes. 4 THE COURT: -- who are active; is that 5 true? 6 So the question is should the claimant be 7 declared here an administrator ad litem for the 8 purposes of being permitted to ask the court to 9 be able to intervene, which the court may or 10 may not do? 11 MR. ROSE: There's one other part of my 12 opening I missed on my notes -- 13 THE COURT: Go ahead. Sure. 14 MR. ROSE: Mr. Morrissey touched on it and 15 reminded me. If you're going to appoint an 16 administrator ad litem it should not be 17 Mr. Stansbury. You can appoint somebody and 18 Mr. Stansbury could fund it, he could pay the 19 expenses of, let's say, Mr. Brown or an 20 independent person to hire a Chicago lawyer 21 and, you know, advance the case. But you would 22 then be preserving issues of privilege and you 23 would be preserving the integrity of the system 24 rather than have Mr. Stansbury, who is a 25 claimant, who is adverse on multiple levels to</p>	<p style="text-align: right;">24</p> <p>1 THE COURT: He represents himself 2 individually. So someone who may look for the 3 interest of the estate. And, you know, these 4 type of litigation, obviously, the Illinois 5 judge is going to have to take evidence -- I'm 6 not going to do that in my hearing -- on who 7 the beneficiary is of this policy. That's what 8 has to be determined. 9 MR. FEAMAN: That's correct. 10 THE COURT: The issue is narrow and I 11 think everyone agrees with that. 12 MR. FEAMAN: And -- 13 THE COURT: What I'm thinking about is 14 you kind of want to be able to make sure that 15 everyone who, perhaps, could ultimately be a 16 beneficiary of this policy have a voice in that 17 litigation. That's the due process part of it. 18 So my thought is, having heard everybody say 19 what they said, I rarely find it to be a 20 problem allowing someone to intervene -- unless 21 they're a stranger, this wouldn't be a 22 stranger -- because a voice is a good thing to 23 have. We allow interventions all the time here 24 on my cases. I just hear from someone else. 25 They don't win or lose unless there's merit to</p>
<p style="text-align: right;">23</p> <p>1 the estate, as the active person he would be 2 funding the litigation and, in my view, he 3 should be required to indemnify. But you'd 4 have a neutral third person doing it rather 5 than Mr. Stansbury which I think makes a lot 6 more sense. 7 THE COURT: What do you say about the 8 latter comment? That's the only one I want you 9 to address. 10 MR. FEAMAN: The fact that Mr. Stansbury 11 will become privy to confidential information 12 -- 13 THE COURT: Well, we're not at -- 14 MR. FEAMAN: Ben Brown -- 15 THE COURT: -- I'll allow someone else to 16 intervene to appropriately determine whether 17 the estate has an interest in this money or 18 not. That's the issue, correct? 19 MR. FEAMAN: Yes. 20 THE COURT: All right. Right now the 21 person technically doing that is Eliot who 22 tries his best as a pro se. But it's pretty 23 tough -- 24 MR. FEAMAN: That's right. He doesn't 25 represent the estate.</p>	<p style="text-align: right;">25</p> <p>1 them. Someone right now is hovering the 2 position that the Simon Bernstein Irrevocable 3 Trust is the beneficiary. They're lawyered up. 4 The only other person that seems to suggest 5 that that may not be the case and it is the 6 estate that's the beneficiary is Eliot. So I'm 7 considering having someone other than Eliot -- 8 or in addition to Eliot, because he's there 9 individually on behalf of himself and he's not 10 representing the estate -- someone represent 11 the interest of the estate. 12 And so the proposal is that that be 13 someone funded by your client, Mr. Feaman, but 14 not -- but someone who is more neutral like Mr. 15 Brown or something like that. What do you say 16 about that? 17 MR. FEAMAN: We came up with Mr. Stansbury 18 because if he's the one that's willing to fund 19 the intervention and to fund the person -- the 20 lawyer -- to make sure that the estate is going 21 to be protected -- 22 THE COURT: He has more -- he's like 23 Eliot. He has his own interests, personal 24 interest. 25 MR. FEAMAN: He does. He has interests in</p>

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1 money coming into the estate, absolutely.
 2 THE COURT: But someone who is more
 3 neutral may be the right move there. If that's
 4 where I'm going on this, what is your position
 5 on that?
 6 MR. FEAMAN: If that's where you're going
 7 on that then Ben Brown is acceptable in that
 8 regard. I would just -- since Mr. Stansbury is
 9 the one that's volunteering, if you will, to
 10 fund initially the cost of this, then he needs,
 11 through me, some input with Mr. Brown.
 12 THE COURT: Sure.
 13 MR. FEAMAN: On all matters.
 14 THE COURT: You'd be allowed to have input
 15 with him. But Mr. Brown would be there,
 16 assuming he's willing to take the assignment,
 17 to preserve issues of confidentiality and other
 18 concerns that could exist. He sounded, all
 19 along, from the beginning, as the perfect
 20 centerpiece to do this. What do you say?
 21 MR. BROWN: Actually, I -- a few things to
 22 say, Your Honor. The first thing is with
 23 regard to the privilege issue. I'm not aware
 24 of any privilege that would apply.
 25 THE COURT: And I'm not either. But let's

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1 get past that point.
 2 MR. BROWN: The testamentary exception,
 3 this is squarely in the testamentary exception,
 4 so there is no privilege in my view of this.
 5 THE COURT: Okay.
 6 MR. BROWN: The second issue is that I
 7 promised David Simon, I've given to you before,
 8 this email thread where he sent me an email and
 9 said you're trying to have Mr. Stansbury
 10 appointed as administrator ad litem, the estate
 11 should not be appearing in Illinois, you're
 12 going to be wasting estate assets and you have
 13 a conflict of interest because you're the
 14 curator and the estate pours over into the
 15 revocable trust and the beneficiaries of the
 16 revocable trust don't want this policy to go to
 17 the estate. I've been accused of conflict of
 18 interest. I've been accused of beaches of
 19 fiduciary duty already by David Simon who,
 20 apparently, is Adam Simon's brother and the
 21 father of some of the grandchildren.
 22 My third issue is that, I think it's from
 23 the Vietnam War, this comes within the category
 24 of mission creek. I'm supposed to be temporary
 25 interim limited curator. There's supposed to

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1 be a personal representative appointed at some
 2 point. I've been asked by the parties to
 3 consider being the personal representative.
 4 Frankly, Your Honor, this case is -- goes off
 5 in a lot of different directions. Whoever the
 6 personal representative is going to spend a lot
 7 of money just dealing with the different
 8 parties and the different people who are
 9 involved. And, frankly, I don't know that I
 10 have the time. And I really don't want to be
 11 the personal representative.
 12 THE COURT: Okay.
 13 MR. BROWN: If I'm appointed administrator
 14 ad litem it seems like I'm in there for the
 15 long run on a federal case. They do move them
 16 pretty quickly here in the Southern District of
 17 Florida. I know that from experience. I don't
 18 know about the Northern District of Illinois.
 19 MR. FEAMAN: Well, there's been -- I can
 20 answer that question.
 21 THE COURT: Okay.
 22 MR. FEAMAN: There's been a notification
 23 of a docket entry entered by the judge on -- it
 24 said that all case dispositive motions are to
 25 be filed by mid-July, July 13. So it sounds

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1 like we're on a rocket docket to me, Your
 2 Honor.
 3 And on behalf of Mr. Stansbury I would
 4 like to, since he is running the cost, be able
 5 to work with whomever it is to pick counsel up
 6 in Chicago. And that -- and to review
 7 counsel's bills from Chicago and to help
 8 strategize with that counsel the best way to
 9 proceed up there should Your Honor go that
 10 direction.
 11 THE COURT: All right. So let me ask this
 12 question: Is there also before me a petition
 13 to appoint or determine a PR?
 14 MR. FEAMAN: Not today.
 15 THE COURT: Not today, okay.
 16 MR. BROWN: Your Honor, I don't know if
 17 that's set for hearing at all. Although I
 18 request that it be set for hearing. The other
 19 issue with a PR versus a curator is that
 20 Mr. Stansbury has active litigation going on in
 21 front of Judge Blanc right now. So far there
 22 hasn't been any conflict as far as Ted
 23 Bernstein and the estate defending against
 24 Mr. Stansbury's claim, but there have been
 25 multiple instances where people in this case,

<p style="text-align: right;">30</p> <p>1 in this room, basically, have said that there 2 could eventually be a conflict of interest 3 because there could be some finger pointing in 4 cross claims. 5 THE COURT: It's hard to purify a case 6 like this and not have it -- not have a 7 situation where it's allegation free of a 8 purported conflict of interest. But it just 9 sounds logical that if -- especially when I'm 10 looking at the latest heading out of the case 11 in Illinois -- if this is, in its simplest 12 form, a dispute as to who the beneficiary of 13 this life insurance policy is, I mean that's a 14 -- that's kind of a narrow hearing. We do 15 those types of things in state court. You 16 know, you need some discovery. And then you 17 present the evidence and the judge makes a 18 decision. Kind of like the way you do in 19 contract cases. And so the parties who claim 20 to be beneficiaries of the policy seem to be 21 Simon Bernstein's Irrevocable Trust and their 22 representative. I'm treating Simon Bernstein 23 Trust as the same party for the purpose of this 24 discussion. Eliot, individually, he's there. 25 And no one who may have a voice to say I want,</p>	<p style="text-align: right;">32</p> <p>1 isn't a personal type of litigation. And so, 2 you know, the strategies are legal strategies 3 that would be in charge of you and the lawyer 4 you hire. 5 MR. BROWN: I understand that, Your Honor. 6 Basically what you just described is something 7 that Mr. Stansbury could very easily do and pay 8 for himself. 9 THE COURT: Right. But he's -- but I 10 don't want him to be the party to do that 11 because I think there's -- he's a claimant. 12 There's -- I'm not comfortable there. 13 MR. BROWN: Okay. 14 THE COURT: And, you know, you're the 15 neutral person looking out for the estate's 16 interest. He has -- he's not -- he's looking 17 out for the estate's interest but in a 18 different manner. So hypothetically if you 19 went up into the litigation and you got 20 convinced by looking at everything you looked 21 at, you and your lawyer, that the beneficiary 22 was the Simon Bernstein Irrevocable Insurance 23 Trust, whatever that is, and not the estate, 24 you have a duty to argue in good faith. You 25 follow what I'm saying? That's where the</p>
<p style="text-align: right;">31</p> <p>1 on behalf of the estate, because there's no PR. 2 If there's a PR the PR would take care of that. 3 Especially where Mr. Stansbury is willing to 4 front the cost of the fees for that up front it 5 sounds beneficial to have that voice. 6 So I'll put it this way, Mr. Brown, I 7 would expand your curator duties, if you're 8 willing, to take the assignment. If not, we 9 got to go elsewhere. It's up to you. 10 MR. BROWN: The curator duties basically 11 to just effectively be the party who's 12 intervening using Mr. Stansbury's counsel? 13 THE COURT: No. You would be the party. 14 You would hire a lawyer. You're allowed to, 15 like in any other case, you and your lawyer can 16 hear, because your phones work and your emails 17 work, from anyone else including Mr. Feaman and 18 Mr. Rose and Mr. Morrissey, and anyone else can 19 stick their two sense in. That's the way 20 litigation goes. But it seems to be that this 21 isn't an issue that's a finger-pointing issue. 22 This is who the beneficiary of the policy is. 23 The judge is going to look at the documents and 24 either say it's clear on its face or else take 25 parol evidence and we're on our way. This</p>	<p style="text-align: right;">33</p> <p>1 neutrality part comes in. But you are more 2 advocating, primarily, to the estate at -- 3 that's the assignment. 4 MR. BROWN: I understand that, Your Honor. 5 But -- and I know there's a lot of buts here -- 6 the estate has about 6 to \$700,000 worth of 7 assets, that includes the jewelry. 8 THE COURT: Remember, I'm having 9 Mr. Stansbury pay. 10 MR. BROWN: Oh, you are having Mr. 11 Stansbury, okay. 12 THE COURT: That was the deal. 13 MR. BROWN: And just using his counsel 14 that he already has retained and already tried 15 to intervene with? 16 THE COURT: No. No. You pick the lawyer. 17 He pays. 18 MR. BROWN: Your Honor, I will do it 19 subject to whatever personal representative is 20 appointed going ahead and taking over -- 21 THE COURT: Ultimately if we get to the 22 stage where there's a PR taking the place of 23 you, that would be different. This is -- let 24 me just tell you, I mean a couple of reasons 25 why I think that works is Mr. Brown has worked</p>

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1 with me as curator in a lot of cases. I mean I
 2 haven't had one challenge to the reasonableness
 3 of the fees ever. He keeps control of the
 4 lawyers. You know, and he does really a good
 5 job there. So I really, you know, I can't
 6 think of a better person to deal with this
 7 issue given everyone's competing interest.
 8 He'll be fair on what he argues on behalf of
 9 the estate. He's not going to run up fees.
 10 He's not going to allow the lawyer to run up
 11 fees. If you want, I don't think he should be
 12 the lawyer probably because I don't think he's
 13 admitted in Illinois --
 14 MR. BROWN: No.
 15 THE COURT: -- and he'll be able to best
 16 determine how to filter whatever the
 17 information is that other counsel want to give
 18 to them. Again, it's a narrow issue. Okay,
 19 everyone is jumping up.
 20 MR. MORRISSEY: If I could respond on
 21 behalf of four of the grandchildren. We're now
 22 talking about having to pay, you know, from my
 23 client's perspective pockets, Mr. Brown's fees,
 24 an attorney up in Illinois --
 25 THE COURT: I just said that won't be the

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1 case.
 2 MR. MORRISSEY: That could potentially be
 3 the case.
 4 THE COURT: It would only be the case if
 5 there was a recovery for the estate to which
 6 then Mr. Stansbury would say, under the
 7 statute, I performed a benefit for the estate.
 8 How could that not benefit -- and from what I'm
 9 told your clients, the grandchildren, would be
 10 the people who would benefit from that. So why
 11 would you complain about that if that's what
 12 wound up happening? There's not a dollar
 13 coming out of the estate unless there's a
 14 recovery basically, and then the recovery would
 15 take place and he would seek some recovery of
 16 fees.
 17 MR. MORRISSEY: And he would seek that --
 18 THE COURT: Here.
 19 MR. MORRISSEY: Here?
 20 THE COURT: Sure. You can say what I
 21 think you're going to say, it's okay.
 22 MR. MORRISSEY: I just want to go back to
 23 the basics. The fact that the estate is only a
 24 taker in default. So the estate doesn't need
 25 to be represented in the Illinois action.

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1 It's, for example, there was even talk, I
 2 believe, in the Illinois case by one of the
 3 banks or insurance companies that it's possible
 4 if there's no beneficiary then the State of
 5 Illinois could be the taker in default. Well,
 6 the State of Illinois wasn't named as a party.
 7 They don't have counsel there. Likewise, why
 8 should the estate have counsel in an action
 9 where they're only the taker of last resort?
 10 THE COURT: Because if they're the taker
 11 as a matter of law -- I mean -- I don't really
 12 follow your argument because let's say there's
 13 a hearing, which there will be, and the trust
 14 is there, Eliot is there, and the estate is
 15 there, and the judge hears it all and says the
 16 decision is the beneficiary should be the
 17 estate, would we say that that's a ridiculous
 18 thing that we had the estate participate? I
 19 don't think so.
 20 MR. MORRISSEY: I don't know what -- I
 21 mean there is no evidence that anyone on behalf
 22 of the estate can present that they have ever
 23 been named as a beneficiary --
 24 THE COURT: That could be. It may be then
 25 that once Mr. Brown and counsel intervene, see

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1 the documents -- I mean you're not talking --
 2 how many pages of documents could the
 3 beneficiary forms be? It can't be that many.
 4 When we sign our life insurance forms we sign a
 5 page or two, that's about it. It's not like
 6 it's going to be really exotic litigation.
 7 This is a narrow, single issue who the
 8 beneficiary is of this policy. You know, it
 9 may be that it is clear that it's this
 10 irrevocable trust and then they'll go from
 11 there to see whether that really is an entity
 12 that exists. That may be a separate issue. If
 13 the judge says -- someone can name on the life
 14 insurance policy, you know, the Star Spangled
 15 Banner Fund and if that doesn't exist then we
 16 know from contract law what happens if you name
 17 a beneficiary that doesn't exist. You go to
 18 the next level. You certainly want the life
 19 insurance funds going somewhere. That's what
 20 we would determine if that took place. Step 1,
 21 step 2, step 3, doesn't sound to be that
 22 complexed. Last word.
 23 MR. ROSE: If I understand what you are
 24 saying, which makes sense, Mr. Brown will keep
 25 separate time for the time he spends as curator

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1 working on the Illinois issue. He will hire
 2 counsel and the fees of Mr. Brown and the
 3 Illinois counsel, under his direction and his
 4 discretion, would be paid by Mr. Stansbury?
 5 THE COURT: That's the case. Subject to a
 6 claim for reimbursement under the statute.
 7 MR. ROSE: I'd want to hear from
 8 Mr. Stansbury under oath that he's willing to
 9 undertake that expense. Not to talk out of
 10 school, but I haven't had discussion with
 11 counsel and I didn't necessarily get the sense
 12 that that was going to be the case.
 13 THE COURT: All right. Well, Mr. Feaman
 14 can represent them.
 15 MR. FEAMAN: I am representing as an
 16 officer of the Court, Your Honor.
 17 THE COURT: Okay.
 18 MR. FEAMAN: My only concern is if
 19 there's -- basically Mr. Stansbury is funding
 20 this there's -- there has to be some type of, I
 21 don't want to use the word control, but real
 22 input into the process.
 23 THE COURT: Well, he's allowed to, like
 24 anyone else in cases like this, you could have
 25 conversations with Mr. Brown and his lawyer.

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1 You can show them what documents there are.
 2 You can ask them to discuss things with them.
 3 And, you know, I mean they -- they obviously
 4 know he has an interest. And to the extent
 5 that they're comfortable I think it's
 6 appropriate they'll discuss these things with
 7 them.
 8 MR. FEAMAN: On behalf of Mr. Stansbury, I
 9 would like assurances.
 10 THE COURT: I'm not going to -- I have to
 11 keep the -- there's a line of demarcation I
 12 don't want to cross up front.
 13 MR. FEAMAN: And I'm not objecting that
 14 it's not Mr. Stansbury. I just want to make
 15 sure the person who --
 16 THE COURT: The person who is appointed is
 17 going to advocate for the estate.
 18 MR. FEAMAN: Right. Agree with that.
 19 THE COURT: But let me tell you this, the
 20 reason I appoint a curator to do this is the
 21 curator is not advocating for Mr. Stansbury.
 22 He's advocating for the estate. There's times
 23 when the curator could say, after doing
 24 everything, I don't think, for example, the
 25 estate has a bona fide interest. That may be

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1 bad news for your side. But if that's what
 2 they conclude then that's what they conclude.
 3 If they conclude they do they will continue
 4 advocating. It's things we do as lawyers all
 5 the time. We go after cases with merit, and
 6 shy away from those we think don't have merit.
 7 MR. FEAMAN: Yes.
 8 THE COURT: There's multilevel here. If
 9 someone says that the Bernstein Irrevocable
 10 Trust is the beneficiary but that it doesn't
 11 exist there may be an argument that could be
 12 made how then still as a result of that the
 13 estate should get the funds, that would be
 14 something that Mr. Brown and counsel could
 15 consider advocating. But it's all in good
 16 faith stuff.
 17 MR. FEAMAN: Sure. I just want to make
 18 sure --
 19 THE COURT: You'll get copies of the
 20 bills. You'll be able to see what's that. If
 21 at anytime you think that Mr. Brown and the
 22 lawyer are, you know, going way beyond what you
 23 think they should, from an expense point of
 24 view, you can always come back to me.
 25 MR. FEAMAN: I'm less concerned with the

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1 expense, although it is important, more with
 2 being able to pick up the phone and speak to
 3 counsel in Chicago and say, hey, have you
 4 considered this, I have information that may
 5 help your case.
 6 THE COURT: I'm not going to micromanage
 7 that part. Today if you want to call Mr. Brown
 8 for this hearing, for example, and say, Mr.
 9 Brown, this is what I think, what do you think,
 10 you're allowed to have a discussion on that.
 11 That happens all the time, doesn't it?
 12 MR. BROWN: It does. It does with
 13 everybody in the case, emails and phone calls.
 14 THE COURT: You guys email between each
 15 other like crazy now.
 16 MR. BROWN: That's true. Your Honor, the
 17 only -- as far as keeping my time, if I kept my
 18 time at my rate as curator is Mr. Stansbury
 19 supposed to pay for that, or is that still
 20 payable by the estate?
 21 THE COURT: Your time and the lawyer's
 22 time are the only rate I approve --
 23 MR. BROWN: Paid by Mr. Stansbury.
 24 THE COURT: -- the hourly rate, I approve
 25 of 350.

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1 MR. BROWN: I also propose, it doesn't
 2 have to go on the order, it would seem to me,
 3 there's nothing wrong, once I retain a Chicago
 4 attorney, there's nothing wrong with Mr. Feaman
 5 calling that Chicago attorney and me telling
 6 the Chicago attorney don't get me on the phone
 7 --
 8 THE COURT: I agree. There's no question.
 9 You're the conduit.
 10 MR. BROWN: As far as the claim, I'll
 11 absolutely rely on Illinois counsel.
 12 THE COURT: All right. I think this is
 13 pretty clear how it's going to be handled.
 14 Yes, sir.
 15 MR. ROSE: A couple of minor concerns, I
 16 think Mr. Brown went too far. Mr. Stansbury
 17 would not pay for all the curator fees, only
 18 the curator fees directly related to the
 19 Illinois matter.
 20 THE COURT: That's what he said. Separate
 21 times sheets, sure.
 22 MR. ROSE: I'm concerned if they -- he's
 23 going to hire a Chicago lawyer, a Chicago
 24 lawyer is going to be expensive. That's what
 25 our main concern is --

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1 THE COURT: Hold on. Mr. Brown --
 2 MR. ROSE: He's a practical guy --
 3 THE COURT: -- he's going to find a good
 4 lawyer with a reasonable rate, and that's a
 5 little higher. He's not going to hire a
 6 \$1,000-an-hour-guy.
 7 MR. ROSE: But if he hires a lawyer and
 8 the bill is \$12,000 and Mr. Stansbury's counsel
 9 looks at it and says we don't think we should
 10 pay it, Mr. Brown is retaining the person on
 11 behalf of the estate, we need to have not a
 12 chance for them to complain about bills.
 13 THE COURT: Okay. I'm not worried about
 14 that now. There's too much -- I'm not finding,
 15 you know -- I mean one -- part of this is what
 16 I think is the sincerity of Mr. Feaman's side
 17 here. And it's kind of a good thing that we
 18 have the ability to be able to use
 19 Mr. Stansbury's funds that way. They've made
 20 the pledge to do it. I don't think they're
 21 going to go back on their word.
 22 MR. ROSE: I understand. I think
 23 Mr. Stansbury should at least, under oath --
 24 THE COURT: Your request is denied.
 25 Mr. Feaman is an officer of the court. He

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1 represents --
 2 MR. ROSE: -- it would be enforceable as a
 3 judgment if he doesn't pay -- the estate would
 4 have a claim against Mr. Stansbury if he, for
 5 example, didn't pay some invoices and we got
 6 stuck paying the bill for a Chicago lawyer.
 7 THE COURT: You want me to rule on that
 8 now? Your answer is no. You're real premature
 9 on that. Draft an order along the lines I
 10 mention.
 11 What else for today?
 12 MR. BROWN: Your Honor, I had two motions
 13 for instructions.
 14 THE COURT: One had to do with this issue,
 15 right?
 16 MR. BROWN: That one I basically just took
 17 a backseat to because of the administrator ad
 18 litem motion.
 19 The other, Eliot Bernstein sends me a lot
 20 of emails with a lot of requests. I'm not
 21 saying it's a bad thing. But he asks me
 22 questions I don't necessarily know I can
 23 answer. For instance, he got the accounting by
 24 Tetra and Spallina and then sent me an email
 25 that I've attached to the motion. I don't know

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1 if you have the motion for instructions.
 2 THE COURT: I do.
 3 MR. BROWN: That had 44 different
 4 questions, not including subparts, and asked
 5 that I hire a forensic accountant, an analyst
 6 and acquire account statements from a number of
 7 third-party institutions.
 8 THE COURT: Is that the motion? I don't
 9 have the attachments. It says motion for
 10 instructions -- that's the life insurance one.
 11 Hold on.
 12 MR. BROWN: It's not necessarily
 13 important. Eliot is very thorough. But,
 14 again, the estate has limited assets. My view
 15 of what the curator should do with respect to
 16 the accounting is not take the lead on
 17 objecting to what Tetra and Spallina did,
 18 investigating the underpinnings of the
 19 accounting, that's up to -- we have a lot of
 20 beneficiaries here who are very, very
 21 passionate and interested in what's going on
 22 with the estate.
 23 THE COURT: Stop. You don't have to go
 24 further. That position, that's the law. You
 25 don't do that. If there's an accounting,

<p style="text-align: right;">46</p> <p>1 there's a rule on objections, the parties 2 object. They don't use you -- you don't work 3 for them. 4 MR. BROWN: Okay. 5 THE COURT: You work for the court. 6 MR. BROWN: I'll try and craft an order 7 that deals with that motion in that regard. 8 Also, there also was a motion, Eliot has 9 concerns about the 2012 will and its validity. 10 I think your ruling would be the same on that. 11 I don't have a role in trying to contest that 12 will -- 13 THE COURT: Exactly. You're not an 14 advocate. You don't investigate things that 15 the parties may be interested in. They can do 16 what they think they need to do based on the 17 rules of procedure and statutes. 18 MR. BROWN: That's it. 19 MR. ROSE: If I may address the privilege 20 issue? 21 THE COURT: Okay. The privilege issue, 22 okay. 23 MR. ROSE: May I approach? 24 THE COURT: Yes. 25 MR. ROSE: I can file a copy of this.</p>	<p style="text-align: right;">48</p> <p>1 Like I do when I get a letter that has 2 threatening stuff to me I sent it to my friends 3 who are lawyers. I sent it to a number of 4 people. Actually, I got so busy sending it to 5 people, because it scared me a little bit that 6 it was very threatening to people, that by the 7 time I was done my wife stopped me and said we 8 got to go to court. All I know is my brother 9 sent me an email that seems pretty threatening. 10 It was addressed to me. I was the intended 11 recipient. 12 THE COURT: Let me ask you, when the email 13 starts off Alan -- 14 MR. ROSE: I get a million emails -- 15 THE COURT: That say Alan? 16 MR. BERNSTEIN: That say whoever's name. 17 THE COURT: Okay. All right. You know 18 what, I don't buy anything you just told me. 19 MR. BERNSTEIN: I thought my brother was 20 sending me a copy of an email -- 21 THE COURT: Stop. Stop. Stop speaking. 22 I'm going to look at the rule for a second. 23 MR. BERNSTEIN: Okay. 24 MR. ROSE: It's 1.285. 25 THE COURT: Okay.</p>
<p style="text-align: right;">47</p> <p>1 This is the email in question. Without reading 2 the email, if you look at who it is addressed 3 to at the very top. Mr. Bernstein is saying, 4 this is Ted, telling me he sent it to Eliot by 5 mistake. Last night at 10:12 he got off an 6 airplane and wanted to tell me things. It's to 7 Eliot by accident. If you just read -- 8 THE COURT: When you say to Eliot by 9 accident, the only person this is sent to is 10 Eliot. 11 MR. ROSE: Correct. He was trying to send 12 it to me. If you look below the word analysis, 13 the first word of the email is Alan. 14 THE COURT: So this was is supposed to go 15 to you and it went to Eliot? 16 MR. ROSE: By mistake. And Mr. Bernstein 17 has advised me this morning he sent it to 2,000 18 people already. He plans on publicizing it -- 19 THE COURT: I'm sure he didn't do that 20 because if he wants to participate in the case 21 he's obligated to have and comply with the 22 rules of court. 23 MR. BERNSTEIN: Your Honor -- 24 THE COURT: When you -- 25 MR. BERNSTEIN: I was sent an email to me.</p>	<p style="text-align: right;">49</p> <p>1 MR. BERNSTEIN: I haven't been prepared 2 for this, so... 3 THE COURT: Okay. 4 MR. BERNSTEIN: I haven't looked at the 5 rules. 6 THE COURT: Okay. 7 MR. BERNSTEIN: I can show you several 8 instances in my email of people sending me 9 letters addressed to other people, several 10 thousands of those. 11 THE COURT: So, all right. Everyone has 12 to take a deep breath. This situation is done 13 pursuant to Rule 1.285. So Mr. Rose, on your 14 side, correct me if you think I'm wrong, 15 Subsection A says, "When you" -- your client -- 16 "takes a position that there's been an 17 inadvertent disclosure of privileged materials 18 to another person" -- which is what you say 19 happened, correct? 20 MR. ROSE: Correct, sir. 21 THE COURT: It says here, "In order to 22 assert the privilege the party, person or 23 entity shall, within 10 days of actually 24 discovering the inadvertent disclosure, serve 25 written notice of the assertion of privilege on</p>

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1 the party to whom the materials were disclosed.
 2 The notice shall specify with particularity" --
 3 etc. And then there's a procedure.
 4 MR. ROSE: I did that last night. I
 5 emailed him last night.
 6 THE COURT: I didn't know that. So you
 7 gave him the written notice. I assume he got
 8 it. Can I see a copy of the notice?
 9 MR. ROSE: I'm trying to get a copy of the
 10 notice. Perhaps -- I'm not trying to have the
 11 whole argument heard today. I just --
 12 THE COURT: The rule applies.
 13 MR. ROSE: Right.
 14 THE COURT: So once he gets notice, the
 15 rule applies. So the notice will have -- you
 16 sent it by email?
 17 MR. ROSE: I have it here now. I do find
 18 it, sir. May I approach?
 19 THE COURT: What's the time and date of
 20 the notice?
 21 MR. ROSE: May 22, 2014 at 11:07 p.m. I
 22 said, "You received an email from Ted intended
 23 solely for me, and accidentally sent to you by
 24 mistake. The email was sent around 10:12 p.m.
 25 tonight. Please delete the email immediately

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1 without reading it and confirm that deletion by
 2 email. The communication was attorney-client
 3 protected and you are not entitled to read or
 4 possess the email due to the accidental
 5 transmission. Thank you in advance. And if
 6 you fail to comply with this request we'll be
 7 forced to take corrective action with the
 8 court." Signed by me sent to the same email
 9 address that --
 10 THE COURT: Okay. All right. So the rule
 11 says, to Eliot, he sent that to you, Rule
 12 1.285, Subsection B tells you what you're
 13 supposed to do.
 14 MR. BERNSTEIN: I haven't seen it yet.
 15 THE COURT: Okay.
 16 MR. BERNSTEIN: He's saying he sent it
 17 after Ted's email. The last email I read was
 18 Ted's email. So I haven't seen it.
 19 THE COURT: So open that email --
 20 MR. BERNSTEIN: Okay.
 21 THE COURT: Okay. And do what the rule
 22 says.
 23 MR. BERNSTEIN: Don't send it to anybody
 24 else.
 25 THE COURT: Well, okay, that, but it also

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1 says some other things of what you're supposed
 2 to do. You're supposed to return or destroy
 3 it. That's one thing you're supposed to do.
 4 And you are to notify anyone else who you
 5 disclosed it to that they're to do the same
 6 thing and you're also to take reasonable steps
 7 to retrieve the materials disclosed --
 8 MR. BERNSTEIN: I'll do all that.
 9 THE COURT: And the only exception to this
 10 is if you want to challenge that assertion that
 11 you were provided an inadvertent privileged
 12 matter. And then the rule says what could
 13 happen and we can have litigation and spend a
 14 lot of money.
 15 MR. BERNSTEIN: No. I'll do whatever it
 16 is -- whatever the law says, as always.
 17 THE COURT: There's nothing for me to do.
 18 MR. ROSE: I understand. I just want to
 19 make sure you --
 20 MR. BERNSTEIN: Your Honor, it went out to
 21 a lot of people. Like I said, I have a broad
 22 base --
 23 THE COURT: Take a look. When you leave
 24 the courthouse --
 25 MR. BERNSTEIN: Okay. I'll notify

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1 everybody though.
 2 THE COURT: Go and take a look at the rule
 3 and just do what the rule says.
 4 MR. ROSE: And it's not to be posted on
 5 social media.
 6 THE COURT: You see, I'm not allowed to
 7 have dialogue on that now. Other than signing
 8 the order, hearing over. Thank you.
 9 (Whereupon the hearing is concluded at 10:00 a.m.)
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1 CERTIFICATE OF COURT REPORTER

2

3 I, JULIE ANDOLPHO, do hereby certify that
4 the foregoing transcript of the proceedings,
5 consisting of pages numbered 1 through 54,
6 inclusive, is a true and correct transcript of the
7 proceedings taken by me before the Honorable MARTIN
8 COLIN, on May 23, 2014.

9 I further certify that I am not a relative
10 or employee or attorney or counsel of any of the
11 parties, nor a relative or employee of such attorney
12 or counsel, or financially interested, directly or
13 indirectly, in this action.

14 The certification does not apply to any
15 reproduction of the same by any means unless under
16 direct control and/or direction of the reporter.

17 Dated this 27th day of May, 2014.

18 _____
19 Julie Andolpho

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