

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

PROBATE DIVISION

CASE NO. 502012CP004391XXXXSB

IN RE: ESTATE OF SIMON L. BERNSTEIN

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**NOTICE OF FILING**

Curator, Benjamin P. Brown, hereby gives notice of filing the transcript of the hearing on  
May 23, 2014, attached hereto as Exhibit A, in connection with matters being heard on June 11,  
2014.

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served by e-mail upon Alan Rose, Esq., Page Mrachek, 505 S. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com); John Pankauski, Esq, Pankauski Law Firm, 120 S. Olive Ave., Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com), Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, [service@feamanlaw.com](mailto:service@feamanlaw.com); Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv); William H. Glasko, Esq., Golden Cowan, Palm Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com), on this 5<sup>th</sup> day of June, 2014.

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By: \_\_\_\_\_/s/  
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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.

1 APPEARANCES:

2

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

West Palm Beach, FL 33401

15

16 APPEARING AS THE CURATOR:

17 BENJAMIN BROWN, ESQ.

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19

20 APPEARING PRO SE:

21 ELIOT BERNSTEIN

22

23

24

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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:

9

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

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 accidentally 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 accidentally 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

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

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

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



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

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

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 --

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

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

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

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 --

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?



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

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

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

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.

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.

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

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

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           that 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.



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

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

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

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 breaches 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

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

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,

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,

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



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

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

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

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.

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

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

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.

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



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

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.

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 --

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

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

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,

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.

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.



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.

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

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

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

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

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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CERTIFICATE OF COURT REPORTER

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

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

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

Dated this 27th day of May, 2014.

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Julie Andolpho

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