

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

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

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

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

**Case No. 13 cv 3643  
Honorable Amy J. St. Eve  
Magistrate Mary M. Rowland**

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

ELIOT IVAN BERNSTEIN, )  
 )  
 )  
 Cross-Plaintiff )  
 )  
 v. )  
 )  
 TED BERNSTEIN, individually and )  
 as alleged Trustee of the Simon Bernstein )  
 Irrevocable Insurance Trust Dtd, 6/21/95 )  
 )  
 Cross-Defendant )  
 and, )  
 )  
 PAMELA B. SIMON, DAVID B.SIMON, )  
 both Professionally and Personally )  
 ADAM SIMON, both Professionally and )  
 Personally, THE SIMON LAW FIRM, )  
 TESCHER & SPALLINA, P.A., )  
 DONALD TESCHER, both Professionally )  
 and Personally, ROBERT SPALLINA, )  
 both Professionally and Personally, )  
 LISA FRIEDSTEIN, JILL IANTONI )  
 S.B. LEXINGTON, INC. EMPLOYEE )  
 DEATH BENEFIT TRUST, S.T.P. )  
 ENTERPRISES, INC. S.B. LEXINGTON, )  
 INC., NATIONAL SERVICE )  
 ASSOCIATION (OF FLORIDA), )  
 NATIONAL SERVICE ASSOCIATION )  
 (OF ILLINOIS) AND JOHN AND JANE )  
 DOES )  
 )  
 Third-Party Defendants. )  
 \_\_\_\_\_ )

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

### **INTRODUCTION**

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

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

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

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

## **FACTUAL BACKGROUND**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **STANDARD OF REVIEW**

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

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

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

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

### **ARGUMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CONCLUSION**

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

**By:** /s/Adam M. Simon

Adam M. Simon (#6205304)

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Attorneys for Plaintiffs and Third-Party  
Defendants

*Simon L. Bernstein Irrevocable*

*Insurance Trust Dtd 6/21/95; Ted*

*Bernstein as Trustee, and individually,*

*Pamela Simon, Lisa Friedstein and Jill*

*Iantoni*

**CERTIFICATE OF SERVICE**

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

Eliot Ivan Bernstein  
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*Ad Litem for the Estate of Simon Bernstein*

on the 28th day of June, 2014.

/s/ Adam M. Simon  
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Attorney for Plaintiffs

## EXHIBIT A

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,  
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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 24<sup>th</sup> day of June, 2014.

MATWICZYK & BROWN LLP  
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By: \_\_\_\_\_ /s/  
Benjamin P. Brown  
Florida Bar No. 841552

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

IN RE: THE ESTATE OF SIMON L. BERNSTEIN

-----/

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.

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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.

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16 APPEARING AS THE CURATOR:

17 BENJAMIN BROWN, ESQ.

MATWICZYK & BROWN, LLP

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West Palm Beach, FL 33401

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 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

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.

\_\_\_\_\_

Julie Andolpho

<p style="text-align: center;"><u>§</u></p> <p><b>\$1,000-an-hour-guy</b> 43:6</p> <p><b>\$1.7</b> 6:9 14:2</p> <p><b>\$12,000</b> 43:8</p> <p><b>\$700,000</b> 33:6</p> <hr/> <p style="text-align: center;"><u>1</u></p> <p><b>1</b> 37:20 54:5</p> <p><b>1.285</b> 4:11,21 48:24 49:13 51:12</p> <p><b>10</b> 49:23</p> <p><b>10:00</b> 1:13 53:9</p> <p><b>10:12</b> 47:5 50:24</p> <p><b>11:07</b> 50:21</p> <p><b>13</b> 28:25</p> <hr/> <p style="text-align: center;"><u>2</u></p> <p><b>2</b> 37:21</p> <p><b>2,000</b> 4:16 47:17</p> <p><b>200</b> 3:5</p> <p><b>2012</b> 46:9</p> <p><b>2014</b> 1:12 3:7 50:21 54:8,17</p> <p><b>213</b> 2:14</p> <p><b>22</b> 50:21</p> <p><b>23</b> 1:12 54:8</p> <p><b>23rd</b> 3:7</p> <p><b>27th</b> 54:17</p> <hr/> <p style="text-align: center;"><u>3</u></p> <p><b>3</b> 37:21</p> <p><b>30</b> 4:4</p> <p><b>330</b> 2:14</p> <p><b>33401</b> 2:10,14,18</p> <p><b>33436</b> 2:6</p> <p><b>350</b> 41:25</p> <p><b>3695</b> 2:5</p> <hr/> <p style="text-align: center;"><u>4</u></p> <p><b>401</b> 2:18</p> <p><b>44</b> 45:3</p> <hr/> <p style="text-align: center;"><u>5</u></p> <p><b>502012CP004391XXX</b> <b>XSB</b> 1:2</p> <p><b>505</b> 2:10</p>	<p><b>54</b> 54:5</p> <hr/> <p style="text-align: center;"><u>6</u></p> <p><b>6</b> 33:6</p> <p><b>625</b> 2:18</p> <hr/> <p style="text-align: center;"><u>9</u></p> <p><b>9</b> 2:5</p> <p><b>9:00</b> 1:13</p> <hr/> <p style="text-align: center;"><u>A</u></p> <p><b>a.m</b> 1:13 53:9</p> <p><b>ability</b> 43:18</p> <p><b>able</b> 22:9 24:14 29:4 34:15 40:20 41:2 43:18</p> <p><b>above-styled</b> 3:3</p> <p><b>absolutely</b> 26:1 42:11</p> <p><b>acceptable</b> 26:7</p> <p><b>accident</b> 47:7,9</p> <p><b>accidental</b> 51:4</p> <p><b>accidentally</b> 4:22 50:23</p> <p><b>accidently</b> 4:6</p> <p><b>according</b> 6:16 7:17 17:6</p> <p><b>account</b> 45:6</p> <p><b>accountant</b> 45:5</p> <p><b>accounting</b> 44:23 45:16,19,25</p> <p><b>accused</b> 27:17,18</p> <p><b>acquire</b> 45:6</p> <p><b>act</b> 15:5</p> <p><b>action</b> 7:5 8:13 9:22 14:9 15:12 17:22 35:25 36:8 51:7 54:13</p> <p><b>actions</b> 15:19,20</p> <p><b>active</b> 22:4 23:1 29:20</p> <p><b>actively</b> 13:18</p> <p><b>actually</b> 6:17 26:21 48:4 49:23</p> <p><b>ad</b> 5:23 6:3 7:3 13:24 22:7,16 27:10 28:14 44:17</p> <p><b>Adam</b> 19:11,18</p>	<p><b>21:17</b> 27:20</p> <p><b>addition</b> 25:8</p> <p><b>address</b> 15:3 23:9 46:19 51:9</p> <p><b>addressed</b> 5:3 47:2 48:10 49:9</p> <p><b>addressing</b> 11:24</p> <p><b>administrator</b> 5:23 6:3 7:3 13:24 15:24 22:7,16 27:10 28:13 44:17</p> <p><b>admitted</b> 34:13</p> <p><b>adult</b> 2:12 3:18 9:9,11,18,22 17:18,19</p> <p><b>adults</b> 9:18</p> <p><b>advance</b> 22:21 51:5</p> <p><b>adverse</b> 14:9 22:25</p> <p><b>advised</b> 4:15,23,24 47:17</p> <p><b>advocate</b> 39:17 46:14</p> <p><b>advocating</b> 18:10 33:2 39:21,22 40:4,15</p> <p><b>affidavit</b> 11:17,23 21:6</p> <p><b>against</b> 17:25 29:23 44:4</p> <p><b>ago</b> 20:21</p> <p><b>ahead</b> 4:3 5:18 6:23 22:13 33:20</p> <p><b>airplane</b> 47:6</p> <p><b>Alan</b> 2:9 3:19 47:13 48:13,15</p> <p><b>allegation</b> 30:7</p> <p><b>allege</b> 20:11</p> <p><b>alleged</b> 7:10,22</p> <p><b>allow</b> 23:15 24:23 34:10</p> <p><b>allowed</b> 15:4,11 20:4 26:14 31:14 38:23 41:10 53:6</p> <p><b>allowing</b> 24:20</p> <p><b>already</b> 13:16 15:20 27:19</p>	<p><b>33:14</b> 47:18</p> <p><b>am</b> 38:15 54:9</p> <p><b>amended</b> 17:17</p> <p><b>among</b> 13:4</p> <p><b>amount</b> 13:21</p> <p><b>analysis</b> 16:10,11 47:12</p> <p><b>analyst</b> 45:5</p> <p><b>and/or</b> 10:19 21:19 54:16</p> <p><b>Andolpho</b> 54:3,19</p> <p><b>answer</b> 28:20 44:8,23</p> <p><b>anticipate</b> 16:14</p> <p><b>anybody</b> 51:23</p> <p><b>anyone</b> 31:17,18 36:21 38:24 52:4</p> <p><b>anything</b> 12:13 48:18</p> <p><b>anytime</b> 40:21</p> <p><b>apparently</b> 14:2 27:20</p> <p><b>appearance</b> 6:5</p> <p><b>Appearances</b> 2:1 3:12</p> <p><b>appearing</b> 2:3,8,12,16,20 27:11</p> <p><b>application</b> 14:1</p> <p><b>applies</b> 50:12,15</p> <p><b>apply</b> 26:24 54:14</p> <p><b>appoint</b> 6:2 7:3 22:15,17 29:13 39:20</p> <p><b>appointed</b> 15:24 27:10 28:1,13 33:20 39:16</p> <p><b>appointment</b> 5:23</p> <p><b>approach</b> 46:23 50:18</p> <p><b>appropriate</b> 39:6</p> <p><b>appropriately</b> 23:16</p> <p><b>approve</b> 20:14 41:22,24</p> <p><b>arguably</b> 6:18</p> <p><b>argue</b> 32:24</p> <p><b>argues</b> 34:8</p> <p><b>argument</b> 36:12</p>
---	---	--	---

40:11 50:11 arrangement 14:19 assert 13:8 16:24 49:22 asserting 13:6,8 18:8 20:2 assertion 49:25 52:10 asset 6:19,24 8:1 assets 7:1 8:1 9:16 10:12,18,21 12:16 27:12 33:7 45:14 assignment 26:16 31:8 33:3 assume 8:18 50:7 assuming 26:16 assurances 39:9 Atlantic 3:5 attached 11:17 16:3,4 21:7 44:25 attachments 45:9 attacking 5:5 attempted 16:1 attorney 34:24 42:4,5,6 54:10,11 attorney-client 4:8,18 51:2 attorneys 14:11 attorney's 12:20 available 14:1 Avenue 3:5 award 12:20 14:11 aware 7:24 26:23 away 40:6 <hr/> B backseat 44:17 bad 40:1 44:21 banks 36:3 Banner 37:15 base 52:22 based 8:18 46:16 basically 22:2 30:1 31:10 32:6 35:14 38:19	44:16 basics 35:23 battle 19:20 20:1 Beach 1:1 2:5,6,10,14,18 3:4,6 beaches 27:18 become 7:25 15:13,15 20:19 23:11 beginning 26:19 behalf 2:3,8,12 3:14,17,19 5:20 6:5 10:11 12:14 18:11,21,22 19:6 25:9 29:3 31:1 34:8,21 36:21 39:8 43:11 behind 20:7 believe 8:14 11:4 36:2 Ben 3:21 23:14 26:7 beneficial 31:5 beneficiaries 7:15 9:11,14,16,25 16:25 27:15 30:20 45:20 beneficiary 7:10,16,19,23 11:11,12,13,16, 19 12:1,24 13:13 20:14 21:10 24:7,16 25:3,6 30:12 31:22 32:21 36:4,16,23 37:3,8,17 40:10 benefit 6:9 10:17 14:23 16:14 17:7 19:13 35:7,8,10 BENJAMIN 2:17 Bernstein 1:6 2:8,21 3:11,13,20 4:5,7,9,10,11,1 5,23,25 5:2,6,7,9,10,12 6:18 7:19,21 9:3,10,19 11:20 12:21 13:6 17:1,11 19:9,11 20:6,19 21:3,5,11,13	25:2 29:23 30:22 32:22 40:9 44:19 47:3,16,23,25 48:16,19,23 49:1,4,7 51:14,16,20,23 52:8,15,20,25 Bernstein's 6:8 30:21 best 23:22 29:8 34:15 better 34:6 beyond 40:22 bill 43:8 44:6 bills 29:7 40:20 43:12 bit 48:5 bizarre 5:5 Blanc 29:21 blank 19:7 Blvd 2:5 bona 39:25 Boynton 2:5,6 breath 49:12 bring 10:12 14:17 broad 52:21 brother 5:3 19:12 27:20 48:8,19 Brown 2:17 3:21 10:3,5,6 22:19 23:14 25:15 26:7,11,15,21 27:2,6 28:13 29:16 31:6,10 32:5,13 33:4,10,13,18,2 5 34:14 36:25 37:24 38:2,25 40:14,21 41:7,9,12,16,23 42:1,10,16 43:1,10 44:12,16 45:3,12 46:4,6,18 Brown's 21:7 34:23 bunch 4:22 21:24 burden 8:19 busy 48:4 buts 33:5 buy 48:18	<hr/> C care 31:2 case 1:2 3:11 8:15 13:16 14:10 17:9,15 18:7 20:6 21:3 22:21 25:5 28:4,15,24 29:25 30:5,10 31:15 35:1,3,4 36:2 38:5,12 41:5,13 47:20 cases 24:24 30:19 34:1 38:24 40:5 category 27:23 cause 3:3 centerpiece 26:20 certain 15:9,13,18 certainly 15:19 37:18 CERTIFICATE 54:1 certification 54:14 certify 54:3,9 challenge 34:2 52:10 chance 43:12 charge 32:3 Chicago 9:2 10:11 17:21 19:10 22:20 29:6,7 41:3 42:3,5,6,23 44:6 children 9:9,11,18,23 17:19 18:23 19:16,21,25 children's 20:25 CIRCUIT 1:1 City 3:6 claim 11:4 12:3,18 14:24 15:17 18:9,11,23 20:11,13 29:24 30:19 38:6 42:10 44:4 claimant 15:6,8,12,16 22:6,25 32:11 claimed 16:20
---	--	--	---

<b>claims</b> 13:5 30:4	<b>confidentiality</b> 26:17	11:1,18 13:1,2,22 14:6,12,21 15:1,22 16:8,9,13,20 17:2,6,9,14,20, 23 18:6,12,19,22 19:2,8,15,19 20:4,14,17 21:1,13,18 22:4,8,9,13 23:7,13,15,20 24:1,10,13 25:22 26:2,12,14,25 27:5 28:12,21 29:11,15 30:5,15 31:13 32:9,14 33:8,12,16,21 34:15,25 35:4,18,20 36:10,24 38:5,13,16,17,2 3 39:10,16,19 40:8,19 41:6,14,21,24 42:8,12,20 43:1,3,13,24,25 44:7,14 45:2,8,23 46:5,13,21,24 47:8,14,19,22,2 4 48:8,12,15,17,2 1,25 49:3,6,11,21 50:6,12,14,19 51:8,10,15,19,2 1,25 52:9,17,23 53:2,6 54:1	31:7,10 34:1 37:25 39:20,21,23 41:18 42:17,18 45:15 <b>current</b> 10:13 <b>currently</b> 6:6 <hr/> <b>D</b> <b>date</b> 1:12 50:19 <b>Dated</b> 54:17 <b>David</b> 19:12 27:7,19 <b>day</b> 3:7 54:17 <b>days</b> 49:23 <b>deal</b> 33:12 34:6 <b>dealing</b> 6:24 28:7 <b>deals</b> 46:7 <b>death</b> 6:9 <b>deceased</b> 6:8,18 <b>decide</b> 13:3,4 <b>decision</b> 30:18 36:16 <b>declared</b> 22:7 <b>deep</b> 49:12 <b>default</b> 35:24 36:5 <b>defendant</b> 20:20,23 <b>defending</b> 29:23 <b>delete</b> 4:12 50:25 <b>deletion</b> 51:1 <b>Delray</b> 3:6 <b>demarcation</b> 39:11 <b>denied</b> 13:15 15:21,22,25 16:2,7 20:13 43:24 <b>deposited</b> 13:1 <b>described</b> 32:6 <b>despite</b> 8:11 <b>destroy</b> 52:2 <b>determine</b> 13:12 23:16 29:13 34:16 37:20 <b>determined</b> 24:8 <b>dialogue</b> 53:7 <b>different</b> 12:7 21:4 28:5,7,8
<b>classes</b> 15:11	<b>confirm</b> 51:1		
<b>clear</b> 7:23 31:24 37:9 42:13	<b>conflict</b> 27:13,17 29:22 30:2,8		
<b>Clematis</b> 2:14	<b>consider</b> 28:3 40:15		
<b>client</b> 4:9 11:7 13:23 25:13 49:15	<b>considered</b> 41:4		
<b>clients</b> 18:14 19:6 35:9	<b>considering</b> 25:7		
<b>client's</b> 34:23	<b>consisting</b> 54:5		
<b>COLIN</b> 1:9 3:4 54:8	<b>contest</b> 46:11		
<b>comes</b> 17:7 27:23 33:1	<b>contingent</b> 11:16		
<b>comfortable</b> 32:12 39:5	<b>continue</b> 40:3		
<b>coming</b> 26:1 35:13	<b>contract</b> 30:19 37:16		
<b>comment</b> 23:8	<b>control</b> 34:3 38:21 54:16		
<b>communication</b> 4:8 51:2	<b>conversations</b> 38:25		
<b>companies</b> 36:3	<b>convinced</b> 32:20		
<b>company</b> 6:17 7:18 8:4,7,23 11:12,14,19,24 17:12 18:1,4,6 20:10,12	<b>copies</b> 40:19		
<b>company's</b> 21:9	<b>copy</b> 7:13 8:17 9:5 46:25 48:20 50:8,9		
<b>competing</b> 13:5 19:22 21:25 34:7	<b>correct</b> 17:8 23:18 24:9 47:11 49:14,19,20 54:6		
<b>complain</b> 35:11 43:12	<b>correcting</b> 18:3		
<b>complexed</b> 37:22	<b>corrective</b> 51:7		
<b>comply</b> 4:20 47:21 51:6	<b>cost</b> 26:10 29:4 31:4		
<b>computer</b> 3:11 11:22,23 21:9	<b>counsel</b> 5:1 19:15 29:5,8 31:12 33:13 34:17 36:7,8,25 38:2,3,11 40:14 41:3 42:11 43:8 54:10,12	<b>courthouse</b> 3:5 52:24	
<b>concern</b> 12:15 13:17 38:18 42:25	<b>counsel's</b> 29:7	<b>craft</b> 46:6	
<b>concerned</b> 40:25 42:22	<b>counterclaim</b> 18:2	<b>crazy</b> 41:15	
<b>concerning</b> 6:21	<b>County</b> 1:1 3:5,6	<b>creditor</b> 10:10 14:15 15:7 16:16	
<b>concerns</b> 26:18 42:15 46:9	<b>couple</b> 16:5 33:24 42:15	<b>creditors</b> 10:20	
<b>conclude</b> 40:2,3	<b>course</b> 10:18	<b>creek</b> 27:24	
<b>concluded</b> 53:9	<b>court</b> 1:1 3:10,23 4:3,20,25 5:8,11,14,18,19 6:2,22,25 7:5 8:3 9:1,3,6 10:4,15,22	<b>cross</b> 30:4 39:12	
<b>conduit</b> 42:9		<b>cross-defendants</b> 21:25	
<b>confidential</b> 23:11		<b>cross-plaintiff</b> 20:18 21:21	
		<b>curator</b> 2:16 3:21 10:2,19 27:14,25 29:19	



32:18 33:23 45:3 <b>direct</b> 54:16 <b>direction</b> 29:10 38:3 54:16 <b>directions</b> 28:5 <b>directly</b> 4:9 42:18 54:12 <b>disclosed</b> 50:1 52:5,7 <b>disclosure</b> 49:17,24 <b>discovering</b> 49:24 <b>discovery</b> 30:16 <b>discretion</b> 38:4 <b>discuss</b> 39:2,6 <b>discussed</b> 4:14 <b>discussion</b> 30:24 38:10 41:10 <b>discussions</b> 11:6 <b>dispositive</b> 28:24 <b>dispute</b> 11:11 30:12 <b>dissolved</b> 11:15 <b>distinction</b> 15:7 <b>distribution</b> 6:21 <b>District</b> 28:16,18 <b>docket</b> 28:23 29:1 <b>document</b> 4:16 9:1 12:8 <b>documentation</b> 8:8 <b>documents</b> 6:13 12:13 31:23 37:1,2 39:1 <b>dollar</b> 35:12 <b>done</b> 48:7 49:12 <b>Draft</b> 44:9 <b>Drive</b> 2:10,18 <b>due</b> 24:17 51:4 <b>duties</b> 31:7,10 <b>duty</b> 10:20 27:19 32:24	<b>eight</b> 15:11 <b>either</b> 14:11 26:25 31:24 <b>Eliot</b> 2:21 3:13 4:7,10,11,14,24 5:6,9 13:6,8 18:10,12 20:2,4,17 21:21,22 22:2 23:21 25:6,7,8,23 30:24 36:14 44:19 45:13 46:8 47:4,7,8,10,15 51:11 <b>else</b> 23:15 24:24 31:17,18,24 38:24 44:11 51:24 52:4 <b>elsewhere</b> 31:9 <b>email</b> 4:5,6,10,11,21 5:1,2,3 27:8 41:14 44:24 47:1,2,13,25 48:9,12,20 49:8 50:16,22,24,25 51:2,4,8,17,18, 19 <b>emailed</b> 4:16 50:5 <b>emails</b> 31:16 41:13 44:20 48:14 <b>employee</b> 54:10,11 <b>enforceable</b> 44:2 <b>entered</b> 28:23 <b>entities</b> 21:24 <b>entitle</b> 16:17 <b>entitled</b> 51:3 <b>entity</b> 21:2 37:11 49:23 <b>entry</b> 28:23 <b>especially</b> 30:9 31:3 <b>ESQ</b> 2:4,9,13,17 <b>establish</b> 8:16 <b>estate</b> 1:6 3:22 5:21 6:4,5,12,19,25 7:7,8,25 8:1,5,11,12,13, 23 9:12,20 10:1,10,11,12,1 3,17,18,21 11:5	12:14,16,18,22, 24 13:9,19,20 14:3,8,16,18,23 15:14 16:23,24 17:7 18:11 20:3 23:1,17,25 24:3 25:6,10,11,20 26:1 27:10,12,14,17 29:23 31:1 32:23 33:2,6 34:9 35:5,7,13,23,24 36:8,14,17,18,2 2 39:17,22,25 40:13 41:20 43:11 44:3 45:14,22 <b>estate's</b> 7:1 32:15,17 <b>eventually</b> 30:2 <b>everybody</b> 24:18 41:13 53:1 <b>everyone</b> 24:11,15 34:19 49:11 <b>everyone's</b> 34:7 <b>everything</b> 5:13 7:7 32:20 39:24 <b>evidence</b> 11:8,9 12:3,10,12 13:12 24:5 30:17 31:25 36:21 <b>evidentiary</b> 10:25 <b>exact</b> 13:6 <b>Exactly</b> 46:13 <b>example</b> 16:16 36:1 39:24 41:8 44:5 <b>exception</b> 27:2,3 52:9 <b>exist</b> 12:5,11 14:25 26:18 37:15,17 40:11 <b>exists</b> 37:12 <b>exotic</b> 37:6 <b>expand</b> 31:7 <b>expended</b> 13:20 <b>expense</b> 13:18 38:9 40:23 41:1 <b>expenses</b> 22:19 <b>expensive</b> 42:24 <b>experience</b> 28:17 <b>extensive</b> 16:10	<b>extent</b> 14:16 39:4 <hr/> <b>F</b> <hr/> <b>face</b> 31:24 <b>fact</b> 7:15 8:11 12:11 15:13 16:13 23:10 35:23 <b>facts</b> 11:8 <b>fail</b> 51:6 <b>fair</b> 14:18 34:8 <b>faith</b> 32:24 40:16 <b>fashion</b> 9:6 <b>father</b> 27:21 <b>favor</b> 16:15 <b>Feaman</b> 2:4,5 3:14 5:19,20 10:9 13:22 17:6,17,21 19:18 23:10,14,19,24 24:9,12 25:13,17,25 26:6,13 28:19,22 29:14 31:17 38:13,15,18 39:8,13,18 40:7,17,25 42:4 43:25 <b>Feaman's</b> 43:16 <b>federal</b> 7:4 12:6 28:15 <b>fee</b> 14:19 <b>fees</b> 10:13,16 12:19,20 13:23 14:11 15:5 31:4 34:3,9,11,23 35:16 38:2 42:17,18 <b>fence</b> 19:3 <b>fide</b> 39:25 <b>fiduciary</b> 27:19 <b>FIFTEENTH</b> 1:1 <b>fight</b> 11:10 12:17 <b>figured</b> 20:22 <b>file</b> 46:25 <b>filed</b> 11:17 16:3 18:1 21:7 28:25 <b>filing</b> 6:14 <b>filter</b> 34:16 <b>final</b> 14:14
<hr/> <b>E</b> <hr/> <b>easily</b> 32:7 <b>economic</b> 16:21 <b>effect</b> 14:5 <b>effectively</b> 31:11	<b>estate</b> 1:6 3:22 5:21 6:4,5,12,19,25 7:7,8,25 8:1,5,11,12,13, 23 9:12,20 10:1,10,11,12,1 3,17,18,21 11:5	<b>estate's</b> 7:1 32:15,17 <b>eventually</b> 30:2 <b>everybody</b> 24:18 41:13 53:1 <b>everyone</b> 24:11,15 34:19 49:11 <b>everyone's</b> 34:7 <b>everything</b> 5:13 7:7 32:20 39:24 <b>evidence</b> 11:8,9 12:3,10,12 13:12 24:5 30:17 31:25 36:21 <b>evidentiary</b> 10:25 <b>exact</b> 13:6 <b>Exactly</b> 46:13 <b>example</b> 16:16 36:1 39:24 41:8 44:5 <b>exception</b> 27:2,3 52:9 <b>exist</b> 12:5,11 14:25 26:18 37:15,17 40:11 <b>exists</b> 37:12 <b>exotic</b> 37:6 <b>expand</b> 31:7 <b>expended</b> 13:20 <b>expense</b> 13:18 38:9 40:23 41:1 <b>expenses</b> 22:19 <b>expensive</b> 42:24 <b>experience</b> 28:17 <b>extensive</b> 16:10	<b>extent</b> 14:16 39:4 <hr/> <b>F</b> <hr/> <b>face</b> 31:24 <b>fact</b> 7:15 8:11 12:11 15:13 16:13 23:10 35:23 <b>facts</b> 11:8 <b>fail</b> 51:6 <b>fair</b> 14:18 34:8 <b>faith</b> 32:24 40:16 <b>fashion</b> 9:6 <b>father</b> 27:21 <b>favor</b> 16:15 <b>Feaman</b> 2:4,5 3:14 5:19,20 10:9 13:22 17:6,17,21 19:18 23:10,14,19,24 24:9,12 25:13,17,25 26:6,13 28:19,22 29:14 31:17 38:13,15,18 39:8,13,18 40:7,17,25 42:4 43:25 <b>Feaman's</b> 43:16 <b>federal</b> 7:4 12:6 28:15 <b>fee</b> 14:19 <b>fees</b> 10:13,16 12:19,20 13:23 14:11 15:5 31:4 34:3,9,11,23 35:16 38:2 42:17,18 <b>fence</b> 19:3 <b>fide</b> 39:25 <b>fiduciary</b> 27:19 <b>FIFTEENTH</b> 1:1 <b>fight</b> 11:10 12:17 <b>figured</b> 20:22 <b>file</b> 46:25 <b>filed</b> 11:17 16:3 18:1 21:7 28:25 <b>filing</b> 6:14 <b>filter</b> 34:16 <b>final</b> 14:14

finally 10:14	18:15,21 27:21 34:21 35:9	hire 22:20 31:14 32:4 38:1 42:23 43:5 45:5	4:12,24 50:25
financially 54:12	granted 18:4	hires 43:7	impleaded 8:9
finding 43:14	guy 43:2	history 4:17	impleading 19:19
Fine 5:17	guys 41:14	hold 14:8 16:8 21:1 43:1 45:11	important 4:1 41:1 45:13
finger 30:3		hold 14:8 16:8 21:1 43:1 45:11	inadvertent 49:17,24 52:11
finger-pointing 31:21	<hr/> H <hr/>	honestly 19:4	incentive 9:19
first 7:2,16 8:4,20 15:3 18:19 26:22 47:13	handed 20:21	Honor 5:20,24 6:15,22 7:3,7,24 8:25 9:10,12,19 10:2,7 16:6 20:7,24 26:22 28:4 29:2,9,16 32:5 33:4,18 38:16 41:16 44:12 47:23 52:20	included 12:22
five 17:18	handled 42:13	honorable 1:9 3:4 54:7	includes 33:7
FL 2:6,10,14,18	happen 52:13	hourly 41:24	including 31:17 45:4
Flagler 2:10,18	happened 49:19	hovering 25:1	inclusive 54:6
Florida 1:1 3:7 28:17	happens 37:16 41:11	hypothetically 32:18	indemnification 12:19
forced 51:7	hard 30:5		indemnify 14:8 23:3
foregoing 54:4	harmless 14:9		independent 22:20
forensic 45:5	haven't 14:4 19:4,7 20:22 34:2 38:10 49:1,4 51:14,18		indicate 16:6
form 30:12	having 15:16 24:18 25:7 33:8,10 34:22		indirectly 54:13
former 7:6 8:6	heading 30:10		individual 21:13,16
formerly 8:22	hear 10:4 14:21 24:24 31:16 38:7		individually 16:2 21:19,22 24:2 25:9 30:24
forms 11:25 37:3,4	heard 14:4 24:18 50:11	I'd 4:20 14:21 38:7	information 4:19 15:9,14,18 23:11 34:17 41:4
frankly 28:4,9	hearing 10:25 24:6 29:17,18 30:14 36:13 41:8 53:8,9	ID 12:5,6	inherit 9:23
fraudulent 20:11	hears 36:15	I'll 23:15 31:6 42:10 46:6 52:8,15,25	inherited 9:20
free 30:7	He'd 14:7	Illinois 6:7 7:5,22 8:3 9:22 12:10,17,25 13:3 15:12 19:14,15 22:1 24:4 27:11 28:18 30:11 34:13,24 35:25 36:2,5,6 38:1,3 42:11,19	initially 26:10
Friday 3:7	he'll 13:25 34:8,15	I'm 10:6 14:12 18:25 20:23,24 21:1,18 24:5,13 25:6 26:4,23,25 27:24 28:13,14 30:9,22 32:12,25 33:8 35:8 39:10,13 40:25 41:6 42:22 43:13,14 44:20 47:19 48:22 49:14 50:9,10 53:6	input 26:11,14 38:22
friends 48:2	help 29:7 41:5		instance 44:23
front 29:21 31:4 39:12	hereby 54:3		instances 29:25 49:8
fund 22:18 25:18,19 26:10 37:15	Heritage 7:17		institutions 45:7
funded 25:13	he's 4:17 15:6,10,11,20 21:16 25:8,9,18,22 26:16 30:24 32:9,11,16 34:9,10,12 38:8,23 39:22 42:22 43:2,3,5 47:21 51:16		instruct 4:20
funding 23:2 38:19	hey 41:3		instructions 21:8 44:13 45:1,10
funds 8:9 13:19,21 14:1 18:5 19:20 20:2 37:19 40:13 43:19	high 8:14,19		instrument 8:16
<hr/> G <hr/>	higher 43:5	immediately	insurance 6:7,15,17,19 7:9,11,12,13,16 17,21,24 8:4,7,20,23,24 9:5,8,21,24 11:5,10,12,18,2 1,24 12:2,4 13:10 16:25
gets 50:14			
given 27:7 34:7			
gone 13:14 20:7			
grandchildren 2:12 3:18 9:13,17,24 17:5			

17:11,12,25 18:1,4,6 20:9,11,12 21:9,11 30:13 32:22 36:3 37:4,14,19 45:10	irrevocable 7:21 11:20 12:1 13:9 17:11 19:9 21:5,11,20,23 22:1 25:2 30:21 32:22 37:10 40:9	jurisdiction 9:25 justify 8:8	lines 44:9 liquid 8:1 9:16 listed 12:1 litem 5:23 6:3 7:4 13:24 22:7,16 27:10 28:14 44:18
integrity 22:23 intended 48:10 50:22	isn't 31:21 32:1 issue 4:1,14 12:9,17 13:2,10 23:18 24:10 26:23 27:6,22 29:19 31:21 34:7,18 37:7,12 38:1 44:14 46:20,21	<hr/> L <hr/> LaSalle 7:18 last 4:2 15:3 20:21 36:9 37:22 47:5 50:4,5 51:17 latest 30:10 latter 23:8 law 36:11 37:16 45:24 52:16 lawsuit 9:7 14:17 16:16,18,23 17:24 lawyer 5:11 19:17 22:20 25:20 31:14,15 32:3,21 33:16 34:10,12 38:25 40:22 42:23,24 43:4,7 44:6 lawyered 25:3 lawyers 12:7 34:4 40:4 48:3 lawyer's 41:21 lead 45:16 least 7:4 43:23 leave 52:23 leaves 9:15 legal 16:10 32:2 less 40:25 let's 22:19 26:25 36:12 letter 48:1 letters 49:9 level 37:18 levels 22:25 life 6:7,8 7:9,10,12,13,15 ,24 9:21,24 11:20 12:2 13:10 16:25 17:12 21:11 30:13 37:4,13,18 45:10 Likewise 36:7 limited 13:21 27:25 45:14 line 39:11	litigated 17:10 litigation 6:6,10,21 8:10 23:2 24:4,17 29:20 31:20 32:1,19 37:6 52:13 little 43:5 48:5 LLP 2:17 logical 30:9 long 28:15 lose 24:25 losing 14:11 lost 8:16 20:16 lot 23:5 28:5,6 33:5 34:1 44:19,20 45:19 52:14,21
interested 5:21 45:21 46:15 54:12	issues 22:22 26:17 it's 4:18,19 7:20 8:17 9:9,12 11:1 12:22,23 14:18 21:6 23:22 27:22 30:5,7 31:9,24 34:18 35:21 36:1,3 37:5,6,9 39:5,14 40:4,15 42:13 43:17 44:21 45:12 47:6 48:24 53:4		LLP 2:17 logical 30:9 long 28:15 lose 24:25 losing 14:11 lost 8:16 20:16 lot 23:5 28:5,6 33:5 34:1 44:19,20 45:19 52:14,21
interesting 6:13 Interestingly 8:19 9:10	I've 6:14 16:3 20:19 27:7,17,18 28:2 44:25		
interests 20:25 25:23,25	<hr/> J <hr/> Jeff 3:15 JEFFREY 2:4 jewelry 33:7 job 34:5 John 2:13 3:17 joined 17:18,19 judge 13:3,15 24:5 28:23 29:21 30:17 31:23 36:15 37:13 judgment 13:11 15:10 16:15 44:3 JUDICIAL 1:1 Julie 54:3,19 July 28:25 jumping 6:23 34:19		<hr/> M <hr/> main 10:10 13:17 42:25 manner 32:18 married 19:12 marshal 10:20 marshaled 7:2 marshaling 10:17 MARTIN 1:9 3:4 54:7 mashugana 20:15 materials 4:13 49:17 50:1 52:7 matter 36:11 42:19 52:12 matters 26:13 MATWICZYK 2:17 may 1:12 3:7 5:19 15:1,5,13,15 17:7 18:15 22:9,10 24:2 25:5 26:3 30:25 36:24 37:9,12 39:25 40:11 41:4 46:15,19,23
interested 5:21 45:21 46:15 54:12			
internet 4:18			
interpleaded 18:2 interpleader 18:5 interrupt 10:8			
intervene 7:4 10:11 13:14,16 15:12 16:1,18 20:5 22:9 23:16 24:20 33:15 36:25			
intervening 14:10 15:19 31:12			
intervention 15:20 16:12,13 25:19			
interventions 24:23			
investigate 46:14			
investigating 45:18			
investigation 11:7			
invoices 44:5			
involved 6:12 28:9			
involving 6:7			

50:18,21 54:8,17 <b>maybe</b> 16:16 <b>mean</b> 12:23 30:13 33:24 34:1 36:11,21 37:1 39:3 43:15 <b>meaning</b> 14:2 <b>means</b> 12:22 54:15 <b>media</b> 53:5 <b>mention</b> 44:10 <b>merely</b> 16:21 <b>merit</b> 11:6 12:18 24:25 40:5,6 <b>micromanage</b> 41:6 <b>mid-July</b> 28:25 <b>million</b> 6:9 14:2 48:14 <b>minor</b> 42:15 <b>misrepresents</b> 5:12 <b>missed</b> 22:12 <b>mission</b> 27:24 <b>mistake</b> 47:5,16 50:24 <b>money</b> 7:8 8:2 13:8 14:17 17:7 18:24 19:14,23 23:17 26:1 28:7 52:14 <b>monies</b> 18:16 <b>morning</b> 3:10 4:15 47:17 <b>Morrissey</b> 2:13 3:17 15:2,3 16:1,9 17:2,4,8,13 18:17,20,25 19:4 22:14 31:18 34:20 35:2,17,19,22 36:20 <b>Morrissey's</b> 18:13 <b>motion</b> 6:15 10:5,7 44:18,25 45:1,8,9 46:7,8 <b>motions</b> 11:18 28:24 44:12 <b>move</b> 26:3 28:15 <b>MRACHEK</b> 2:9 <b>multilevel</b> 40:8 <b>multiple</b> 22:25	29:25 <hr/> <b>N</b> <b>N.A</b> 21:4 <b>narrow</b> 24:10 30:14 34:18 37:7 <b>National</b> 7:18 <b>necessarily</b> 38:11 44:22 45:12 <b>negotiate</b> 15:16 <b>neutral</b> 23:4 25:14 26:3 32:15 <b>neutrality</b> 33:1 <b>news</b> 40:1 <b>night</b> 4:2 47:5 50:4,5 <b>nobody</b> 7:11,12 12:8 <b>nor</b> 17:1 54:11- <b>Northern</b> 28:18 <b>notes</b> 22:12 <b>nothing</b> 42:3,4 52:17 <b>notice</b> 49:25 50:2,7,8,10,14, 15,20 <b>notification</b> 28:22 <b>notify</b> 52:4,25 <b>numerous</b> 12:6 <hr/> <b>O</b> <b>oath</b> 38:8 43:23 <b>object</b> 46:2 <b>objecting</b> 39:13 45:17 <b>objection</b> 10:2 <b>objections</b> 46:1 <b>obligated</b> 47:21 <b>obtained</b> 6:14 <b>obviously</b> 24:4 39:3 <b>office</b> 3:15 <b>officer</b> 38:16 43:25 <b>Oh</b> 33:10 <b>okay</b> 17:23 19:15 27:5 28:12,21	29:15 32:13 33:11 34:18 35:21 38:17 43:13 46:4,21,22 48:17,23,25 49:3,6 51:10,15,20,21, 25 52:25 <b>open</b> 51:19 <b>opening</b> 11:1 22:12 <b>opposition</b> 16:4 <b>oral</b> 8:18 <b>order</b> 16:3,4,5,11 20:14,22 42:2 44:9 46:6 49:21 53:8 <b>original</b> 7:12 8:17 18:8 <b>others</b> 8:6 <b>owned</b> 6:17 12:21,23 <b>owner</b> 8:11 <hr/> <b>P</b> <b>P.A</b> 2:5,13 <b>p.m</b> 50:21,24 <b>page</b> 2:9 37:5 <b>pages</b> 37:2 54:5 <b>paid</b> 38:4 41:23 <b>Palm</b> 1:1 2:10,14,18 3:4,6 <b>Pam</b> 19:13 <b>parol</b> 11:9 12:12 13:12 31:25 <b>participate</b> 36:18 47:20 <b>particularity</b> 50:2 <b>parties</b> 16:15 19:22,25 22:1 28:2,8 30:19 46:1,15 54:11 <b>party</b> 12:20 16:23 30:23 31:11,13 32:10 36:6 49:22 50:1 <b>passionate</b> 45:21 <b>past</b> 27:1 <b>pay</b> 8:6 22:18 32:7 33:9 34:22	41:19 42:17 43:10 44:3,5 <b>payable</b> 41:20 <b>paying</b> 44:6 <b>payment</b> 10:13 <b>pays</b> 33:17 <b>pending</b> 6:6,10 8:10 <b>pension</b> 11:14 <b>people</b> 4:16 8:18 11:8 15:11 18:8 21:24 28:8 29:25 35:10 47:18 48:4,5,6 49:8,9 52:21 <b>perfect</b> 26:19 <b>performed</b> 35:7 <b>perhaps</b> 24:15 50:10 <b>permissive</b> 16:12 <b>permitted</b> 22:8 <b>person</b> 5:21 22:20 23:1,4,21 25:4,19 32:15 34:6 39:15,16 43:10 47:9 49:18,22 <b>personal</b> 7:6 8:5,22 10:19 25:23 28:1,3,6,11 32:1 33:19 <b>perspective</b> 34:23 <b>Peter</b> 2:4,5 3:14 5:20 <b>petition</b> 5:22,25 21:8 29:12 <b>phone</b> 41:2,13 42:6 <b>phones</b> 31:16 <b>phonetic</b> 8:21 11:3 <b>pick</b> 29:5 33:16 41:2 <b>piece</b> 12:2 <b>plaintiff</b> 17:10 20:20 <b>plaintiffs</b> 9:7 17:15,19 <b>plan</b> 11:14 <b>plans</b> 47:18
---	---	--	---

<p>please 5:19 50:25</p> <p>pledge 43:20</p> <p>pockets 34:23</p> <p>point 6:23 14:14 15:4 18:13 19:7 27:1 28:2 40:23</p> <p>pointing 30:3</p> <p>policy 6:7,16,20 7:9 8:12 11:5,10 12:21,25 13:13 20:8 24:7,16 27:16 30:13,20 31:22 37:8,14</p> <p>position 10:5,6,22,24 11:2 13:7 14:13 16:19 18:14,17,20 25:2 26:4 45:24 49:16</p> <p>possess 51:4</p> <p>possible 36:3</p> <p>posted 53:4</p> <p>posting 4:17</p> <p>potential 14:15</p> <p>potentially 35:2</p> <p>pour-over 9:14</p> <p>pours 27:14</p> <p>PR 29:13,19 31:1,2 33:22</p> <p>practical 43:2</p> <p>precious 12:16</p> <p>premature 44:8</p> <p>prepared 49:1</p> <p>present 30:17 36:22</p> <p>presently 8:2</p> <p>preserve 26:17</p> <p>preserving 22:22,23</p> <p>pretty 10:24 23:22 28:16 42:13 48:9</p> <p>prevailing 12:20</p> <p>primarily 33:2</p> <p>prior 11:4,13</p> <p>privilege 22:22 26:23,24 27:4 46:19,21 49:22,25</p>	<p>privileged 4:8,13,19 49:17 52:11</p> <p>privity 15:8,9,13,15,17 23:11</p> <p>pro 2:20 3:13 18:12 23:22</p> <p>probability 8:14</p> <p>probably 18:2 34:12</p> <p>probate 12:23 20:13</p> <p>problem 7:11 24:20</p> <p>procedure 46:17 50:3</p> <p>proceed 29:9</p> <p>proceedings 1:9 3:3 54:4,7</p> <p>proceeds 6:20,22 7:25 9:21,23 12:25 13:5 17:1 18:9</p> <p>process 24:17 38:22</p> <p>promised 27:7</p> <p>proposal 25:12</p> <p>propose 42:1</p> <p>proposing 20:15</p> <p>protected 25:21 51:3</p> <p>prove 14:22</p> <p>provided 14:22 52:11</p> <p>provision 9:15</p> <p>PRs 11:4</p> <p>publicizing 47:18</p> <p>purify 30:5</p> <p>purported 21:20 30:8</p> <p>purpose 6:4 30:23</p> <p>purposes 16:22 22:8</p> <p>pursuant 49:13</p> <p>pursue 13:20</p> <hr/> <p>question 18:19 19:5,7 22:6 28:20 29:12</p>	<p>42:8 47:1</p> <p>questions 44:22 45:4</p> <p>quickly 28:16</p> <p>quite 19:4 20:22</p> <hr/> <p>R</p> <hr/> <p>race 13:5</p> <p>rarely 24:19</p> <p>rate 41:18,22,24 43:4</p> <p>rather 22:24 23:4</p> <p>RE 1:6</p> <p>reading 21:1,18 47:1 51:1</p> <p>real 38:21 44:8</p> <p>really 10:8 13:17 16:18 28:10 34:4,5 36:11 37:6,11</p> <p>reason 15:25 39:20</p> <p>reasonable 43:4 52:6</p> <p>reasonableness 34:2</p> <p>reasons 33:24</p> <p>receive 9:23</p> <p>received 50:22</p> <p>recent 21:7</p> <p>recently 6:14</p> <p>recipient 48:11</p> <p>recognize 18:13</p> <p>record 11:13 19:1</p> <p>records 6:16 7:14</p> <p>recovery 13:25 35:5,14,15</p> <p>references 12:7</p> <p>regard 26:8,23 46:7</p> <p>registry 8:3 18:6</p> <p>reimbursed 10:16</p> <p>reimbursement 38:6</p> <p>related 42:18</p> <p>relative 54:9,11</p> <p>relief 6:1</p> <p>rely 42:11</p>	<p>remaining 12:16</p> <p>remember 5:16 33:8</p> <p>REMEMBERED 3:2</p> <p>reminded 22:15</p> <p>remote 16:22</p> <p>replied 4:6</p> <p>reply 4:21</p> <p>reporter 54:1,16</p> <p>represent 14:7 17:2,4 23:25 25:10 38:14</p> <p>representation 14:6</p> <p>representative 8:22 10:19 28:1,3,6,11 30:22 33:19</p> <p>representatives 7:6 8:5</p> <p>represented 8:13,23 19:10,16 21:17 35:25</p> <p>representing 17:20 20:24 21:14 25:10 38:15</p> <p>represents 24:1 44:1</p> <p>reproduction 54:15</p> <p>request 4:20 29:18 43:24 51:6</p> <p>requested 5:25 8:4</p> <p>requests 44:20</p> <p>require 13:11</p> <p>required 23:3</p> <p>residual 9:13</p> <p>resolved 12:9</p> <p>resort 36:9</p> <p>respect 45:15</p> <p>respond 34:20</p> <p>result 9:14 14:10 40:12</p> <p>retain 42:3</p> <p>retained 33:14</p> <p>retaining 43:10</p>
--	---	--	--

retrieve 52:7	seeing 7:1	situation 30:7 49:12	39:8,14,21 41:18,23 42:16 43:23 44:4
return 4:12 52:2	seek 13:23 35:15,17	so-called 8:20 9:8	Stansbury's 5:22 16:20 29:24 31:12 43:8,19
review 29:6	seem 10:9,16 30:20 42:2	social 53:5	Star 37:14
revocable 27:15,16	seems 25:4 28:14 31:20 48:9	sole 6:4	started 17:25
ridiculous 36:17	seen 51:14,18	solely 50:23	starts 48:13
Robert 20:10	send 47:11 51:23	somebody 11:22 17:21 22:17	state 3:6 30:15 36:4,6
rocket 29:1	sending 48:4,20 49:8	somehow 20:19	statements 45:6
role 13:23 46:11	sends 44:19	someone 18:3 23:15 24:2,20,24 25:1,7,10,13,14 26:2 37:13 40:9	statute 14:22 35:7 38:6
room 30:1	sense 23:6 31:19 37:24 38:11	somewhere 37:19	statutes 46:17
Rose 2:9 3:19,25 4:4 5:17 10:23,24 11:3 13:4 14:4,7,14,24 17:24 19:24 21:6,15 22:3,11,14 31:18 37:23 38:7 42:15,22 43:2,7,22 44:2 46:19,23,25 47:11,16 48:14,24 49:13,20 50:4,9,13,17,21 52:18 53:4	sensitive 4:19	sort 4:1	steal 20:8
Royer 2:4 3:16	sent 4:5,11 27:8 44:24 47:4,9,17,25 48:2,3,9 50:16,23,24 51:8,11,16	sought 15:20	step 7:2 37:20,21
rule 4:10,21 16:22 44:7 46:1 48:22 49:13 50:12,15 51:10,11,21 52:12 53:2,3	separate 37:12,25 42:20	sound 37:21	steps 52:6
rules 46:17 47:22 49:5	serve 49:24	sounded 26:18	stick 31:19
ruling 46:10	several 49:7,9	sounds 28:25 30:9 31:5	stop 10:4 45:23 48:21
run 28:15 34:9,10	sheets 42:21	Southern 28:16	stopped 48:7
running 29:4	shorthand 11:21,25	Spallina 8:21 11:3 20:10 44:24 45:17	stranger 24:21,22
<hr/> <u>S</u> <hr/>	shorthanded 11:22 21:9	Spangled 37:14	strategies 32:2
satisfy 15:17	showed 20:20	speak 41:2	strategize 29:8
scared 48:5	shy 40:6	speaking 16:11 48:21	Street 2:14
scheduled 5:15	sign 37:4	specify 50:2	stuck 44:6
scheme 20:15	Signed 51:8	spend 12:15 28:6 52:13	stuff 40:16 48:2
school 38:10	signing 53:7	spends 37:25	style 17:14 18:8 21:2
se 2:20 3:13 18:12 23:22	Simon 1:6 6:8,18 7:19,20 9:9,18 11:20 12:21 17:11 19:9,11,12,13,1 8 21:3,5,11,17 25:2 27:7,19 30:21,22 32:22	spent 13:18	subject 12:18 18:3 33:19 38:5
second 7:18 27:6 48:22	Simon's 27:20	squarely 27:3	submitted 5:24 20:10
seconds 4:4	simple 10:24	stage 33:22	subparts 45:4
sections 16:5	simplest 30:11	stand 19:2	Subsection 49:15 51:12
	sincerity 43:16	standard 16:10	subsequently 17:17
	single 37:7	standing 15:23	succeed 9:21
	sir 42:14 49:20 50:18	stands 19:13	succeeds 10:14
	sister 19:13	Stansbury 2:3 3:15 5:21 6:3 13:7,14 14:15 15:4 16:19,24 22:17,18,24 23:5,10 25:17 26:8 27:9 29:3,20 31:3 32:7 33:9,11 35:6 38:4,8,19	success 8:14
			successor 9:4
			sued 20:6
			suggest 25:4
			suit 21:14
			Suite 2:5,14,18
			summary 13:11

<p>supplement 5:25</p> <p>support 11:9</p> <p>supporting 12:3</p> <p>supposed 27:24,25 41:19 47:14 51:13 52:1,2,3</p> <p>sure 13:19 14:12 22:13 24:14 25:20 26:12 35:20 39:15 40:17,18 42:21 47:19 52:19</p> <p>system 11:22 22:23</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>taker 35:24 36:5,9,10</p> <p>taking 10:6 33:20,22</p> <p>talk 36:1 38:9</p> <p>talking 34:22 37:1</p> <p>tax 12:5,6</p> <p>taxable 12:22</p> <p>technically 17:24 19:25 23:21</p> <p>Ted 2:8 3:19 4:5,9 5:6,9 9:3 21:13,22 29:22 47:4 50:22</p> <p>Ted's 51:17,18</p> <p>temporary 27:24</p> <p>ten 9:12,17,24</p> <p>testamentary 27:2,3</p> <p>testimony 8:18 14:4</p> <p>Tetra 11:3 44:24 45:17</p> <p>Thank 51:5 53:8</p> <p>that's 5:5 6:23 7:5 11:15,17,25 12:8,9 14:6 17:14 19:18 21:18,21 23:8,18,24 24:7,9,17 25:6,18 26:3,6,9 29:17 30:13,14 31:19,21 32:25 33:3 35:11 36:17 37:5,19</p>	<p>38:5 40:1,2 41:16 42:20,24 43:4 45:10,19,24 46:18 52:3</p> <p>therefore 6:25</p> <p>therefrom 6:20</p> <p>there's 5:15 7:23 11:11,16,21 12:6 14:9 15:7 22:11 24:25 27:25 28:19,22 31:1,2 32:11,12 33:5,22 35:12,13 36:4,12 38:19,20 39:11,22 40:8 42:3,4,8 43:14 45:25 46:1 49:16 50:3 52:17</p> <p>they'll 37:10 39:6</p> <p>they're 8:15 9:2 12:15 20:1 21:19 24:21 25:3 36:9,10 39:5 43:20 52:5</p> <p>They've 12:25 43:19</p> <p>third 23:4 27:22</p> <p>third-party 45:7</p> <p>thorough 45:13</p> <p>thousands 49:10</p> <p>thread 27:8</p> <p>threatening 5:5 48:2,6,9</p> <p>today 3:24 29:14,15 41:7 44:11 50:11</p> <p>tonight 50:25</p> <p>top 47:3</p> <p>touched 22:14</p> <p>tough 23:23</p> <p>transcript 54:4,6</p> <p>transmission 51:5</p> <p>treating 30:22</p> <p>trial 13:12</p> <p>tried 33:14</p> <p>tries 23:22</p> <p>true 22:5 41:16 54:6</p>	<p>trust 7:11,12,14,16,1 8,19,21 8:21,25 9:5,6,8,16,17 11:21 12:2,4,8,11 13:10 17:1,11,25 19:9,21 20:16 21:3,5,10,12,20 ,23 22:1 25:3 27:15,16 30:21,23 32:23 36:13 37:10 40:10</p> <p>trustee 8:24 9:4 21:20,23</p> <p>try 8:15 10:10,20 20:8 46:6</p> <p>trying 27:9 46:11 47:11 50:9,10</p> <p>twofold 13:17</p> <p>type 24:4 32:1 38:20</p> <p>types 30:15</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimately 24:15 33:21</p> <p>underpinnings 45:18</p> <p>understand 32:5 33:4 37:23 43:22 52:18</p> <p>understanding 18:3</p> <p>undertake 38:9</p> <p>unless 13:24 24:20,25 35:13 54:15</p> <p>usual 5:4</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>validity 46:9</p> <p>versus 29:19</p> <p>Vietnam 27:23</p> <p>view 18:14 23:2 27:4 40:24 45:14</p> <p>voice 24:16,22 30:25 31:5</p> <p>volunteering 26:9</p> <p>vs 17:11 21:22</p>	<hr/> <p style="text-align: center;">W</p> <hr/> <p>waive 18:22,23,25 19:5</p> <p>War 27:23</p> <p>wasn't 36:6</p> <p>wasting 27:12</p> <p>week 20:21</p> <p>weeks 20:21</p> <p>we'll 5:14,16 9:1 51:6</p> <p>we're 3:11 6:2,24 23:13 29:1 31:25 34:21</p> <p>West 2:10,14,18 3:5</p> <p>whatever 5:6 7:20 32:23 33:19 34:16 52:15,16</p> <p>Whereupon 53:9</p> <p>whether 23:16 37:11</p> <p>Whoever 28:5</p> <p>whoever's 48:16</p> <p>whole 50:11</p> <p>whom 9:25 50:1</p> <p>whomever 29:5</p> <p>who's 31:11</p> <p>wife 48:7</p> <p>William 2:3 3:15 5:20</p> <p>willing 25:18 26:16 31:3,8 38:8</p> <p>win 14:17 24:25</p> <p>wit 3:8</p> <p>work 8:25 9:2 29:5 31:16,17 46:2,5</p> <p>worked 33:25</p> <p>working 38:1</p> <p>works 33:25</p> <p>worried 43:13</p> <p>worth 33:6</p> <p>wound 35:12</p> <p>written 49:25 50:7</p> <p>wrong 42:3,4 49:14</p>
---	--	---	--

<p>_____</p> <p style="text-align: center;">Y</p> <hr/> <p>yet 9:5 14:5,13 51:14</p> <p>You'll 40:19,20</p>			
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**EXHIBIT B**

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

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
by Ted S. Bernstein, its Trustee, Ted S. )  
Bernstein, an individual, )  
Pamela B. Simon, an individual, )  
Jill Iantoni, an individual and Lisa S. )  
Friedstein, an individual. )

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

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

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
Successor in interest to LaSalle National )

**Case No. 13 cv 3643  
Honorable Amy J. St. Eve  
Magistrate Mary M. Rowland**

Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Trustee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd 6/21/95, )  
and ELIOT BERNSTEIN )

Third-Party Defendants. )  
\_\_\_\_\_ )

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

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

Cross-Defendant )

and, )

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

Third-Party Defendants. )  
\_\_\_\_\_ )

**AFFIDAVIT OF DON SANDERS**

1. I, Don Sanders, am a resident of the City of Mansfield, County of Tarrant, State of Texas and am over the age of 18. If I were called and sworn as a witness in this matter I could competently and voluntarily testify to the facts set forth in this Affidavit.
2. When I use the term Capitol Bankers, I mean Capitol Bankers Life Insurance Company.
3. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
4. When I use the term "Jackson" I mean Jackson National Life Insurance Company.
5. When I use the term "Insurer", I mean the life insurance company that was the insurer of the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
6. When I use the term "Policy" herein, I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
7. When I use the term "Insured", I mean Simon Bernstein.
8. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.
9. When I use the term "Policy Proceeds", I mean either the amount that was payable by the Insurer under the Policy upon the death of the insured and/or the amount that was actually paid by the Insurer to the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
10. When I use the term "Policy records", I mean the records of the Insurer relating to the Policy as produced by Jackson during the Litigation.
11. When I use the term "Litigation", I mean the above-captioned litigation.
12. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
13. I am currently employed as Assistant Vice-President of Operations for Jackson.
14. I have been employed in Jackson's operations department for the past 11 years, and have been employed in the life insurance industry for approximately 32 years.

15. In my role as Assistant Vice President of Operations with Jackson, I have personal knowledge regarding the policy administration and death claim practices and procedures Jackson utilizes with regard to the Capitol Bankers Life Insurance Policy at issue.
16. I am aware that I am being presented as a witness pursuant to Fed. R. Civ. P. 30(b)(6), on behalf of Jackson in response to a Subpoena for Deposition served upon Jackson by the Plaintiffs in the above-captioned matter.
17. I am aware that pursuant to Rule 30(b)(6) my statements and this Affidavit shall be relied upon as the statements of Jackson, itself.
18. I have had access to counsel for Jackson with regard to my testimony and affidavit prior to having signed this Affidavit.
19. I understand that since Heritage paid the Policy Proceeds to the Registry of the Court, Heritage has been dismissed and is no longer a party to the Litigation.
20. I have no personal or business interest in the outcome of the Litigation including no interest in the determination by the court of the beneficiary(ies) of the Policy Proceeds.
21. No one from Jackson has any interest in the outcome of this Litigation including determination by the court of the beneficiary(ies) of the Policy Proceeds.
22. I have received no compensation from any party to the Litigation in exchange for my testimony.
23. The Policy was issued by Capitol Bankers in 1982.
24. In June 1998, Capitol Bankers was acquired by Swiss Re Life & Health America, Inc.
25. In May of 2000, Capitol Bankers entered into a one hundred percent Coinsurance/Administrative Reinsurance Agreement with Reassure America Life Insurance Company.
26. In May 2000, one hundred percent of stock of the Capitol Bankers was sold to Annuity & Life Reassurance.
27. In December of 2000, Capitol Bankers changed its name to Annuity & Life Reassurance America, Inc.

28. In August 2005, Annuity & Life Reassurance America, Inc. was acquired by Wilton Re Group.
29. In August 2008, Annuity & Life Reassurance America, Inc. changed its name to Heritage Union Life Insurance Company.
30. In 2012, Jackson acquired and merged Reassure America Life Insurance Company into Jackson, and as a result, Jackson became administrator and reinsurer of the Policy.
31. Since at least 2000, Jackson (and/or its predecessor Reassure America Life Insurance Company) has been in possession of the Policy records.
32. I have personal knowledge regarding the record-keeping procedures and practices utilized by Jackson with regard to its administration of the Policy and others like it.
33. I have reviewed and made myself familiar with the Policy records.
34. The Policy records start with bates no. JCK000001 and end at bates no. JCK001275. I have reviewed these bates-stamped records, and can attest that the bates-stamped records are a true, accurate and complete set of the Policy records in Jackson's possession pertaining to the Policy.
35. The Policy records do not contain an original or executed duplicate of the Policy, which was issued in 1982.
36. The Policy records do include a specimen policy form, a copy of the Insured's application, and copies of the schedule pages that were included with the original Policy.
37. Also, the Policy records do not include:
  - (a) an original or copy of the "S.B. Lexington Employee Death Benefit Trust"; or
  - (b) the "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995", or
  - (c) any purported trust named the "Simon Bernstein Trust, N.A."
38. Bates no. JCK001099 to JCK001117 is a Capitol Bankers Life Insurance Company specimen policy form of the Capitol Bankers whole life insurance product referred to as "Current Value Life". This specimen policy is a sample of the policy form issued on the life of Simon Bernstein as Policy No. 1009208 (the "Policy").
39. This specimen policy form contains the same policy language that is contained in Policy No. 1009208. The only pages that are different are pages that relate to the variable policy

specifications that pertain primarily to Simon Bernstein's age, underwriting classification, sum insured and statement of policy costs and benefits.

40. From my review of the records, on the date of issuance the sum insured (or death benefit) of the Policy was \$2 million.
41. The Policy is a whole life, flexible premium, life insurance contract, which is a type of policy that builds cash value as premium payments are made.
42. The Insurer will deduct the monthly cost of insurance charges from any existing cash value in the Policy, but when the cash value is insufficient to cover the cost of insurance, then the Policy will go into a grace period and eventually lapse if no premium payment is made. A brief summary description of these features of the Policy are contained in a letter from the Insurer dated November 9, 2010, to the Owner. (Bates No. JCK000131).
43. If premium payments are not made according to schedule, or Policy loans are taken against the cash value, this reduces the cash value which negatively impacts the Policy's performance and eventually results in a reduction in the Policy proceeds.
44. The Policy records indicate that premiums were not made according to schedule, and Policy loans occurred with regard to the Policy such that at the time of the Insured's death, the net death benefit payable by the Insurer was \$1,689,070.00 (the "Policy Proceeds").
45. Bate stamp no. JCK001252-JCK001258 is a financial history report that is titled "Financial Activity from Issue."
46. On page JCK001258, the financial history report indicates that the amount of the Policy Proceeds at the time of the Insured's death was \$1,689,070.00.
47. I have reviewed the receipt from the Registry of the Court for the Northern District of Illinois (the "Registry"), and according to the receipt the Policy Proceeds, a total of \$1,703,567.09, was deposited by the Insurer to the Registry on June 26, 2013. This deposit represented the Policy Proceeds of \$1,689,070.00, less a deduction for a policy loan, plus interest paid from the date of Simon Bernstein's death until the date of deposit with the Registry. (Bates No. BT000106)
48. Part I of the Policy application is contained in the Policy records as Bates No. JCK000419. The owner and beneficiary sections of Part I set forth the initial policy owner and beneficiary(ies) of the Policy.

49. According to Part I of the application, the Policy Owner at issuance was “First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust”.
50. Also according to Part I of the application, the beneficiary was designated as follows: “First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust”.
51. According to Part I of the application, Simon Bernstein’s employer at the time of issuance was S.B. Lexington, Inc. and his title was listed as Chairman of the Board. (JCK000419).
52. Bates no. JCK001021 is a copy of the Schedule Page that was included with the Policy. The Schedule Page indicates the Policy No. 1009208 was a “Current Value Life” plan issued on December 27, 1982, insuring the life of Simon Bernstein with a “sum insured” of \$2 million.
53. Bates no. JCK001023 through JCK001024 is a copy of a Current Value Life, Statement of Policy Cost and Benefit Information which is an illustration of projected values and benefits of the Policy. This Statement of Policy Cost and Benefit Information indicates on its face that it was produced on the issue date of the Policy, December 27, 1982.
54. On or about November 7, 1989 the Insurer acknowledged a change of ownership designating United Bank of Illinois as trustee. (JCK000811). This first change of trustee likely occurred as early as July 6, 1983, because the Insurer received and recorded a Request Letter making this same change in trustee. (JCK000935)
55. On or about June 5, 1992, a letter submitted on behalf of the Policy Owner informing the Insurer that LaSalle National Trust was being appointed as successor trustee. On June 17, 1992, the Insurer acknowledged the change of ownership and designated the Policy Owner on its records as LaSalle National Trust, N.A., as Successor Trustee. (Bates No. JCK000365).
56. On or about November 27, 1995, Capitol Bankers received a “Request Letter” signed by LaSalle National Trust, N.A. in their capacity as Trustee, as Policy Owner, and the Request Letter contained the following requested changes to the Policy:
  - (a) LaSalle National Trust, N.A. as Trustee was designated as the primary beneficiary of the Policy; and
  - (b) The Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995 was designated as the contingent beneficiary.



57. Though the name of the Trust on the Request Letter was set forth as stated in Par. 30(b) above, it was apparently abbreviated upon input into the Insurer's systems as Simon Bernstein Ins. Trust Dated 6/21/95. (Bates No. JCK000370, JCK000372, JCK000514, JCK000554, 599, 601).
58. As a matter of standard policy and procedures at Jackson and as set forth in the Policy itself, the designation of the Owner and Beneficiary is governed by the Request Letter or Direction of the Owner and not by how the name of the owner or beneficiary is input by employees into the Insurer's systems as part of policy administration.
59. In my experience in operations, Insurers' systems require employees to abbreviate names of owners and/or beneficiaries at times when the names contain too many characters for the Insurer's systems capabilities.
60. On November 27, 1995 Capitol Bankers sent correspondence to LaSalle National Trust N.A., as Successor Trustee acknowledging the changes in beneficiaries as referenced in Par. 56 above.
61. In April of 1998, LaSalle National Trust, as successor Trustee submitted a change of owner which designated Simon Bernstein as the Owner of the Policy. (Bates No. JCK000560).
62. After reviewing Jackson's records on the Policy, I can confirm on behalf of Jackson that on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (Bates No. JCK000370).
63. Capitol Bankers Life Insurance Company acknowledged receipt of the "executed beneficiary change" in its correspondence to the Owner of the Policy dated November 27, 1995. (JCK000372).
64. According to Jackson's records, following the death of Simon Bernstein, Heritage or Jackson received competing claims to the death benefit proceeds. Jackson or Heritage received claims on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 and a competing claim in the form of a letter from Eliot Bernstein either on his own behalf or on behalf of his children.

65. According to Jackson's records on the Policy, no one named Eliot Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
66. According to Jackson's records on the Policy, no one named Joshua Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
67. According to Jackson's records on the Policy, no one named Jacob Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
68. According to Jackson's records on the Policy, no one named Daniel Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
69. According to Jackson's records on the Policy, no Owner of the Policy ever submitted a beneficiary designation which designated Simon Bernstein Trust, N.A. as a beneficiary of the Policy.
70. According to Jackson's records, no Owner of the Policy ever submitted a beneficiary designation which designated "Simon Bernstein's estate" or "the Estate" as beneficiary.
71. From my review of the records, and my experience in the industry and with Insurer database systems, it is evident that the name Simon Bernstein Trust, N.A. was either entered by an employee of the Insurer either as an abbreviation for the actual contingent beneficiary or in error. In any case, the document that contains the Owner's actual last beneficiary designation prior to the death of the insured is Bates No. JCK000601. In this document, the Owner designates Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 as the contingent (or successor) beneficiary.
72. The last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured is Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995". (See Bates No. JCK000370 and JCK000372).
73. According to Jackson's records, the last change of Owner submitted on the Policy prior to the death of the insured was on or about April 3, 1998. (JCK000563 and 566).
74. According to Jackson's records, a company named Equifax conducted an interview in connection with the application and underwriting for the Policy. The Equifax report indicates that Simon Bernstein was interviewed on March 25, 1982. The report says on

its face that it was prepared for Life Insurance Underwriting purposes only.  
(JCK001074).

75. Contained in the Equifax Report from Simon Bernstein's interview is the following description of the intended purpose of the insurance:

"BENEFICIARY-PURPOSE OF INSURANCE: The beneficiary of this policy is First Arlington National Bank, S.B. Lexington, Inc. employee death benefit trust. The insurance will be paid to the trust, and the trust will determine the manner in which the benefits are to be paid and to whom it will be paid. Normally, benefits are paid to family members." (JCK001084).

76. Since the death of Simon Bernstein, Jackson (and "Heritage") has received notices of potential claims from the Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95, and from Eliot Bernstein, purportedly on his own behalf and on behalf of his children. I am aware that a person named William Stansbury filed a petition to intervene in the above-captioned litigation but that his petition to intervene was denied by the court. I am aware that in Plaintiff's First Amended Complaint, that Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein have filed claims seeking imposition of a Resulting Trust and as such First Amended Complaint does represent additional potential claims to the Policy Proceeds.

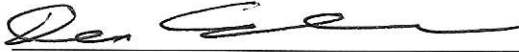
77. The Policy records do not include any notices of claims from any of the following individuals or entities:

- a) The VEBA;
- b) Any Bank Trustee of the VEBA;
- c) Adam Simon;
- d) David Simon;
- e) The Simon Law Firm ; or
- f) STP Enterprises, Inc.

78. I am unaware of any claims having been received by Jackson or Heritage as to the Policy proceeds from any persons or entities, other than those described in Par. 76 above.

*FURTHER AFFIANT SAYETH NAUGHT.*

Dated: April 8, 2014



Don Sanders, Assistant Vice-President  
Jackson National Life Insurance Company

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 8th DAY OF APRIL, 2014.



NOTARY PUBLIC  
County of Dallas, TX

