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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA
NO. 502012CP004391XXXXSB
CP - Probate

IN RE:)
ESTATE OF SIMON L. BERNSTEIN)
_____)

TELEPHONIC DEPOSITION of DONALD R.
TESCHER, called as a witness by and on behalf of
Ted S. Bernstein, pursuant to the applicable
provisions of the Florida Rules of Civil Procedure,
before P. Jodi Ohnemus, RPR, RMR, CRR, CA-CSR
#13192, NH-LCR #91, MA-CSR #123193, and Notary
Public, within and for the Commonwealth of
Massachusetts, at the Hampton Inn & Suites, 10
Plaza Way, Plymouth, Massachusetts, on Wednesday, 9
July, 2014, commencing at 2:38 p.m.

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1 (Tescher 1, Simon L. Bernstein Amended and
2 Restated Trust Agreement.)

3 (Tescher 2, three-page web printout.)

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19 Consulting, LLC.)

20 (Tescher 11-A, Reconciliation Detail,
21 Period ending 9/29/2006.)

22 (Tescher 11-B, Reconciliation Detail,
23 period ending 11/30/2006.)

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25 period ending 1/31/2007.)

1 (Tescher 12, Declaratory Action to
2 Establish a Lost Trust and Appoint a
3 Successor Trustee.)

4 (Tescher 13, TS 001359-367,
5 Will of Simon Bernstein.)

6 (Tescher 14, four-page document,
7 12/6/2012.)

8 (Tescher 15, Florida Department of State,
9 Detail by Entity Name, T&S Registered
10 Agents, LLC.)

11 MR. FEAMAN: Alan, you're taking this
12 deposition for the purpose of using it at the
13 hearings that are going to take place on Friday
14 before Judge Colin; and I'd like to stipulate that
15 by this deposition today, I am not waiving -- I
16 assume none of the other parties are waiving their
17 right to take the deposition of Mr. Tescher at some
18 point in the future concerning any issues that are
19 not before the court on Friday.

20 MR. BLOCK: What's before the court on
21 Friday?

22 MR. FEAMAN: Before the court on Friday,
23 according to an order entered by Judge Colin --

24 MR. BLOCK: What date is Friday?

25 MR. FEAMAN: Friday is the 11th.

1 MR. BLOCK: Okay. Good enough.

2 MR. FEAMAN: And the four things that this
3 deposition -- I understand -- is being taken for
4 is, No. 1, Elliot Bernstein's motion to disqualify
5 Alan Rose and the Mrachek law firm and John
6 Pankauski and the Pankauski law firm; No. 2, the
7 various motions/petitions filed in connection with
8 an appointment of a successor personal
9 representative for the estate of Simon Bernstein;
10 No. 3, the various motions and petitions filed in
11 connection with the removal of Ted Bernstein as
12 trustee of the Simon Bernstein Revocable Trust; and
13 the determination of the applicability of the
14 attorney/client privilege regarding an email sent
15 by Ted Bernstein to Eliot Bernstein; and that, by
16 our asking questions of Mr. Tescher today, we do
17 not waive the right to take Mr. Tescher's
18 deposition, if necessary, at some point in the
19 future concerning any other issues that may or may
20 not arise in connection with these matters.

21 MR. ROSE: I have no objection to your
22 stipulation. In fact, I think it's very obvious
23 that this deposition should be limited to four very
24 narrow issues. One of them has nothing to do with
25 Mr. Tescher -- which will be the privileged email.

1 I agree wholeheartedly.

2 I would actually express in advance some
3 concern that your exhibits would seem to go far
4 afield of those issues. But subject to that, I am
5 fine with your stipulation. And I would like to --
6 I think the witness should be sworn in.

7 MR. MORRISSEY: This is John Morrissey.
8 The only addition that I would have to the
9 stipulation is Mr. Feaman made a couple of
10 references to the use of this deposition only at
11 the hearing on the 11th.

12 My understanding is we have a kind of a
13 pour-over hearing on the 16th. So I would add to
14 that stipulation that this deposition could be used
15 on the 16th to the extent necessary as well.

16 MR. FEAMAN: Well, my stipulation doesn't
17 involve use. It involves a waiver on the part of
18 my client to -- if -- that somehow he would not be
19 allowed or anybody else would be allowed to take
20 Mr. Tescher's deposition again because it's already
21 been taken. And the point is, there may be issues
22 that arise in the future in which Mr. Tescher is
23 involved -- either as a witness or in some other
24 capacity -- and, therefore, today's deposition
25 would not be a waiver of any parties' right to take

1 his deposition in the future for other matters.

2 MR. ROSE: Let me take over for a second.
3 This is Alan Rose. Mr. Block, as counsel for Don
4 Tescher, do you agree he can be deposed again in
5 the future?

6 MR. BLOCK: Well --

7 MR. FEAMAN: Subject to the limitation and
8 nobody would ask him the same questions we're going
9 to ask him today.

10 MR. BLOCK: What I agreed to is the
11 stipulation decided by Peter, with the additional
12 of the date of the 16th by John Morrissey. That's
13 what I agree to.

14 MR. ROSE: And for the record, the
15 deposition is going to be used for whatever
16 purposes a deposition can be used under the Florida
17 Rules of Civil Procedure with no limitation.

18 You can swear in the witness.

19 DONALD R. TESCHER, having
20 satisfactorily been identified by
21 the production of a driver's license,
22 and being first duly sworn by the Notary
23 Public, was examined and testified as
24 follows to interrogatories

25 BY MR. ROSE:

1 **Q. Would you state your full name for the**
2 **recovered?**

3 A. Donald R. Tescher.

4 **Q. And are you an attorney licensed to**
5 **practice law in the State of Florida; currently a**
6 **partner of the law firm Tescher & Spallina?**

7 A. Yes; and yes.

8 **Q. Where are you physically located today?**

9 A. Right now I'm sitting in Plymouth,
10 Massachusetts.

11 **Q. Is your plan to spend the summer in**
12 **Massachusetts?**

13 A. Yes.

14 **Q. Do you have plans to be in Palm Beach**
15 **county or July 11th or July 16th of this year?**

16 A. No.

17 **Q. Is -- is your current location more than**
18 **100 miles from the courthouse?**

19 A. Your courthouse; right -- or our
20 courthouse, I should say, in Florida --

21 **Q. Is your --**

22 A. -- certainly it's about 1,500 miles.

23 **Q. Is your location more than 100 miles from**
24 **the Palm Beach County courthouses?**

25 A. Yes, sir.

1 **Q. Okay. You have in front of you something**
2 **called "Affidavit of Donald Tescher"?**

3 A. I don't. (Witness reviews documents.)
4 I do.

5 MR. ROSE: I'd like to mark that as
6 Exhibit 1 to your deposition.

7 (Discussion off the record.)

8 (Tescher A, Affidavit of Donald R.
9 Tescher.)

10 **Q. Are you familiar with Exhibit A, Mr.**
11 **Tescher?**

12 A. Yes, sir.

13 **Q. Is this an affidavit you prepared some**
14 **time ago?**

15 A. Yes.

16 **Q. And signed under oath on March 4th, 2014?**

17 A. Yes.

18 **Q. Have you reviewed the affidavit recently?**

19 A. Yes.

20 **Q. And had you reviewed the affidavit and had**
21 **a role in editing it prior to the time that you**
22 **signed it in March of 2014?**

23 A. Yes, I did.

24 **Q. If I asked you questions that would elicit**
25 **the information that you put in your affidavit in**

1 **March, would you give me the same answers today as**
2 **you wrote in your affidavit?**

3 A. I believe so.

4 **Q. Now, attached to the affidavit there are**
5 **five documents that have been marked in the**
6 **affidavit as A, B, C, D, and E.**

7 A. Yes, sir.

8 **Q. Do you have those in front of you?**

9 A. Yes, I do.

10 **Q. The first document -- which is Exhibit A**
11 **to your affidavit -- is entitled "Will of Shirley**
12 **Bernstein."**

13 **Are you familiar with the will of Shirley**
14 **Bernstein?**

15 A. This is the will that was executed on May
16 20, 2008.

17 **Q. And the original of this will was held in**
18 **your safe deposit box and ultimately was filed with**
19 **the court?**

20 A. That is correct.

21 **Q. Exhibit B is the Shirley Bernstein Trust**
22 **Agreement, also dated May 20, 2008.**

23 **Are you familiar with that document?**

24 A. Yes, sir.

25 **Q. Was your law firm responsible for drafting**

1 the will and the trust for Shirley Bernstein?

2 A. Yes, it was.

3 Q. If you look at Exhibit C, there's a
4 document called "First Amendment to Shirley
5 Bernstein Trust Agreement."

6 Are you familiar with that document?

7 A. Yes, sir.

8 Q. Is Exhibit C a true and accurate copy of
9 the first amendment to the Shirley Bernstein Trust
10 Agreement?

11 A. The only thing that's unusual about the
12 copy I'm looking at here is there's no date
13 inserted on the top of the first page; and I
14 believe that document, as I recall, was -- was
15 dated. It's dated, obviously, on the page 2.

16 Q. As far as you know, is the document
17 attached to the affidavit an accurate copy of what
18 would have been signed by Shirley Bernstein on or
19 about November 18, 2008?

20 A. Yes.

21 Q. Other than the three documents -- A, B,
22 and C -- are you aware of any other operative
23 documents that would have -- that would have been
24 signed by Shirley Bernstein while she was alive?

25 A. No.

1 MR. FEAMAN: Objection to the form.

2 Q. I'll ask a different question: As far as
3 you know, are Exhibits A, B, and C, the will, and
4 the trust, and the amendment and -- the only
5 amendment that you're aware of to the Shirley
6 Bernstein Trust?

7 A. Yes.

8 Q. Now, Exhibit D is the will of Simon
9 Bernstein.

10 Do you see that?

11 A. Yes, sir.

12 Q. And this is a -- not original document,
13 but it appears to be dated on July 25, 2012.

14 A. It appears to be a conformed copy of a
15 will that was executed, apparently, on that date.

16 Q. And this will would have been held in your
17 safe deposit box in the original files with the
18 court upon Mr. Bernstein's death?

19 A. Yes, sir.

20 Q. And as far as you know, is this the last
21 will of Simon L. Bernstein?

22 A. Yes, sir.

23 Q. The last exhibit, Exhibit E, is the Simon
24 L. Bernstein Amended and Restated Trust Agreement,
25 which is dated July 25, 2012.

1 **Are you familiar with this document?**

2 A. Yes.

3 **Q. As far as you know, is this the final**
4 **version of a -- or the last version of any trust**
5 **document that Simon Bernstein signed prior to his**
6 **death?**

7 A. Yes, sir.

8 **Q. Are you familiar with the prior versions**
9 **of Simon's will and trust from 2008?**

10 A. Generally.

11 **Q. In the 2012 document, were you and Robert**
12 **Spallina designated as the successor cotrustees**
13 **upon the death of Simon Bernstein?**

14 A. Yes, we were.

15 **Q. And do you recall who had been listed as a**
16 **successor cotrustee in the 2008 version?**

17 A. My -- my recollection -- and I don't
18 specifically recall -- that it might have been Mr.
19 Stansbury.

20 **Q. And are you aware of a decision by Simon**
21 **Bernstein to remove Mr. Stansbury as a successor**
22 **trustee under his 2012 trust?**

23 A. Yes, indirectly.

24 **Q. Did you have any discussions with Simon**
25 **about that decision?**

1 A. I did not have discussions directly with
2 Simon regarding that decision.

3 **Q. Upon Mr. Spallina's resignation as**
4 **trustee, at some point in time you were the sole**
5 **remaining trustee of the Simon L. Bernstein Amended**
6 **and Restated Trust Agreement; is that correct?**

7 A. Yes, sir, for one day.

8 **Q. And did the trust document give you any**
9 **powers with regard to deciding who would be your**
10 **successor?**

11 A. The provision of the trust document
12 provides first that if there is none named, that
13 the last surviving trustee can designate the
14 successor trustee.

15 **Q. And did you make a decision in your**
16 **position who should be the successor to you?**

17 A. Yes, I did.

18 **Q. And who did you select?**

19 A. I selected Theodore.

20 **Q. And could you tell the court why you**
21 **selected Mr. Bernstein -- Mr. Ted Bernstein?**

22 A. I concluded that he was the logical choice
23 for a variety of reasons, including the fact that
24 he -- among all of the children, probably had the
25 most knowledge of his -- his mother and father's

1 matters. He was then serving as successor --
2 personal representative and successor trustee for
3 Shirley after Simon had died. He had, you know,
4 direct knowledge of the litigation that was ongoing
5 with William Stansbury. He's not a beneficiary
6 under any of those documents, other than dividing
7 up tangible personal property; and I believe him to
8 be a competent person and a competent businessman.

9 **Q. Did you give any consideration to**
10 **selecting Eliot Bernstein for that role?**

11 A. Not at all.

12 **Q. Do you think that Simon Bernstein would**
13 **want Eliot Bernstein to have any fiduciary role in**
14 **connection with his will or his trust?**

15 A. I do not.

16 **Q. And can you tell us why?**

17 A. There has been --

18 MR. FEAMAN: Objection to the form.

19 **Q. You can answer, sir.**

20 A. Over -- over the years it was made
21 apparent to us by members of the Bernstein family
22 that Eliot -- Eliot suffers from certain
23 impediments and impairments that would affect his
24 judgment and ability to act in an impartial fashion
25 and to handle the affairs that would be necessary

1 to be handled.

2 Eliot and his family -- particularly his
3 siblings -- did not enjoy a -- a wonderful
4 relationship. It's my understanding that he, at
5 times, threatened -- I'm not sure if he actually
6 sued -- but he certainly threatened to sue certain
7 members of the family.

8 In fact, my recollection is that there is
9 an agreement that Si Bernstein had Eliot and his
10 wife execute regarding his ceasing that activity,
11 in exchange for which -- I believe that there were
12 payments to be made to Eliot Bernstein in
13 connection with helping to support him.

14 **Q. Now, do you recall Mr. Stansbury also**
15 **being named as the successor personal**
16 **representative under Simon's 2008 document?**

17 A. I don't specifically recall, but I think
18 that was the case.

19 **Q. And in the documents that were signed July**
20 **25th, Mr. Stansbury is not named in any capacity;**
21 **is that correct?**

22 A. That is correct.

23 **Q. Do you know what happened between or**
24 **around July of 2012 that would have caused Simon**
25 **Bernstein to want to remove William Stansbury from**

1 **having any role or say in his affairs?**

2 MR. FEAMAN: Objection to the form.

3 A. Well, I -- I believe -- although I'm not a
4 hundred percent certain -- that litigation had
5 already commenced by Mr. Stansbury against Mr.
6 Bernstein -- Simon Bernstein -- as well as the Life
7 Insurance Concepts and other entities around that
8 time.

9 **Q. Did you have personal knowledge of Simon's**
10 **reaction to being sued by William Stansbury?**

11 A. Unfortunately, no, I do not.

12 **Q. Okay. That's fine.**

13 **Now, in connection with the estate**
14 **planning, did Simon take any extra precautions or**
15 **special arraignments in dealing with assets that**
16 **were being provided to or set aside for Eliot**
17 **Bernstein?**

18 A. Yeah. And, again, this was not -- this
19 was not a matter that our firm was involved in
20 creating or structuring.

21 Simon Bernstein had trusts created for
22 Eliot Bernstein's three children. He had those
23 trusts become the members -- sole members of a
24 limited liability company. He provided the
25 financing and the monies to acquire their current

1 residence, which is owned in that limited liability
2 company; and, in essence, owned by those three
3 trusts for Eliot Bernstein's children.

4 **Q. And were those elaborate estate plans**
5 **designed and created so that Eliot would not have**
6 **any assets in his individual name or control?**

7 A. I believe that that was part of the
8 rationale.

9 **Q. Prior to the time that you resigned, Ted**
10 **was not playing any role in the Simon estate or the**
11 **Simon trust; is that accurate?**

12 A. I'm sorry? Who wasn't?

13 **Q. Ted was not involved --**

14 A. Ted?

15 **Q. -- in a fiduciary capacity for the Simon**
16 **estate or for the Simon trust prior to your**
17 **resignation; is that accurate?**

18 A. That is correct.

19 MR. FEAMAN: Objection to form.

20 MR. ROSE: What's the objection?

21 MR. FEAMAN: No predicate. Overly broad.

22 **Q. Now, was Ted at that same time serving in**
23 **a fiduciary capacity as the successor trustee of**
24 **the Shirley Bernstein Trust and the successor PR of**
25 **the Shirley Bernstein estate?**

1 A. Yes, sir.

2 Q. And was your law firm representing him in
3 his capacity as a fiduciary on the Shirley side?

4 A. Yes, we were.

5 Q. During the time that Ted was being
6 represented by you, did there come -- from time to
7 time -- situations where you would give advice of
8 what -- what action should be taken in a given
9 circumstance?

10 A. Our firm did; yes.

11 Q. Did Ted generally follow your advice?

12 A. Yes.

13 Q. Were there any times when Ted specifically
14 refused to follow your advice?

15 A. No.

16 Q. Now, there was -- this is on the Shirley
17 side --

18 A. Well, I take that --

19 Q. -- not especially relevant, but it relates
20 to Ted's ability and capacity to serve as a
21 fiduciary on the Simon side -- but was there a time
22 when there was a sale of a large asset on the
23 Shirley side?

24 A. Yes. One of the --

25 MR. FEAMAN: Objection.

1 A. -- one of the residences was sold.

2 Q. And were there discussions concerning
3 whether to make an interim distribution at that
4 time?

5 A. Yes, there were.

6 Q. And at the end of the -- at the end of the
7 day, after whatever discussions occurred, did your
8 firm ever advise Ted that it would be improper for
9 him, as trustee, to make an interim distribution?

10 A. We never advised him that it was improper.
11 We advised him to be cautious about making
12 distributions, because at that time the Shirley
13 trust was a named defendant in the Stansbury
14 litigation.

15 Q. And with respect to that -- so long as
16 there was sufficient funds left over to cover
17 whatever claim there was, there would be no problem
18 with an interim distribution; is that accurate?

19 A. Assumedly.

20 MR. FEAMAN: Objection to form.

21 Q. Now, Stansbury's claim has been against
22 the estate of Shirley Bernstein or the Shirley
23 Bernstein Trust have been dismissed with prejudice;
24 are you aware of that?

25 A. Yes.

1 **Q. Back at the time when an interim**
2 **distribution was being considered, what were your**
3 **thoughts as to the merits of the lawsuit by Mr.**
4 **Stansbury against the Shirley Bernstein estate or**
5 **the Shirley Bernstein Trust?**

6 MR. FEAMAN: Objection to the form.

7 A. I thought it was ludicrous, frankly.

8 They continued to keep naming Mr. Spallina
9 and myself as the trustees of that trust, which we
10 never were in -- in all of the pleadings.

11 That trust had -- Shirley never owned any
12 interest in the business. And I could see no
13 reason why Mr. Stansbury was attempting to reach
14 into that trust, other than the fact that it had
15 some assets.

16 **Q. Now, there is an issue -- there is an**
17 **issue on the Shirley side about whether the**
18 **distribution should have been made to all 10**
19 **grandchildren or to only six.**

20 Were you aware at the time of the interim
21 distribution that there was a question about
22 distributions to six versus 10?

23 A. Not at that time; no.

24 **Q. As far as you know, was Ted aware of the**
25 **issue of six versus 10?**

1 MR. FEAMAN: Objection to the form.

2 A. To the best of my knowledge, I don't think
3 he was at that time.

4 Q. One second, please.

5 Do you recall when the Shirley Bernstein
6 Trust sold the condominium that, among the contents
7 of the condominium would be property that would
8 have then been owned by the estate of Simon
9 Bernstein?

10 A. Well, under -- under Shirley's documents,
11 all the tangible personal property passed to Simon.

12 Q. I thought -- at the time that Shirley's
13 condo was sold, whatever contents were in it would
14 have been owned by Simon's estate.

15 A. Correct.

16 Q. At the time you were the personal
17 representative or copersonal representative of
18 Simon's estate; is that correct?

19 A. At the time that the sale occurred; yes.

20 Q. Did you and the other copersonal
21 representative agree that the -- that the property
22 should be sold with the condominium; and that if
23 there was ever a time in the future when there
24 needed to be some allocation, it could be handled
25 in the future, rather than either interfering with

1 the sale of the condo, or requiring the furniture
2 to be to be removed from the condo?

3 MR. FEAMAN: Objection to the form.

4 A. I don't recall if I was directly involved
5 in that discussion.

6 Q. Does it make sense to you that if the
7 beneficiaries of the Shirley trust are the same as
8 the beneficiaries of the Simon estate should not
9 undergo an expense to move furniture or undertake
10 an allocation if the money is going to the same
11 people?

12 A. Correct.

13 Q. And if at some later point in time it
14 makes a difference, couldn't somebody then go back
15 and allocate some portion of the purchase price
16 from the Shirley condo and give the money to the
17 Simon estate for the value of the -- of his
18 personal property that was included in the sale?

19 A. Yes, it could true up.

20 Q. Does that make more sense to you, that an
21 estate with limited resources -- to true it up at
22 the end, if it matters, rather than undertake that
23 expense at the time of the sale?

24 MR. FEAMAN: Form.

25 A. From a practical standpoint, given the

1 fact that these estates were not going to be
2 subject to federal estate tax liabilities; yes.

3 **Q. As you sit here today, do you have any**
4 **reason you would advise Judge Colin or any**
5 **hesitancy in suggesting that Ted would be a proper**
6 **candidate and could -- and competent and capable of**
7 **doing the job if the judge were to appoint Ted as**
8 **the successor personal representative of his**
9 **father's estate?**

10 MR. FEAMAN: Objection to the form.

11 A. I would have no object -- I would have no
12 problem in recommending Mr. Ted Bernstein to serve
13 in the fiduciary capacity requested.

14 MR. ROSE: That's the end of my
15 examination. I'd like mine ordered on an expedited
16 basis. And I have no further questions; and turn
17 him over to cross-examination by whomever wishes to
18 do so.

19 MR. FEAMAN: Okay if I go next with
20 everybody?

21 THE WITNESS: Is that Peter?

22 MR. FEAMAN: Yeah.

23 THE WITNESS: All right. Let me just get
24 the other set of exhibits there.

25 MR. FEAMAN: Alan Rose, I'm going to

1 object to the admission of the affidavit. So I
2 want to give you the opportunity to ask more
3 questions concerning what's contained in the
4 affidavit so you don't feel like I am sandbagging
5 you in any way.

6 So if you have further questions
7 concerning what's contained in the affidavit of
8 this witness, I want to give you the opportunity to
9 ask.

10 MR. ROSE: That's fine.

11 My -- and just for the record, I believe
12 that once the affidavit is tendered by the witness
13 during a deposition and is subject to
14 cross-examination by all parties, that the
15 affidavit is fully admissible, regardless of
16 whether I asked him every question. But I will
17 also go through -- while you're questioning him --
18 and decide if there are any other questions I wish
19 to ask as a protective measure.

20 MR. FEAMAN: Okay. Very good.

21 MR. MORRISSEY: This is John Morrissey.
22 Just for the record, by allowing Mr. Feaman to ask
23 questions today, I'm certainly not agreeing and --
24 and don't waive any objection to -- to a standing
25 argument.

1 That is to say, his standing to make
2 argument at the upcoming hearings.

3 MR. ROSE: This is Alan Rose. I concur in
4 that, but I also think we need to let him get
5 moving.

6 MR. MORRISSEY: Sure. I just want to make
7 that point or argument for the record.

8 EXAMINATION

9 BY MR. FEAMAN:

10 **Q. All right. Mr. Tescher, this is Peter**
11 **Feaman on behalf of William Stansbury.**

12 A. Yes, sir.

13 **Q. I'd first like to draw your attention to**
14 **one of the exhibits to the affidavit; and I believe**
15 **that it was Exhibit E that you discussed in direct**
16 **examination for Mr. Rose, which is the Simon**
17 **Bernstein Amended and Restated Trust Agreement?**

18 A. Yes, sir.

19 **Q. Can you --**

20 A. I have that in front of me.

21 **Q. -- have that in front of you. Okay.**

22 I'd like to -- now, you said that you
23 appointed or exercised the power of appointment of
24 a successor trustee under this document; and you
25 appointed Ted Bernstein.

1 **Can you find that provision in the trust**
2 **which allows you to do that?**

3 A. Page 16, paragraph 3 -- subparagraph 2 --
4 no, subparagraph 3(a).

5 **Q. Okay. And is it fair to say that under**
6 **paragraph (b) (1) on page 15, the bottom of page 15,**
7 **you and Mr. Spallina were the successor**
8 **cotrustees --**

9 A. That's correct.

10 **Q. -- before you have exercised your power of**
11 **appointment?**

12 A. That's correct.

13 **Q. And when did Mr. Spallina resign as**
14 **successor cotrustee?**

15 A. The day before me.

16 **Q. Did he do that in the form of a letter --**

17 A. He executed --

18 **Q. -- or how did he do that?**

19 A. He executed a resignation form, as I
20 recall.

21 **Q. All right. Do you know what day that --**
22 **what the date of that was?**

23 A. I don't have any of those documents in
24 front of me. I can't tell you.

25 **Q. Okay. And do you have a copy of the**

1 **resignation form?**

2 A. I believe it exists; and I believe it's
3 included somewhere in all the discovery that, you
4 know, you all have from our files.

5 **Q. So then you do have it in your files at**
6 **some point?**

7 A. I believe that we do. I know it exists.
8 I saw it.

9 **Q. Did you excise -- or excuse me -- execute**
10 **a resignation?**

11 A. Yes, I did.

12 **Q. Do you recall the date of your**
13 **resignation?**

14 A. No. I do not, other than to reference it
15 the day after Mr. Spallina's resignation.

16 **Q. All right. Now, in your exercise of what**
17 **you term your "appointment of a successor trustee,"**
18 **what form did that exercise take?**

19 **Did you write a letter? Or what did you**
20 **do?**

21 A. It's a written form. It's "Resignation as
22 Successor Trustee and Appointment of Successor," I
23 believe.

24 Again, I don't have the benefit of having
25 the document in front of me, sir, so I'm at a

1 little bit of a loss.

2 But it was a standard document that we
3 would use in our office to have somebody resign and
4 appoint a successor.

5 **Q. Okay, 'cause I have not seen such a**
6 **document that you describe.**

7 MR. ROSE: I think they've been produced.
8 If you want me to email you a copy, Peter, I'll be
9 glad to do it.

10 MR. FEAMAN: Sure. That will be fine.

11 MR. ROSE: Okay.

12 **Q. All right. Now, the -- I'd like to draw**
13 **your attention to the paragraph that you brought me**
14 **to, which is paragraph 3 on page 16.**

15 A. Yes.

16 **Q. It says that -- it's the last paragraph of**
17 **page 16 -- "A trustee appointed under this**
18 **paragraph shall not be a related or subordinate**
19 **party of the trust."**

20 Do you see that?

21 A. Yeah, but I --

22 **Q. Okay.**

23 A. Go ahead. I'm sorry.

24 **Q. Is Mr. Bernstein -- Ted Bernstein -- a**
25 **related or subordinate party of the trust?**

1 A. Not for purposes of paragraph 3(b) -- not
2 for purposes of paragraph 3(a).

3 For purposes of paragraph 3(b), he would
4 be.

5 **Q. And where does 3(a) start?**

6 A. "The remaining trustees, if any."

7 **Q. All right. And did you not tell me that**
8 **you exercised your power of appointment pursuant to**
9 **the sentence that is actually two lines above that?**

10 A. Well, you probably didn't -- what I said
11 to you was that, if the remaining trustee is the
12 one who's making the appointment, the "flush"
13 language dealing with "related or subordinate
14 party" is not material.

15 It's only material if a beneficiary of the
16 trust picks a related or subordinate person to
17 serve as their trustee.

18 **Q. Let me draw your attention, if I could, to**
19 **the definitional section of this document, which is**
20 **-- I believe begins at page 5, paragraph E.**

21 A. Yes, sir.

22 **Q. Would you go there, please?**

23 A. Okay.

24 **Q. And this is the definitional section of**
25 **the trust; is that correct?**

1 A. This is a definition provision.

2 **Q. All right. And under paragraph E, let me**
3 **call your attention to paragraph 7, which appears**
4 **on page 7.**

5 A. Correct.

6 **Q. It says "A related or subordinate party to**
7 **a trust describes --" could you read that into the**
8 **record?**

9 A. Yes, sir. 7: "Related or subordinate
10 party: A related or subordinate party to a trust
11 describes a beneficiary of the subject trust or a
12 related or subordinate party to a beneficiary of
13 the trust as the terms 'related or subordinate
14 party' are defined under code section 672(c)."

15 **Q. And have you reviewed the code section**
16 **referred to there as to how it's defined?**

17 A. I'm generally familiar with 672(c),
18 although I don't have in front of me.

19 **Q. And does it define a related or**
20 **subordinate party as a child or issue of a grantor?**

21 A. I would not want to comment without having
22 the code provision in front of me.

23 **Q. Okay. So as you sit here today, you don't**
24 **-- you don't know one way or the other whether a**
25 **related party under that code section would include**

1 a child of the grantor; is that correct?

2 A. They would be related to the grantor.

3 Q. Is the grantor in this case under this
4 trust Simon Bernstein?

5 A. He was the grantor. He died.

6 Q. And is it your understanding that Ted
7 Bernstein is an issue of the grantor --

8 A. He certainly is.

9 Q. -- as used in the code section referred to
10 in your document 672?

11 A. Yes.

12 Q. I also want to direct your attention to --
13 under the definition section, (e) (1).

14 Do you see where it says "Children, Lineal
15 Decedents"?

16 A. Yes, sir.

17 Q. Okay. Now, that definition paragraph
18 bleeds over on the top of page 6.

19 Could you turn there?

20 A. Yes, sir.

21 Q. All right. Could you read the last
22 sentence of paragraph (e) (1), beginning with
23 "Notwithstanding."

24 A. "Notwithstanding the foregoing, for all
25 purposes of this trust and the dispositions made

1 hereunder, my children, Ted S. Bernstein, Pamela B.
2 Simon, Eliot Bernstein, Jill Iantoni, and Lisa S.
3 Friedstein shall be deemed to have predeceased me,
4 as I have adequately provided for them during my
5 lifetime."

6 **Q. All right. Does -- does that provision**
7 **apply, in your opinion, to the appointment of a**
8 **successor trustee?**

9 A. No. "Dispositions hereunder," sir.

10 **Q. Okay. Now, it says "Notwithstanding the**
11 **foregoing," it says "for all purposes of this**
12 **trust."**

13 **Are you limiting "for all purposes of this**
14 **trust" to answer that question?**

15 A. Am I limiting the "Notwithstanding the
16 foregoing"?

17 **Q. Yeah. What does "for all purposes of this**
18 **trust" mean if it doesn't also include the children**
19 **as eligible to be appointed as a successor trustee?**

20 A. This definition is intended solely for
21 purposes of determining whether they are
22 beneficiaries under the trust.

23 **Q. So when you said, "for all purposes of**
24 **this trust," you didn't really mean all purposes of**
25 **this trust; is that what you're saying?**

1 A. I think you have to read it in context of
2 the entire document.

3 Q. And "for all purposes of this trust," you
4 wrote that the children of the grantor are
5 predeceased. So for all purposes of this trust, if
6 the children have predeceased, then wouldn't that
7 mean that Ted Bernstein, as one of the children,
8 would not then be eligible to be appointed by you
9 as a successor trustee?

10 A. One could make that tortured argument, if
11 you'd like.

12 Q. Okay. All right. Now, I wanted to ask
13 you a question about your affidavit.

14 A. Yes, sir.

15 Q. I want to draw your attention to paragraph
16 5.

17 A. Yes.

18 Q. You state in the second sentence of
19 paragraph 5, quote, "None of the five children were
20 involved in the estate planning process, nor did
21 any of them attend any meetings with myself as
22 counsel."

23 Did I read that correctly?

24 A. You read it correctly.

25 Q. When you refer to "estate planning

1 process," are you talking about the 2008 estate
2 planning process that you did for the Bernsteins or
3 the 2012 estate planning process that you allegedly
4 did for Simon Bernstein?

5 A. Well, I clearly was referring first to the
6 2008 process.

7 With regard to the subsequent process, I
8 did not attend any meetings as counsel in
9 connection with the 2012 planning.

10 Q. So you then have no personal knowledge as
11 to --

12 A. Just my understanding; that's correct.

13 Q. -- the intent -- if I could finish my
14 question -- you then have no personal knowledge as
15 to the intent of Simon Bernstein when he allegedly
16 changed his trust and will in 2012; is that
17 correct?

18 A. I believe that I did not have direct
19 knowledge -- hearing it from his lips; that would
20 be correct.

21 Q. Now, I want to turn to some of the
22 exhibits that I sent to the court reporter in
23 advance.

24 A. Yes, sir.

25 MR. FEAMAN: Alan, I believe you have

1 these as well. I apologize to the others on this
2 call, but due to the nature of this deposition, I
3 wasn't able to provide copies for everybody.

4 **Q. Can you please take a look at what's been**
5 **premarked as Exhibit 2 --**

6 A. Yes, sir.

7 **Q. -- to this deposition.**

8 A. Yes, sir.

9 **Q. Does this appear to be a true and correct**
10 **copy of the three pages of your website for Tescher**
11 **& Spallina, PA?**

12 A. To be honest with you, I haven't looked at
13 that in so long, I'm not sure. But...

14 **Q. All right. Well, let's see if we can**
15 **verify some of the information contained on it.**

16 A. Sure.

17 **Q. It shows the address of Tescher & Spallina**
18 **as 925 South Federal Highway, Suite 500; is that**
19 **correct?**

20 A. That is correct.

21 **Q. How long has Tescher & Spallina been**
22 **located at that address?**

23 A. March 1, 2014.

24 **Q. All right. So then this was at least**
25 **updated within the last couple of months; is that**

1 **fair to say?**

2 A. Yeah, obviously.

3 **Q. Okay.**

4 A. At least the address was updated, sir.

5 **Q. All right. And you represent there in**
6 **your website that your attorneys -- which I assume**
7 **would include you -- have extensive expertise in**
8 **certain areas, including "Wealth transfer planning**
9 **for high-net-worth individuals and families"; is**
10 **that correct?**

11 A. That is correct.

12 **Q. "Business succession planning"; is that**
13 **correct?**

14 A. That's correct.

15 **Q. "Life insurance planning"; is that**
16 **correct?**

17 A. Yes.

18 **Q. "Probate administration"; is that correct?**

19 A. Yes, sir.

20 **Q. Okay. Now, assisting you, it shows --**
21 **there's a picture of you on the second page, Mr.**
22 **Spallina, and then, on the third page, Ms.**
23 **Galvani --**

24 A. Correct.

25 **Q. -- is that correct?**

1 A. Yes.

2 **Q. Are you the managing partner of the firm?**

3 A. I don't know if I still am.

4 I guess I am right now; yes.

5 **Q. Okay. And for how long have you been**
6 **managing partner of Tescher & Spallina?**

7 A. Since its inception in -- would be a
8 little over six years.

9 **Q. So you began Tescher & Spallina in 2008;**
10 **is that correct?**

11 A. We began January 1, 2008; yes. January 1,
12 2008.

13 **Q. Okay. And what firm were you with before**
14 **that?**

15 A. Tescher, Gutter, Chaves, Josepher, Rubin,
16 Ruffin & Forman, PA.

17 **Q. How long were you with that firm?**

18 A. From its inception, going back to 1990.
19 The name changed --

20 **Q. By the way, I forgot to ask you a question**
21 **concerning the Amended and Restated Trust**
22 **Agreement. Could you go back to that document for**
23 **a second?**

24 A. Yes, sir. I've got it.

25 **Q. Okay. It appears that the -- this was**

1 **dated July 25th, 2012; is that correct?**

2 A. July 25, 2012 is the date I see on it.

3 **Q. Okay. And if it was signed by Mr.**
4 **Bernstein, it would have -- can it be assumed then**
5 **that it was signed by him on that day?**

6 A. One could assume that. I think there's a
7 related will that was signed on the same day also.

8 **Q. Okay. That would be July 25th, 2012?**

9 A. I believe that's correct.

10 **Q. It's witnessed by Mr. Spallina and Ms.**
11 **Moran?**

12 A. That's correct.

13 **Q. You were not present when this was signed;**
14 **is that correct?**

15 A. I was not present when that was signed. I
16 was ensconced on Cape Cod.

17 **Q. Now, do you know when that lawsuit that**
18 **you referred to in your direct examination was**
19 **filed by Mr. Stansbury?**

20 A. I said I wasn't sure whether it was before
21 or after that date.

22 **Q. So then, when you testified that you**
23 **believe the litigation had been filed at the time**
24 **that these new documents were executed, you don't**
25 **really know if that's true or not; do you?**

1 A. I'm not certain as to whether, in fact,
2 litigation had commenced.

3 **Q. Okay. Now, on your web page you show**
4 **support staff of Kimberly Moran; correct?**

5 A. Yes, sir.

6 **Q. Okay. And what is her position at the**
7 **firm -- or was her position at the firm?**

8 A. She is a legal secretary.

9 **Q. Does she still work there?**

10 A. She still works there.

11 **Q. Okay. And was she recently accused and**
12 **pled guilty to a crime in connection with work she**
13 **performed while at your firm involving the**
14 **Bernstein estate?**

15 A. Yes.

16 **Q. And what was that crime?**

17 A. She misused her notary seal in notarizing
18 certain documents regarding the Shirley Bernstein
19 estate.

20 **Q. Do you know the statute that she was**
21 **accused of violating and whether it was a felony or**
22 **a misdemeanor?**

23 A. I don't -- I don't know precisely how it
24 ended. I know that she did not and has not served
25 time in jail; that she is apparently currently on

1 probation. And that's all I know.

2 **Q. Is she still a notary?**

3 A. No.

4 **Q. And what document was she accused of**
5 **notarizing falsely?**

6 A. In the Shirley Bernstein estate, when it
7 came time to basically close the probate
8 administration, she sent out to the five children
9 -- and I think to -- to Simon at that time too --
10 waivers, consents, and joinders to the petition for
11 distribution and discharge; and they all came back;
12 everybody signed off -- including Eliot Bernstein;
13 those documents were then filed in the court; and
14 the clerk's office bounced those documents because
15 Judge Colin's division requires that that
16 particular document be signed and notarized; and
17 they had not been notarized.

18 **Q. Okay. And so did she subsequently**
19 **notarize them?**

20 A. She subsequently prepared new ones, and
21 signed them, and notarized them.

22 **Q. And when she prepared the new ones, that**
23 **included a form signed by Simon Bernstein; correct?**

24 A. I believe that's correct.

25 **Q. And Simon --**

1 MR. ROSE: Just for the record -- this is
2 Alan Rose -- I could -- there's no issue for Friday
3 with regard to the document.

4 MR. FEAMAN: Yeah, there is. Yeah, there
5 is.

6 MR. ROSE: There's no issue.

7 MR. FEAMAN: I'm going to tie it in in a
8 minute if you let me finish.

9 MR. ROSE: There's also no issue in the
10 case that the document wasn't properly -- was not
11 properly --

12 MR. FEAMAN: Wait a minute. Wait a
13 minute. Wait a minute. Unless you object to my
14 question, okay, this -- this statement on your part
15 is improper in the middle of my examination.

16 MR. ROSE: Well, I'm not -- the witness
17 answered the question. I'm putting on the record I
18 think this is an irrelevant line of questioning and
19 you are wasting our time on --

20 MR. FEAMAN: And you have no right to
21 interrupt the spontaneity of my examination by
22 making a statement like this at this time. And I
23 would respectfully request that you not do that.
24 And I'd like to finish this line of questioning.
25 I'm almost done.

1 Q. My question, isn't it true that Ms. -- is
2 it Morin or Moran?

3 A. Moran.

4 Q. -- that Ms. Moran notarized Simon
5 Bernstein's signature at a time after he had, in
6 fact, passed away; is that correct?

7 A. In connection with the Shirley Bernstein
8 estate closing.

9 Q. Okay.

10 A. I believe I --

11 Q. And at that time the successor personal
12 representative of the Shirley Bernstein estate was
13 Ted Bernstein; is that correct?

14 A. I believe that's correct.

15 Q. Okay. And at that time the successor
16 trustee to the Shirley Bernstein Trust was Ted
17 Bernstein; is that correct?

18 A. That would be correct.

19 Q. All right. Now, Diane Dustin, what does
20 she do at the firm? Is she still there?

21 A. She is still with me. She is a legal
22 assistant.

23 Q. And then there's Sue Anne Tescher?

24 A. Yes.

25 Q. Is that a relative of yours?

1 A. Happens to be a very close relative of
2 mine. She's my wife.

3 **Q. All right. And what does she do at the**
4 **firm?**

5 A. She manages the firm accounts and books,
6 pays the bills.

7 **Q. Kind of like a -- in the bookkeeper side**
8 **of the office?**

9 A. In the bookkeeper side of the office. She
10 has nothing to do with the legal side of the
11 office.

12 **Q. So she oversees the checks that come into**
13 **the firm; is that correct?**

14 A. That's correct.

15 **Q. Okay. All right.**

16 **Now, how long, Mr. Tescher, have you known**
17 **the Bernstein family -- either professionally or**
18 **personally?**

19 A. I think -- my recollection would be 2007.
20 And when you say "The Bernstein family," that would
21 have -- that would be Ted Bernstein, Simon
22 Bernstein, and Shirley Bernstein.

23 I don't think that I had contact with the
24 other Bernstein family members until subsequent to
25 that.

1 **Q. All right. Oh, I forgot.**

2 **Now, when it came to light that Ms. Moran**
3 **had notarized a signature of a deceased person --**
4 **namely Simon Bernstein -- did you at that time**
5 **resign as the copersonal representative of the**
6 **Simon Bernstein estate?**

7 **A. Not at that time.**

8 What we did was we filed -- because --
9 because the court proceedings were tainted in terms
10 of the documents that had been -- in fact, the
11 estate had been closed. And we -- we moved to have
12 the estate reopened so that the record could be
13 cleaned. And we petitioned the court to reopen the
14 estate, allow us to obtain correct, untainted
15 waivers from those who could give them, and
16 attempted to expunge the -- what were tainted
17 documents.

18 **Q. And when were those documents -- was it**
19 **just one document that was criminally notarized, or**
20 **were there others?**

21 **A. There was one -- to the best of my**
22 **recollection, there was one document -- one form**
23 **document -- the waiver -- I think the waiver,**
24 **consent, and joinder, if I'm not mistaken; and I**
25 **think that only related to the five children and no**

1 one else. I don't think that -- I mean, Si was the
2 personal -- you know, had been the personal
3 representative of the estate.

4 **Q. And how did this come to light?**

5 A. My recollection is that Eliot Bernstein
6 apparently found the discrepancy -- or what he
7 thought appeared to be a discrepancy in the court
8 documents when he reviewed the court files --
9 again, this is supposition on my part; I don't
10 know, you know, for a fact that that was the case.

11 He filed a complaint with the governor's
12 office which administers notary publics in the
13 State of Florida. And apparently they filed --
14 they sent Ms. Moran a -- an inquiry letter asking
15 for, you know, an explanation, etcetera, of what
16 had occurred.

17 **Q. And do you know when -- about -- that was?**

18 A. I don't recall exact dates.

19 **Q. Was that in the year 2013?**

20 A. I believe that it was in the year 2013.

21 **Q. Okay. Was it in the summer of 2013?**

22 A. It might have been -- 'cause in the summer
23 -- if it was the summer, I was not in town. I
24 would have been up here on Cape Cod.

25 **Q. Certainly you didn't bring it to light,**

1 nor did Mr. Spallina bring it to the attention of
2 anybody; is that --

3 A. We couldn't, because we weren't aware of
4 it.

5 Q. Okay. And when you became aware of it in
6 2013, did you think it appropriate at that time to
7 resign as copersonal representative from the estate
8 of Simon Bernstein?

9 A. No.

10 Q. Now, did there come a time, however, when
11 you did resign -- you and Mr. Spallina -- as
12 copersonal representatives of the Simon Bernstein
13 estate; correct?

14 A. That is correct.

15 Q. Do you recall when that was?

16 A. January of 2014.

17 Q. And what was the incident at that time
18 that then caused you to resign as copersonal
19 representatives of the estate of Simon Bernstein?

20 A. It came to light -- it was brought to my
21 attention that the -- there was an amendment --
22 there was an altered document altering the
23 amendment to Shirley Bernstein's revocable trust,
24 which document had been forwarded to Christine
25 Yates, who was then serving as counsel to Eliot

1 Bernstein's children; and that document added a
2 provision.

3 **Q. All right. And how did that document come**
4 **to light -- the altered document?**

5 A. It was brought to my attention by someone
6 in my office.

7 **Q. Okay. Now, the -- you identified the**
8 **altered document as what again -- the Shirley**
9 **Bernstein Trust?**

10 A. The Amendment to Shirley Bernstein's
11 Revocable Trust Agreement.

12 **Q. Okay. And who in your office brought that**
13 **to your attention?**

14 A. Our associate.

15 **Q. And who is that?**

16 A. Lauren Galvani.

17 **Q. And when did that take place?**

18 A. January 2013.

19 **Q. Okay. And there is a document that's**
20 **attached to your affidavit, which is the -- I**
21 **believe an amendment to the Shirley Bernstein**
22 **Trust; is that correct?**

23 A. Hold on one moment. Let me get to that.

24 **Q. Is that Exhibit C?**

25 A. I believe that's C, if I'm not mistaken.

1 Hold on one moment.

2 (Witness reviews document.) Yeah. That's
3 Exhibit C.

4 **Q. Okay. All right.**

5 **Now, Exhibit C, is that the altered**
6 **document or the unaltered document?**

7 A. That is the unaltered document.

8 **Q. And what did the altered first amendment**
9 **to the Shirley Bernstein trust say?**

10 A. I don't have it in front of me, but
11 essentially what it did was there was a -- you see
12 how it's numbered now 1 and 3? There were -- you
13 know, somebody had messed up when it had been
14 originally prepared, and it got numbered --
15 paragraph No. 1, paragraph No. 3.

16 A paragraph No. 2 was inserted between 1
17 and 3.

18 **Q. And when did that take place?**

19 A. I don't know.

20 **Q. Was it -- did it take place sometime in**
21 **2012?**

22 A. I don't know.

23 **Q. Did it take -- well, how did your**
24 **associate suddenly come across it in January of**
25 **2014?**

1 A. You'll have to ask her.

2 **Q. Did you ever ask her how she came across**
3 **it that then subsequently caused you to resign as**
4 **copersonal representative?**

5 A. She noticed that the amendment that had
6 been included in the letter to Christine Yates was
7 different than Exhibit -- the exhibit that's here
8 attached to my affidavit.

9 **Q. And in that letter to Christine Yates,**
10 **what was the date of that letter?**

11 A. I think it was January of 2013 -- I think.

12 **Q. Okay. And so that was after the death of**
13 **Simon Bernstein; correct?**

14 A. Yes, it was.

15 **Q. So then that altered document contained in**
16 **a document dated January 11, 2013 could very well**
17 **have been prepared while Ted Bernstein was the**
18 **successor personal representative and successor**
19 **trustee to the Shirley Bernstein estate and trust;**
20 **correct?**

21 A. No. Probably -- well...

22 Probably -- I'm not sure, to be honest,
23 Peter. I'm not a hundred percent certain on the
24 timing.

25 **Q. Okay. And how did a year go by between**

1 the time of the January 11th, 2013 letter in which
2 the altered document was produced to the attorneys
3 for Eliot Bernstein and then the discovery that it
4 was, in fact, an altered document? What happened
5 in that 12-month time that caused you, or your
6 associate, or your office to discover that, in
7 fact, what had been supplied to counsel for Eliot
8 Bernstein was, in fact, a forged document or
9 altered document?

10 A. I can't answer that question, actually --
11 'cause I don't know.

12 Q. All right. And -- and who in your firm
13 would be in the best position to know that -- if
14 it's not the general manager -- the managing
15 partner of the firm?

16 A. Mr. Spallina or Ms. Galvani.

17 Q. You were the managing partner at that time
18 still; correct?

19 A. I was the president.

20 Q. Okay. And what did the altered document
21 say in paragraph 2?

22 A. I told you that I don't have that in front
23 of me.

24 Q. And the one attached to your affidavit?

25 A. I told you that I don't have that in front

1 of me.

2 **Q. I apologize if I'm being repetitive on**
3 **that score.**

4 A. Yeah, I don't have --

5 **Q. Your best recollection.**

6 A. Yeah. Peter, I don't have it here.

7 It dealt with the definition of children
8 and lineals.

9 MR. ROSE: Peter, I don't want to ruin
10 your momentum that you're building up, but I need
11 to take a bathroom break. Could we take -- we've
12 been going at it for a little more than an hour.
13 Can we take like a five-minute break?

14 MR. FEAMAN: Sure. I'm moving on to the
15 next item anyway.

16 MR. ROSE: No more than five -- maybe as
17 little as two minutes. I'll be right back.

18 MR. FEAMAN: No problem.

19 (Recess was taken.)

20 **Q. Mr. Tescher, I'd like you to take a look**
21 **at what's been premarked as Exhibit 3.**

22 MR. FEAMAN: Madam Court Reporter, would
23 you hand that to the witness.

24 COURT REPORTER: Okay.

25 MR. FEAMAN: Thank you.

1 Q. Now, just to have closure on the subject
2 we were talking about about the altered Shirley
3 Bernstein Trust, Exhibit 3 appears to be a true and
4 correct -- is it a true and correct copy of the
5 letter you wrote on January 14th, 2014 to Ted
6 Bernstein, Eliot Bernstein, Lisa Friedstein, Jill
7 Iantoni, and Pam Simon announcing your resignation
8 as personal representative of the estate of Simon
9 Bernstein?

10 A. Announcing our intent to resign; yes, sir.

11 Q. Your intent to resign.

12 And at that point had -- well, let me back
13 up and lay a predicate.

14 You hired Mr. Manceri as an attorney to
15 represent the Simon Bernstein estate; correct?

16 A. Mr. Manceri was hired -- was brought in by
17 Ted Bernstein -- no, we hired him -- we hired him
18 to assist with regard to the litigation with
19 Stansbury as it related to the estate of Simon
20 Bernstein.

21 Q. All right. And now, as -- do you recall
22 as of January 14th, 2014, whether Mr. Manceri had
23 withdrawn as attorney for the estate in that
24 litigation at this point?

25 A. I do not recall when he specifically

1 withdrew.

2 **Q. I guess we'd have to refer to the court**
3 **records for that; is that correct?**

4 A. Yes, sir.

5 MR. ROSE: Peter, we're here trying to get
6 to the truth. Why don't we just agree it was
7 probably Friday, January the 11th, 2014 when Mr.
8 Manceri filed papers -- that you and I both
9 received -- withdrawing from the case; and ask your
10 next question.

11 MR. FEAMAN: Okay. Good. Thank you for
12 that.

13 **Q. I assume that representation is correct?**

14 A. I have no knowledge.

15 MR. ROSE: To the best of my knowledge,
16 that's correct.

17 MR. FEAMAN: Okay. Very well.

18 MR. ROSE: Because shortly after that, I
19 got a phone call that -- that Mr. Tescher had
20 spoken with Ted Bernstein. So that's my frame of
21 reference.

22 MR. FEAMAN: Okay.

23 **Q. And up until now, had you recommended Ted**
24 **Bernstein to be successor personal representative?**

25 A. I don't recall when I recommended anything

1 to anybody --

2 Q. Okay.

3 A. -- after -- after January 14th.

4 Q. All right. Now, the -- the documents --
5 subsequent to your resignation, you turned over
6 documents to Mr. Brown, the administrator ad litem
7 -- or I should say the curator appointed by the
8 court; is that correct?

9 A. Yes, sir.

10 Q. And Mr. Brown received about -- what --
11 700 pages of documents -- or thousands?

12 A. I have no idea how many pages he received.
13 I know that we completely copied onto disks all of
14 our files.

15 Q. All right. Did you keep copies of what
16 you produced to Mr. Brown?

17 A. Yes, sir.

18 Q. Okay. Do you have originals of any
19 documents in your possession?

20 A. I'm not sure if we have originals of any
21 wills and trusts, for example. Those would have
22 been all turned over or filed in the court.

23 Q. 'Cause I have a copy of the Simon
24 Bernstein last will and testament that appoints Mr.
25 Stansbury as a copersonal representative after

1 Shirley or successor personal representative after
2 Shirley, but I don't have a copy of the original or
3 the original -- nor have I seen one -- I only have
4 a conformed copy.

5 Do you have the original of that document?

6 A. The original will is sitting in the court.

7 Q. No, 2008.

8 A. Oh. I'm sorry. I thought you were
9 referring to the current document.

10 Q. I'm sorry if I was not clear.

11 A. Yeah. I don't know that we had it. If it
12 was there, it got copied.

13 Q. Right. But do you have the original of
14 the 2008 will and trust of Mr. Simon Bernstein?

15 A. If it was there -- I -- I don't know.

16 Q. Okay.

17 A. I don't have my --

18 Q. Do you keep those in a safe deposit box or
19 a vault?

20 A. Not if they're old documents that have
21 been superseded.

22 Q. Okay. And one more question on this, and
23 then I'm going to move on: When Mr. Bernstein
24 allegedly executed his 2012 documents, was that in
25 your office; if you know?

1 A. No, sir; it was not.

2 **Q. Where did that execution take place?**

3 A. In Simon Bernstein's office.

4 **Q. Okay. And have you been told -- since you**
5 **obviously weren't there -- who was present when**
6 **those documents were executed?**

7 A. Well, the only -- the only thing that I
8 know who was present -- and there may have been
9 others present -- is by the executions on the will
10 and trust that were signed that day. And
11 present --

12 **Q. Right. But you don't know anything more**
13 **than I might know by looking at the documents; is**
14 **that correct?**

15 A. That is correct.

16 **Q. Okay. Now, you said that you first met**
17 **some members of the Bernstein family in 2007.**

18 **Who did you meet first, Ted or Si?**

19 A. I think I met Ted before 2007; and we had
20 -- we've had dealings over the years with mutual
21 clients. I think that our first dealings with Ted
22 Bernstein also involved his sister's company up in
23 Chicago. They were doing a -- a life insurance
24 arbitrage program that was kind of interesting; and
25 we -- we had some mutual clients there.

1 Q. So you had a professional relationship
2 with Mr. Ted Bernstein before you did with Mr.
3 Simon Bernstein; is that correct?

4 A. I think so.

5 Q. Okay. Did you also have a business
6 relationship with Mr. Ted Bernstein?

7 A. In what sense?

8 Q. In any sense.

9 A. Well, tell me what businesses. I mean, we
10 had -- we had mutual clients.

11 There were clients who I brought to Ted
12 Bernstein for life insurance needs. There were
13 clients that Ted Bernstein referred to us.

14 Q. Okay. Were there any businesses in which
15 you and Ted were both owners?

16 A. No.

17 Q. All right. I'd like to draw your
18 attention to Exhibit 6, if I could.

19 A. Okay. Hold on a moment. (Witness reviews
20 documents.)

21 Okay.

22 Q. Now, Exhibit 6 is a copy of a printout we
23 got from the Florida Department of State, Division
24 of Corporations. This makes reference to a
25 "Bernstein Family Realty, LLC."

1 **Do you see that?**

2 A. Yes, sir.

3 **Q. Now, it shows the registered agent as "T &**
4 **S Registered Agents."**

5 **Are you familiar with that company?**

6 A. Yes.

7 **Q. What is that company?**

8 A. That is a shell company that we typically
9 use to serve as registered agent for entities that
10 we form for clients.

11 **Q. Okay. And the address of T & S Registered**
12 **Agents, is that 925 South Federal Highway, Suite**
13 **500?**

14 A. It is now. It was the address that's on
15 the Exhibit 6 up until March.

16 **Q. Right. That's your law firm?**

17 A. Yes, sir.

18 **Q. Was your law firm at 4855 Technology Way,**
19 **Suite 720?**

20 A. 7 -- yes, it was.

21 **Q. Okay. Now, it shows that the mailing**
22 **address of the Bernstein Family Realty, LLC was**
23 **changed -- it looks like -- in 2013 to the**
24 **Oppenheimer Trust Company.**

25 **Do you see that on Exhibit 6?**

1 A. (Witness reviews document.) I see
2 Oppenheimer listed there; yeah.

3 **Q. And what was your involvement in the**
4 **change?**

5 A. I didn't have any involvement in the
6 change.

7 **Q. Okay. And did you organize the Bernstein**
8 **Family Realty, LLC, as the attorney?**

9 A. I didn't -- as the attorney.

10 **Q. You did or you did not?**

11 A. I might have filed the articles of
12 organization. I don't recall. I think I was
13 originally named as the registered agent. This was
14 done back in February of '08. At that time it --
15 when I -- when I first withdrew from my prior firm,
16 Peter, we actually shared office space for a year
17 with my former partners -- just, you know, we just
18 continued using our office. It was a friendly --
19 friendly division.

20 And when this company was formed, it was
21 formed February of '08, which would have been
22 roughly a month after -- a little over a month
23 after Robert Spallina and I had set up Tescher &
24 Spallina. We probably didn't even have a new
25 registered agent entity set up yet.

1 Q. All right. And the documents on Exhibit 6
2 shows that the previous mailing address in 2012 was
3 950 Peninsula Corporate Circle, Suite 3010.

4 What address is that?

5 A. I think that was LIC's office.

6 Q. All right. And LIC was the business owned
7 by Simon Bernstein and Ted Bernstein by majority?

8 A. Correct.

9 Q. All right. And if you look at the third
10 page --

11 A. Yes.

12 Q. -- it shows that the managing member was
13 Simon Bernstein.

14 A. Correct.

15 Q. As of January 2012; correct?

16 A. Correct.

17 Q. Now, you are knowledgeable in trust and
18 estates and succession planning, like you said and
19 shown on your website.

20 Once Mr. Bernstein passes away, does the
21 estate then become the managing member?

22 A. No, the estate does not become the
23 managing member.

24 Q. Okay. Well, who then would have been
25 responsible for changing the mailing address of the

1 **Bernstein Family Realty, LLC from the offices of**
2 **LIC -- LIC to Oppenheimer, if it wasn't somebody**
3 **acting on behalf of the estate?**

4 A. I can't answer that question.

5 **Q. All right. And is Bernstein Family Realty**
6 **listed as an asset of the Simon Bernstein estate?**

7 A. No. He didn't own any equity interest in
8 it, other than a mortgage -- a note and mortgage.

9 **Q. Okay. And so normally, as an expert in**
10 **this field, if a person is the only member of an**
11 **LLC, and that person passes away, what is your**
12 **standard operating procedure as to how the**
13 **operations of that LLC are carried out after the**
14 **passing of the only manager?**

15 A. Mr. Feaman --

16 MR. ROSE: Objection to form.

17 A. Mr. Feaman, I'm assuming you meant to say,
18 "manager" and not "member"?

19 Do you want to restate your question?

20 **Q. No, because the electronic signature of**
21 **page 3 of Exhibit 6 is signed by Simon Bernstein,**
22 **as the managing member manager?**

23 A. No, "manager," not "managing member."

24 "Manager," sir.

25 **Q. Okay. Do you know -- as the registered**

1 **agent, do you know where the books and records of**
2 **the Bernstein Family Realty, LLC are maintained?**

3 A. I personally don't know.

4 **Q. Has your office ever maintained them?**

5 A. I don't think so. Remember that the
6 members -- the members of this entity, sir, are
7 three trusts, of which Oppenheimer until recently
8 -- or maybe still is; I don't know -- was the
9 trustee.

10 **Q. And what -- what are those three trusts?**

11 A. They are trusts -- irrevocable trusts
12 created in 2006 by Simon Bernstein for the benefit
13 of Eliot Bernstein's three children.

14 **Q. Okay. Did you create those trusts?**

15 A. No, we did not.

16 **Q. Who did?**

17 A. I don't -- I don't know.

18 **Q. All right.**

19 A. Their prior counsel obviously, not us.

20 **Q. And as copersonal representative of the**
21 **estate of Simon Bernstein, would you have any**
22 **fiduciary responsibility to carry out the intent of**
23 **Mr. Simon Bernstein with regard to the management**
24 **of Bernstein Family Realty?**

25 A. I don't believe so.

1 **Q. Who were the trustees of those three**
2 **trusts that you mentioned that owned it?**

3 A. Oppenheimer.

4 **Q. And who were the trustees before**
5 **Oppenheimer?**

6 A. Stanford.

7 **Q. Stanford?**

8 A. Yes.

9 **Q. Okay. And where are those trusts --**
10 **copies of those trusts located?**

11 A. I don't know.

12 **Q. Do you have possession of the original?**

13 A. Why would I?

14 **Q. I don't know.**

15 MR. ROSE: And I object to this line of
16 questioning as completely irrelevant and
17 immaterial, since the estate has no interest in
18 this, other than the mortgage, which has been
19 unpaid and for which Mr. Eliot Bernstein has been
20 living in the residence without paying any rent, or
21 mortgage, or interest for two years.

22 But other than that, I think this whole
23 line of questioning is wholly irrelevant; and
24 you're wasting valuable time.

25 **Q. Let me ask a follow-up question: What**

1 **conversations have you had with Ted Bernstein**
2 **concerning the Bernstein Family Realty, LLC, since**
3 **the passing of Simon Bernstein?**

4 MR. BLOCK: Well, I ask a question as to
5 whether or not there's a privilege. I have no idea
6 of what you're talking, but just want to throw that
7 out.

8 THE WITNESS: Well, I'm mulling that in my
9 head, Irwin, as to whether it is a privilege issue.

10 **Q. Okay. Let me --**

11 MR. ROSE: The question is, have you had a
12 discussion? And if the -- the answer is either yes
13 or no; and then we can deal with the privilege
14 issue.

15 MR. FEAMAN: Yeah. Right.

16 A. Yeah. I think tangentially there has been
17 -- there had been discussion regarding Bernstein
18 Family Realty.

19 **Q. Between you and Mr. Ted Bernstein; is that**
20 **correct?**

21 A. That's correct.

22 **Q. Okay. And has there been email traffic**
23 **between you and Mr. Ted Bernstein concerning**
24 **Bernstein Family Realty, LLC?**

25 A. Not me, I don't believe.

1 **Q. I mean, to your knowledge, on paper Mr.**
2 **Ted Bernstein has no involvement with Bernstein**
3 **Family Realty, LLC; correct?**

4 A. Well, he has no direct involvement in
5 Bernstein Family Realty, LLC. He does have -- or
6 potentially has involvement vis-a-vis -- no, he
7 does not have involvement; that's correct.

8 **Q. Okay. And so --**

9 A. That I'm aware of.

10 **Q. Therefore, what would the nature of any --**
11 **why would you be having any correspondence or**
12 **conversation with Mr. Ted Bernstein concerning**
13 **Bernstein Family Realty if he has no apparent**
14 **involvement in that entity?**

15 A. Well, Bernstein Family Realty -- if I'm
16 not mistaken -- was also named as a defendant in
17 the Stansbury litigation.

18 **Q. Okay.**

19 A. And certainly in that regard there was
20 discussion.

21 **Q. Okay. Is Bernstein Family Realty still a**
22 **defendant in the Stansbury litigation?**

23 A. Is it still? I don't know. I -- those
24 are issues that I'm not necessarily privy to.

25 **Q. All right. Let me draw your attention to**

1 **premarked Exhibit 7 --**

2 A. Yes, sir.

3 **Q. -- for the deposition --**

4 A. Yes, sir.

5 **Q. -- which is a --**

6 MR. ROSE: Is it still a defendant in the
7 lawsuit, Peter, since it's your lawsuit?

8 MR. FEAMAN: Yes, it is.

9 **Q. Marked as Exhibit 7 is a copy of Articles**
10 **of Incorporation for Bernstein Holdings, LLC.**

11 Do you see that?

12 A. Yes, sir.

13 **Q. You are shown as the registered agent of**
14 **Bernstein Holdings, LLC; is that correct?**

15 A. That's correct.

16 **Q. All right. And the manager is shown as**
17 **Simon Bernstein under article 5 on page 2; correct?**

18 A. That is correct.

19 **Q. Now, the -- this looks like a different**
20 **address altogether than the ones we identified**
21 **before under article 4. It shows an address for**
22 **you of 2101 Corporate Boulevard, Suite 107.**

23 Do you know what was located at that
24 address at that time?

25 A. Yes. That was in the first year of our --

1 of our firm. Starting January 1 of '08, that was
2 our office address.

3 Q. Okay. Very good.

4 And it shows a manager as Simon Bernstein;
5 is that correct?

6 A. That's correct.

7 Q. There's also a signature of a member,
8 Robert Spallina.

9 Do you know what his involvement in the
10 corporation was or is?

11 A. He didn't sign as a member. He signed as
12 an authorized representative of a member.

13 MR. ROSE: Object to form.

14 Q. All right. Well, let me draw your
15 attention to page 3 of Exhibit 7, document dated by
16 the Secretary of State April 12th, 2013. It shows
17 the manager as Robert Spallina.

18 That would be your law partner; correct?

19 A. That is -- yes, he is my law partner.

20 Q. Okay. And how did your law partner, Mr.
21 Spallina, come to be the manager of Bernstein
22 Holdings, LLC?

23 A. The manager died.

24 Q. Okay.

25 A. The interest in this entity was owned by,

1 I believe, the Shirley Bernstein Trust and the
2 Simon Bernstein Trust. They owned a majority
3 interest -- those two trusts -- in Bernstein
4 Holdings, LLC, which was the general partner of a
5 limited partnership.

6 Q. All right. So the manager died. And
7 somehow Robert Spallina became manager.

8 But you told me with regard to Bernstein
9 Family Realty, Exhibit 6, we identified Simon
10 Bernstein as the manager. But then you said nobody
11 became the manager after that as far as you knew.

12 How did Mr. Spallina become the manager of
13 Bernstein Holdings, LLC?

14 A. I don't recall.

15 Q. Who are the members -- did you say -- of
16 Bernstein Holdings, LLC?

17 A. I don't have those documents in front of
18 me, Peter. But I believe that it would have been
19 the Simon Bernstein Trust and the Shirley Bernstein
20 Trust; and there may have been some minor interest
21 held for other family members. I'm not certain.

22 Q. Which trusts would you be referring to --
23 'cause we've identified a number of trusts here
24 today?

25 A. The 2012 -- July 25, 2012 Simon Bernstein

1 Amended and Restated Trust Agreement and --

2 **Q. Okay. And that's -- go ahead.**

3 A. -- and assumedly the family trust under --
4 that was established for the benefit of Simon after
5 Shirley's death under the Shirley Bernstein Trust
6 Agreement from '08.

7 **Q. Okay. And the members designated you, as
8 the managing member --**

9 A. They didn't designate me, Peter.

10 **Q. I mean -- sorry -- designated Mr. Spallina
11 as the managing member. And the members were
12 acting through Ted Bernstein as the successor
13 trustee; is that right?**

14 MR. ROSE: Object to the form.

15 A. I --

16 **Q. Do you remember --**

17 A. I have no personal knowledge.

18 **Q. Okay. Who would know?**

19 A. Mr. Spallina --

20 **Q. Okay.**

21 A. -- or perhaps Mr. Bernstein. I don't
22 know.

23 **Q. Let's take a look at Exhibit 8, if we
24 could.**

25 A. Okay. Yes, sir.

1 Q. Exhibit 8 is a copy of a Certificate of
2 Limited Partnership for the Bernstein Family
3 Investments, LLLP.

4 Do you see that?

5 A. Yes, sir.

6 Q. Now, you're shown as the registered agent
7 for that entity; is that correct?

8 A. Yes. Again, February of 2008; that's
9 correct.

10 Q. Okay. And the general partner is shown as
11 Bernstein Holdings, LLC.

12 Is that the entity we just identified --

13 A. Yes, sir.

14 Q. -- that Mr. Spallina is now the managing
15 partner of?

16 A. Yes, sir.

17 Q. Okay. And your shell company that you
18 created is now the registered agent for that
19 company rather than you individually; is that
20 correct?

21 A. Yes, sir. Yes, sir.

22 Q. Okay. And 950 Peninsula Corporate Circle,
23 Suite 3010, what's located at that address?

24 A. I presume that to be what was Simon
25 Bernstein's office.

1 Q. And now I guess Ted Bernstein's office;
2 right?

3 A. I guess; yes.

4 Q. Okay. All right.

5 Let's take a look at Exhibit 9, if we
6 could.

7 A. Yes, sir.

8 Q. Now, this is a copy of Articles of
9 Incorporation for the Shirley Bernstein Family
10 Foundation, Inc.?

11 A. Yes.

12 Q. Do you see that?

13 A. Yes, sir.

14 Q. Okay. You're shown as, again, the
15 registered agent. Did you -- are you the one that
16 created this entity?

17 A. Yes, sir.

18 Q. And what is the purpose or the business of
19 the Shirley Bernstein Family Foundation, Inc.?

20 A. It has no purpose today. It's an inactive
21 entity, as far as I know.

22 It was formed back in 2008 at a time when
23 Shirley had -- Bernstein had expressed an interest
24 in setting up a foundation to carry on some of her
25 charitable desires.

1 **Q. All right. Let me draw your attention to**
2 **Exhibit 10.**

3 A. Yes, sir.

4 **Q. Exhibit 10 is a printout from the Florida**
5 **Department of State Division of Corporation for an**
6 **entity known as "Two Oaks --"**

7 MR. FEAMAN: That's O-a-k-s, Madam Court
8 Reporter, T-w-o, Oaks -- oh, you have it there in
9 front of you --

10 **Q. "-- Consulting, LLC."**

11 **Do you see that?**

12 A. Yes, sir.

13 **Q. Okay. It shows it's currently inactive,**
14 **but it was apparently active from 2006 through**
15 **2011.**

16 **What is your understanding of what Two**
17 **Oaks Consulting, LLC is?**

18 A. Geeze. I'm trying to remember now.

19 I set this up for -- principally for my
20 wife and I to use for purposes of trying to develop
21 some additional consulting business on our own.

22 **Q. What kind of consulting?**

23 A. All types of business consulting.

24 She is a pretty good bookkeeper. You
25 know, we could provide -- looking to provide, like,

1 bookkeeping services and office administration
2 services.

3 Q. All right. And 2600 Whispering Oaks Lane,
4 is that your home address?

5 A. Yes, it is, sir.

6 Q. All right. And your wife Sue Anne, that's
7 -- she's shown -- is she the only -- was she the
8 only manager?

9 A. She was the manager.

10 Q. Okay. And did Two Oaks Consulting do any
11 business for any entities owned or controlled by
12 the Bernsteins?

13 A. I believe that it might have. I don't
14 recall. I'm looking at your Exhibit 11-A for the
15 first time. So obviously there were some payments
16 that were made to Two Oaks.

17 Q. Okay. Let's take a look at Exhibit 11-A.
18 It's a copy of a reconciliation detail report for
19 Arbitrage International Management, LLC.

20 First, what is your understanding of what
21 Arbitrage International Management, LLC is?

22 A. I'm not 100 percent certain. It was one
23 -- it was part of the overall insurance business of
24 the Bernsteins.

25 Q. So is it fair to say, though, you do

1 understand that this company is -- was or is owned
2 and controlled by majority by Simon and Ted
3 Bernstein?

4 A. I believe I do understand that.

5 Q. Okay. Now, Simon's ownership interest in
6 Arbitrage International Management, LLC, did that
7 exist at the time of Mr. Bernstein's death in 2012?

8 A. I don't recall.

9 Q. Do you know if his ownership interest in
10 this company is shown on the inventory of the
11 estate?

12 A. I don't recall it being listed on the
13 inventory of the estate, because if it were owned
14 still, it might have been owned through his trust
15 and not through his -- him individually.

16 Q. Okay. I guess we have to do further
17 discovery on that. But you would agree that both
18 Ted and Simon Bernstein controlled that entity;
19 correct?

20 A. My knowledge -- to the best of my
21 knowledge.

22 Q. Yeah. That's all I can ask is to the best
23 of your knowledge. Yeah. Yeah.

24 Okay. Let me draw your attention to page
25 1 of Exhibit 11-A, to about two-thirds of the way

1 down the page.

2 There's a check that's listed there dated
3 11/1/2006, No. 2047.

4 Do you see that, sir?

5 A. Yes, sir.

6 Q. And it's a check payable to Two Oaks
7 Consulting for \$55,000.

8 Do you see that?

9 A. Yes, sir.

10 Q. Okay. And what work was performed by Two
11 Oaks Consulting that caused a delivery of that
12 payment from Arbitrage International Management to
13 Two Oaks for \$55,000 at or around October or
14 November of 2006?

15 A. This is seven-and-a-half years ago. To be
16 honest with you, I don't know, without going back
17 and trying to find out.

18 I don't have any immediate knowledge.

19 Q. All right. Then just below that is an
20 entry for 11/1/2006 --

21 A. Yes, sir.

22 Q. -- check No. 2046 for Tescher Gutter.
23 That's your firm before Tescher &
24 Spallina; correct?

25 A. That is correct, sir.

1 Q. That's the Chaves firm I guess you
2 referred to.

3 Now, there's a check for \$45,000 on the
4 same day, which totaled a payment of \$100,000 on
5 November 1st, 2006.

6 Do you recall what that was for?

7 A. Again, no, I'm not a hundred percent
8 certain. But, obviously, if it's paid -- the
9 payment -- I'm -- no, I do not know without
10 checking.

11 Q. All right. Well, let me draw your
12 attention to the next page --

13 A. Yes, sir.

14 Q. -- which is a reconciliation detail.

15 And about a quarter of the way down --
16 also on 11/1/2006 -- this is marked as Exhibit
17 11-B, by the way --

18 A. Yes, sir.

19 Q. There's a check by -- a different check
20 number, 2045, payable to Two Oaks Consulting for
21 the same amount, \$55,000.

22 Do you know what that was for?

23 A. No. This looks like a duplication of
24 11-A, frankly. I mean, I --

25 Q. Yeah. That's what I thought too, except

1 **that it's a different check number.**

2 A. Yeah, I can't explain it. Obviously, it's
3 not my reconciliation. But it certainly looks like
4 the same things here.

5 **Q. Yeah. Okay. And then, finally, on page**
6 **11-C --**

7 A. Yes, sir.

8 **Q. -- there's a check in 2007 -- January**
9 **22nd, 2007 -- payable to your wife's company from**
10 **Arbitrage International Management for \$30,000 --**
11 **check No. 2247.**

12 **Do you know what that was for?**

13 A. No, sir, not without, you know, trying to
14 go back and see if I can find it -- find out what
15 it was.

16 **Q. As you sit here today, any idea**
17 **whatsoever?**

18 A. No.

19 **Q. All right, sir.**

20 **Now, the -- when you do estate planning**
21 **documents for clients, I assume that you also ask**
22 **them about life insurance?**

23 A. Generally, we would ask them about --

24 **Q. As part of your due diligence; is that**
25 **correct?**

1 A. Yes, we would generally ask them about
2 life insurance. Yes, sir.

3 **Q. Okay. And when you did your estate**
4 **planning for Simon Bernstein and Shirley Bernstein**
5 **in 2008, I assume then you asked them about life**
6 **insurance; is that correct?**

7 A. I would presume that we did.

8 **Q. Okay. And are you aware that there's**
9 **presently pending in Chicago litigation concerning**
10 **a life insurance trust?**

11 A. Yes, sir.

12 **Q. And are you aware that the litigation**
13 **makes reference to a lost life insurance trust**
14 **instrument?**

15 A. Yes. Yes, sir.

16 **Q. Okay. Have you ever seen it -- or a copy**
17 **of it?**

18 A. No, sir.

19 **Q. Ever?**

20 A. No, sir.

21 **Q. All right. Do you know if Shirley**
22 **Bernstein was ever a trustee of that document that**
23 **you've never seen?**

24 A. It's my understanding but -- at some point
25 that she was, but I -- I could not tell you for

1 sure.

2 **Q. All right. And do you know who would be**
3 **the alleged trustee of the alleged trust is today?**

4 A. I believe that -- that it is Ted
5 Bernstein.

6 **Q. Okay. And --**

7 A. Now, you --

8 **Q. And what's the basis of your belief that**
9 **Ted Bernstein is the trustee of the trust that you**
10 **have never seen?**

11 A. Just, you know, information related to us,
12 either from Pam Simon, or her husband, or Ted
13 Bernstein, or the insurance companies.

14 **Q. So --**

15 A. And you understand -- you understand that
16 the policy itself was owned by Simon Bernstein.

17 **Q. Yes.**

18 A. The alleged trust was only the alleged
19 beneficiary.

20 **Q. Okay. Now, I'm not an expert in this**
21 **area, but if Simon Bernstein was the owner of the**
22 **trust --**

23 A. Owner of the policy, sir.

24 **Q. I mean -- of the policy -- would that make**
25 **that a potential asset of the estate if the**

1 **beneficiary can't be located?**

2 A. You're -- you're mixing -- you're mixing
3 ownership and beneficiary.

4 **Q. Right.**

5 A. The fact that he was an owner only means
6 that, at least for federal estate tax purposes, the
7 life insurance proceeds would be includable as part
8 of his federal gross estate.

9 **Q. Okay. Now, other than what Pam might have**
10 **told you or Pam's husband, do you have any other**
11 **reason why you say you believe that Mr. Ted**
12 **Bernstein is currently the successor trustee?**

13 A. My recollection -- and, again, this is
14 without the benefit of looking at documents -- at
15 one point in time the -- Simon and Shirley
16 Bernstein were being represented by the Proskauer
17 firm in Boca. And Al Gortz, in that firm --
18 G-o-r-t-z -- was doing some legal work for them;
19 and I believe he prepared -- it may be a 2000
20 trust; I don't remember precisely.

21 He had prepared a new life -- irrevocable
22 life insurance trust, I believe. And I think -- I
23 think my understanding is -- and I could be wrong
24 -- was that he was -- he had prepared that to have
25 Simon transfer the ownership of the policy into

1 this trust so as to keep it out of his estate for
2 estate tax purposes.

3 I don't know that to be 100 percent. You
4 know, that's just what my understandings are. And
5 I don't have specific knowledge. But that would --
6 would make some sense and --

7 **Q. To your knowledge, that was never done;**
8 **correct?**

9 A. That was never done as far as I know. And
10 we --

11 **Q. Now, did your law partner, Mr. Spallina,**
12 **represent that, in fact, he was the cotrustee -- I**
13 **mean, successor trustee of that trust at one point?**

14 A. I -- I find that -- I can't -- I saw some
15 document somewhere in all of the minutia of
16 paperwork that has occurred in the last six months
17 here where supposedly he signed something as a
18 trustee.

19 I don't think he ever represented himself
20 to anybody really as being a trustee of a trust
21 that was to receive the proceeds of that \$1.6
22 million policy.

23 **Q. Well, take a look at Exhibit 14, if you**
24 **would.**

25 A. Yeah. No. I said there is a document

1 floating around; and I didn't know what -- what
2 documents you -- I hadn't seen these in advance, so
3 I wasn't sure.

4 **Q. Okay.**

5 A. Okay. I'm looking at 14 now.

6 **Q. Yeah. It's a composite exhibit?**

7 A. Right.

8 **Q. And it's a letter dated under your**
9 **letterhead of Tescher & Spallina dated December 6,**
10 **2012.**

11 Do you see that?

12 A. Yes.

13 **Q. And it's directed to the claims department**
14 **of Heritage Union Life Insurance Company; is that**
15 **correct?**

16 A. Yes, it is.

17 **Q. He states that he wants -- under the fifth**
18 **bullet point -- the proceeds from the policy**
19 **released so that, quote, "We can make distributions**
20 **amongst the five Bernstein children," unquote.**

21 Do you see that?

22 A. Yes, sir.

23 **Q. Okay. Have you ever seen the Heritage**
24 **policy itself?**

25 A. I'm not a hundred percent certain that I

1 have.

2 **Q. Do you know if it exists?**

3 A. I have no direct knowledge. I presume it
4 exists. Somebody paid 1.6 million into the
5 registry of the court. So there's some life
6 insurance policy that existed.

7 **Q. Well, maybe they should have paid 2.6**
8 **million.**

9 A. Well...

10 **Q. Has a request ever been made, to your**
11 **knowledge -- either on behalf of the state or**
12 **otherwise -- to get a copy of the policy?**

13 A. I'm not aware.

14 **Q. Did you and Mr. Spallina have discussions**
15 **at or about the time that this letter dated**
16 **December 6, 2012, marked as Exhibit 14 was written**
17 **about under what authority Mr. Spallina made the**
18 **demands that the proceeds should be paid to the**
19 **five Bernstein children?**

20 A. It doesn't really read like a demand.
21 But, you know, if you want to characterize it that
22 way...

23 I'm seeing this letter for the first time.

24 **Q. Did you have discussions with Mr. Spallina**
25 **concerning the request made by him that he would**

1 **like the distributions amongst the five Bernstein**
2 **children?**

3 A. Well, my conversations with Robert
4 Spallina included relating conversations he had had
5 with Simon Bernstein regarding the policy and the
6 overall plan that Simon Bernstein wished to have
7 occur upon his demise.

8 **Q. Are there emails between Mr. Bernstein --**
9 **Simon -- and your office concerning any expressions**
10 **of intent about the distribution of insurance**
11 **proceeds upon his demise?**

12 A. I'm not certain. Again, we provided all
13 of that documentation to everybody. There may have
14 been notes. There may have been file notes.

15 MR. ROSE: For the record, Peter, before
16 you ask your next question -- and I hate to break
17 your momentum -- but it's 4:30 p.m.

18 There are a number of other people that
19 might have questions. And you are, in my view,
20 taking discovery in a case that you're not involved
21 in that Mr. Stansbury has counsel, and is
22 representing, as administrator ad litem, the
23 interests of the estate in unrelated litigation;
24 and I think this is far afield of the issues we
25 have Friday. And I think you're being a little

1 unfair to the other participants.

2 MR. ELIOT BERNSTEIN: Perfectly fine.
3 This is Eliot Bernstein; and it's relevant to the
4 matters at hand as to the qualifications of Ted and
5 the qualifications of Mr. Tescher.

6 Q. Did Mr. Spallina, to your knowledge, have
7 the consent of Mr. Eliot Bernstein to request that
8 the distributions of the life insurance policy be
9 made to him instead of the estate?

10 A. I don't know.

11 Q. Okay. Do you recall that there were two
12 other life insurance policies that were, in fact,
13 paid to the Simon Bernstein estate?

14 A. Yes, I believe so. I don't recall. They
15 were relatively modest policies, if I'm not
16 mistaken.

17 Q. Would you agree with me that, if the lost
18 trust instrument cannot be established, that the
19 proceeds of the insurance policy would be then
20 payable to the estate of Simon Bernstein?

21 MR. ROSE: Objection. Calls for a legal
22 conclusion. Beyond the witness's knowledge, scope,
23 information. Irrelevant. Immaterial. And
24 improper question for the purposes of this
25 deposition.

1 MR. ELIOT BERNSTEIN: Are you representing
2 Don Tescher?

3 MR. ROSE: No. He's representing Ted
4 Bernstein.

5 MR. ELIOT BERNSTEIN: Are you putting that
6 objection on for Ted or...

7 MR. FEAMAN: Don Tescher is represented
8 by --

9 THE WITNESS: Irwin Block.

10 MR. FEAMAN: -- Mr. Irwin Block, a very
11 well-respected attorney here in Palm Beach County.

12 MR. ELIOT BERNSTEIN: Okay. Is he making
13 the objections for Mr. Tescher?

14 MR. ROSE: No. He's making the objections
15 on behalf of Mr. Ted Bernstein, which he has the
16 right to do.

17 **Q. Okay. So you can answer.**

18 A. Could you repeat the question, please?
19 I'm sorry.

20 MR. FEAMAN: Sure. I would ask the court
21 reporter to read it back.

22 THE WITNESS: Sure.

23 (Question read: Question: "Would you
24 agree with me that, if the lost trust
25 instrument cannot be established, that the

1 proceeds of the insurance policy would be
2 then payable to the estate of Simon
3 Bernstein?")

4 A. I think it may depend upon the terms and
5 conditions contained in the insurance policy. So I
6 can't say absolutely that that would be the case.

7 **Q. Okay. But it seems nobody can find the**
8 **insurance policy. So in a default provision,**
9 **wouldn't it, in fact, then go to the estate --**

10 A. I --

11 **Q. -- the -- Bernstein as the owner of the**
12 **policy?**

13 A. I -- I --

14 MR. ROSE: Objection to the form. Calls
15 for a legal conclusion. Beyond the scope of the
16 witness's knowledge.

17 A. I don't have an answer.

18 **Q. All right. Well, as the copersonal**
19 **representative, what effort did you take to**
20 **ascertain whether the proceeds of this policy**
21 **should, in fact, be payable to the estate?**

22 A. Well, the first -- what we attempted to
23 first do was to go into court in Palm Beach County
24 and have a declaratory action to establish a lost
25 trust and appoint a successor trustee, which is a

1 -- you know, not an uncommon proceeding.

2 We, in fact, had drafted a pleading, which
3 is your Exhibit 12.

4 The family, for whatever reasons -- and
5 I'm not certain what all the reasons were --
6 decided that they wanted to remove the action to
7 Federal District Court in Illinois. So the matter
8 was removed to federal district court in Illinois.

9 **Q. And --**

10 A. We are not a party any longer in that
11 proceeding and have not been involved in that for
12 quite some time.

13 **Q. Well as a PR, did you think you had any**
14 **fiduciary obligations to creditors -- interested**
15 **persons of the estate to marshall the assets of the**
16 **estate for the benefit of not only the**
17 **beneficiaries but the creditors too?**

18 A. The best information that was given to us
19 that we acted upon was to attempt to see if the '95
20 trust could either be located or reestablished
21 through -- through appropriate testimony.

22 **Q. All right. Let's get back, if we could,**
23 **to Exhibit 14, and then we'll get to my Exhibit 12.**

24 A. Okay. I've got 14. Okay.

25 **Q. So you can identify the letter written by**

1 **Mr. Spallina; is that correct?**

2 A. It is a letter that appears to have been
3 written by Mr. Spallina.

4 **Q. Now, let me draw your attention to the**
5 **claimant's statement that is on page 2 of Exhibit**
6 **14 --**

7 A. Yes, sir.

8 **Q. -- do you see that?**

9 **Do you know who filled that out?**

10 A. It looks to me like it is Mr. Spallina's
11 signature for sure.

12 **Q. Pardon me?**

13 A. It looks to me like it is Mr. Spallina's
14 signature for sure; that would be his signature.

15 **Q. Okay.**

16 A. And apparently he wrote "Personal rep and
17 trustee."

18 **Q. Did you and Mr. Spallina have discussion**
19 **about this document at any time?**

20 A. No, sir.

21 **Q. Is it your understanding that he's**
22 **representing himself to be the trustee of the lost**
23 **insurance trust?**

24 A. No. It's my understanding that he was
25 representing himself to be the trustee of Simon's

1 trust and also personal representative of Simon's
2 estate.

3 Q. Well, let's go to the next page, which is
4 Bates stamped No. JCK 001273.

5 A. Yeah, I see it.

6 Q. Do you see that where it says "Name of
7 Trust: Simon Bernstein Irrevocable Insurance
8 Trust," dated 6/1/95. And it looks like "Printed
9 name of trustee: Robert Spallina."

10 Do you see that?

11 A. I see that.

12 Q. Did you have any discussions with Mr.
13 Spallina concerning his authority to represent
14 himself to the insurance company as the trustee of
15 the 1995 revocable trust?

16 A. No, sir. I'm seeing this document
17 probably for the first time.

18 Q. Okay.

19 MR. ROSE: Object to the form of the last
20 one.

21 Q. And then you mentioned the action that was
22 then filed --

23 A. I didn't say it was filed. I said it was
24 contemplated to be filed.

25 Q. No, in Illinois?

1 A. Oh. I'm sorry. Go ahead.

2 Q. Okay. Now, there -- are you aware that
3 the trustee of the lost trust -- that Mr. Ted
4 Bernstein represents himself as the successor
5 trustee?

6 Are you aware of that?

7 A. Yes, sir.

8 Q. Okay. Do you know by what authority Mr.
9 Bernstein represented himself as successor trustee?

10 A. No.

11 Q. Are you aware that there were discussions
12 and email traffic between your office and counsel
13 in Chicago concerning whether an action should be
14 filed in Palm Beach County -- as you mentioned --
15 or in Illinois?

16 A. I believe there was correspondence back
17 and forth; and there were also telephone
18 discussions.

19 Q. Are you aware that in that correspondence
20 Mr. Spallina represented to counsel in Chicago that
21 the life insurance proceeds were, in fact, an asset
22 of the Simon Bernstein estate; therefore, it should
23 be litigated in Palm Beach County?

24 MR. ROSE: Object to the form.

25 A. I don't recall.

1 Q. All right. And now, take a look at
2 Exhibit 12.

3 A. Yes, sir.

4 Q. That's a draft of a complaint; correct?

5 A. Yes.

6 Q. Was that prepared in your office?

7 A. Yes, sir.

8 Q. Okay. And who prepared it?

9 A. I believe that I did.

10 Q. And this is a draft of a complaint
11 prepared by you entitled "Declaratory Action to
12 Establish a Lost Trust and Appoint a Successor
13 Trustee"; correct?

14 A. Yes, sir.

15 Q. You prepared that on behalf of Ted
16 Bernstein; is that correct?

17 A. "Comes now Ted Bernstein, son of Simon
18 Bernstein"; that's correct.

19 Q. Okay. So -- now, then you said earlier in
20 your testimony that the family -- quote, "the
21 family," close quote -- decided that it should be
22 -- this action should be filed in Chicago?

23 Was Eliot Bernstein a member of the family
24 that you referred to?

25 A. Eliot Bernstein is a member of the family.

1 As to whether Eliot Bernstein's opinion was
2 elicited, I would seriously doubt.

3 Q. Okay. And, in fact, Eliot Bernstein is
4 mentioned in paragraph 5 as one of the five
5 surviving children of Simon Bernstein.

6 A. That is -- that is correct.

7 Q. Okay. And how did the decision come about
8 that the action instead was filed in Chicago -- in
9 Illinois state court, rather than in the county
10 where the decedent resided, in Palm Beach County;
11 if you know?

12 A. I don't know.

13 Q. And who would be most knowledgeable about
14 that?

15 MR. ROSE: Objection. Relevance.
16 Materiality. It's 4:42. You're trying the wrong
17 case. The judge has already determined that Mr.
18 Stansbury, at his own expense, can pursue the
19 litigation in Illinois. And you're not supposed to
20 use this deposition for discovery in that case.
21 And, otherwise, everything you're asking is
22 irrelevant and wasting the time of everyone,
23 including the people that haven't yet had a chance
24 to ask questions.

25 MR. ELIOT BERNSTEIN: Okay. This is Eliot

1 Bernstein. I'll put back on the record that it's
2 very relevant to the qualifications of Mr. Tescher
3 to act in any capacity on this.

4 THE WITNESS: I'm not being asked to act
5 in any capacity, Mr. Bernstein.

6 MR. ELIOT BERNSTEIN: Are you objecting on
7 behalf of Ted or on behalf of --

8 Q. I mean, I'm laying a predicate here,
9 because my next question is, in recommending Ted
10 Bernstein as successor personal representative to
11 the estate of Simon Bernstein, what are you
12 recommending what action Ted Bernstein takes -- if
13 he's appointed by the court as successor personal
14 representative -- to protect the estate in trying
15 to obtain the assets -- excuse me -- the proceeds
16 of this insurance policy?

17 A. I'm not your lawyer anymore.

18 Q. Well, you were never my lawyer.

19 A. Well, I'm no longer Ted Bernstein's lawyer
20 either.

21 Q. And would you expect him to take action to
22 protect the estate?

23 MR. ROSE: Objection to the form in light
24 of Judge Colin's prior ruling.

25 I think you understand it's an improper

1 question, Peter, which is why you keep asking it.

2 MR. ELIOT BERNSTEIN: I don't think it's
3 improper at all.

4 A. I am --

5 Q. You are recommending, sir, Mr. Ted
6 Bernstein, the PR, you're the previous PR. And
7 since you're in the business of recommending, would
8 you recommend to Ted Bernstein as successor
9 personal representative to take assets -- to take
10 steps necessary to try to get these insurance
11 proceeds into the estate of Simon Bernstein, since
12 the PR has a fiduciary obligation to all interested
13 persons of an estate?

14 A. I think that Mr. Bernstein -- Ted
15 Bernstein -- should do what he should do based upon
16 his standing as a fiduciary; and if that means not
17 taking a position -- if that means taking a
18 position on behalf of the estate, if that means
19 standing silent and letting the chips fall where
20 they may, those are decisions that he will have to
21 make.

22 Q. And what decision did you make as personal
23 representative with regard to those estate assets?

24 A. We felt that they belonged to the '95
25 trust; that there was enough evidence around that

1 the trust, in fact, existed; and that it ought to
2 be reestablished if it could be.

3 That was our determination. The family --

4 **Q. Were you aware of the 2000 trust?**

5 A. Yes, we were.

6 **Q. Okay. And is that trust -- can that trust**
7 **be found?**

8 A. I think so, if I'm not mistaken.

9 I'm not 100 percent certain about that,
10 Peter.

11 **Q. And is that also a life insurance trust?**

12 A. I believe it is, in the sense that it was
13 going to be the owner and beneficiary of the
14 policy, I believe.

15 **Q. And the --**

16 A. The reason why -- let me just tell you.

17 The reason why Si never wanted to put the
18 ownership out of his control was for the very
19 reason that he wanted to be able to control where
20 that policy was ultimately going.

21 **Q. And the two other policies that were paid**
22 **to the --**

23 A. Yes, sir.

24 **Q. -- estate --**

25 A. Yes, sir.

1 **Q. -- were they in a trust or owned by him**
2 **personally?**

3 A. Well, they were paid --

4 **Q. Were they placed into a trust?**

5 A. No. They were owned by him personally,
6 and they were payable to the estate.

7 **Q. Okay. Did Eliot Bernstein ever express to**
8 **you his disagreement of -- regarding the estate --**
9 **of Simon Bernstein's noninvolvement in the Illinois**
10 **action?**

11 A. He might have. I don't recall.

12 **Q. You don't recall? And if he might have --**

13 A. He --

14 **Q. -- do you recall what you might have said?**

15 MR. BLOCK: I object to the form of that
16 question.

17 A. I don't know how to respond to that
18 question.

19 **Q. Did your office have disagreements with**
20 **Chicago counsel in emails about the filing of the**
21 **action in Illinois?**

22 A. We -- we did not necessarily totally agree
23 with what they wanted to do.

24 **Q. And were the -- some of the children of**
25 **Mr. Simon Bernstein fearful that the claim of Mr.**

1 **Stansbury would consume the insurance proceeds and,**
2 **therefore, wanted to keep those insurance proceeds**
3 **that are the subject of the litigation in Illinois**
4 **out of the estate at all costs?**

5 MR. BLOCK: Peter, what does that have to
6 do with the issue before the court? This is Block.
7 You know, I'm trying to be quiet, but I think
8 you're really going far afield here.

9 MR. FEAMAN: Okay. Fair -- fair comment.

10 **Q. Let me ask one or two more questions: Did**
11 **Ted Bernstein express to you -- either email or**
12 **orally while you were personal representative --**
13 **his desire to keep the insurance proceeds out of**
14 **the estate of Simon Bernstein so that it would not**
15 **be subject to the claim of Mr. Stansbury as a**
16 **creditor?**

17 A. I don't recall. I mean, obviously we all
18 knew that, if the proceeds were payable to the
19 estate --

20 MR. BLOCK: Don, did you hear my objection
21 on privilege?

22 THE WITNESS: Yes, sir.

23 MR. BLOCK: If you want to answer it,
24 that's up to you.

25 MR. FEAMAN: Yeah. I'm asking that

1 question, Irwin, in his capacity as personal
2 representative.

3 MR. BLOCK: Does that mean he wasn't a
4 lawyer?

5 MR. FEAMAN: Well, when you're a personal
6 representative --

7 MR. BLOCK: Go ahead, Peter.

8 A. I will answer it this way: We were all
9 obviously aware -- everybody was aware that if the
10 proceeds came into the estate they would be exposed
11 to a successful prosecution of Mr. Stansbury's
12 lawsuit if he got a judgment.

13 **Q. Did you talk to Mr. Stansbury at any time**
14 **about his claim -- or your attorney, Mr. Manceri?**

15 A. I don't recall ever talking to Mr.
16 Stansbury about it.

17 MR. FEAMAN: Okay. All right. I think
18 that's all I have at this point.

19 THE WITNESS: Thank you, Peter.

20 MR. ROSE: Does anybody else wish to ask
21 questions of Mr. Tescher?

22 MR. MORRISSEY: John Morrissey. I have no
23 questions.

24 MR. ROSE: Anybody else?

25 MR. ELIOT BERNSTEIN: This is Eliot

A		
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