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Estate of Simon Bernstein

<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2 On behalf of "Interested Person" William E. Stansbury:</p> <p>3</p> <p>4 PETER M. FEAMAN, P.A. 3695 West Boynton Beach Boulevard Suite 9 Boynton Beach, Florida 33436 BY: PETER M. FEAMAN, ESQUIRE</p> <p>6</p> <p>7 On behalf of Ted Bernstein:</p> <p>8 PANKAUSKI LAW FIRM 120 South Olive Avenue, Suite 701 West Palm Beach, Florida 33401 BY: JOHN PANKAUSKI, ESQUIRE</p> <p>10 -- and --</p> <p>11 MRACHEK FITZGERALD ROSE KONOPKA THOMAS WEISS 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 BY: ALAN B. ROSE, ESQUIRE</p> <p>14</p> <p>15 On behalf of the Personal Representative of the Estate of Simon Bernstein:</p> <p>16 CIKLIN LUBITZ MARTENS &amp; O'CONNELL 515 North Flagler Drive, 19th Floor West Palm Beach, Florida 33401 BY: BRIAN O'CONNELL, ESQUIRE</p> <p>19 On behalf of Molly Simon, Michael Bernstein, Eric Bernstein and Alexandra Bernstein:</p> <p>20 JOHN P. MORRISSEY, P.A. 330 Clematis Street, Suite 213 West Palm Beach, Florida 33401 BY: JOHN P. MORRISSEY ESQUIRE</p> <p>23 On behalf of himself:</p> <p>24 ELIOT BERNSTEIN, pro se</p> <p>25</p>	<p>10:07:45-10:08:30</p> <p>Page 4</p> <p>1 se.</p> <p>2 MR. FEAMAN: Peter Feaman on behalf of</p> <p>3 William Stansbury, creditor of the estate.</p> <p>4 THE COURT: Okay. What's for today?</p> <p>5 MR. PANKAUSKI: There's a motion to</p> <p>6 special set a petition to remove Ted Bernstein</p> <p>7 as successor trustee of his dad's trust that</p> <p>8 Mr. Feaman filed.</p> <p>9 THE COURT: Okay. Refresh my memory. I</p> <p>10 thought last time we were here we had some</p> <p>11 evidentiary hearings and then had a schedule of</p> <p>12 other ones. Okay. Isn't that what took place?</p> <p>13 MR. FEAMAN: If I may?</p> <p>14 THE COURT: Yes.</p> <p>15 MR. FEAMAN: With regard to Mr. Stansbury,</p> <p>16 Your Honor, we had a hearing regarding the</p> <p>17 appointment of a personal representative of the</p> <p>18 estate of Mr. Bernstein. Your Honor appointed</p> <p>19 Mr. O'Connell.</p> <p>20 THE COURT: Right. Okay. And there were</p> <p>21 other hearings, though, that I don't think we</p> <p>22 got to then. Are they set now in the future?</p> <p>23 MR. FEAMAN: They are not, Your Honor.</p> <p>24 THE COURT: All right. So this is a --</p> <p>25 MR. FEAMAN: We tried to call in your</p>
<p>10:07:16-10:07:35</p> <p>Page 3</p> <p>1 PROCEEDINGS</p> <p>2 - - -</p> <p>3 BE IT REMEMBERED that the following</p> <p>4 proceedings were had in the above-styled and</p> <p>5 numbered cause in the South Palm Beach County</p> <p>6 Courthouse, City of Delray Beach, County of Palm</p> <p>7 Beach, in the State of Florida, by Lisa Mudrick,</p> <p>8 RPR, FPR, before the Honorable MARTIN COLIN, Judge</p> <p>9 in the above-named Court, on August 19, 2014, to</p> <p>10 wit:</p> <p>11 - - -</p> <p>12 THE COURT: This is Bernstein. Please,</p> <p>13 because we have a lot of parties and lawyers,</p> <p>14 make your appearances. Start left to right, my</p> <p>15 left to right. Go ahead.</p> <p>16 MR. PANKAUSKI: Good morning, Your Honor.</p> <p>17 John Pankauski on behalf of Ted Bernstein.</p> <p>18 MR. ROSE: Alan Rose on behalf of Ted</p> <p>19 Bernstein.</p> <p>20 MR. MORRISSEY: John Morrissey here on</p> <p>21 behalf of four adult grandchildren.</p> <p>22 MR. O'CONNELL: Brian O'Connell, personal</p> <p>23 representative of the estate of Simon</p> <p>24 Bernstein.</p> <p>25 MR. ELIOT BERNSTEIN: Eliot Bernstein, pro</p>	<p>10:08:40-10:09:20</p> <p>Page 5</p> <p>1 absence your assistant.</p> <p>2 THE COURT: Okay.</p> <p>3 MR. FEAMAN: I tried to get some hearing</p> <p>4 times. Counsel could not agree as to the</p> <p>5 length of time necessary, so I had to file a</p> <p>6 motion to come before you to get it special</p> <p>7 set.</p> <p>8 THE COURT: All right. Let me see the</p> <p>9 motion that you want set. I don't know why,</p> <p>10 but I thought there was maybe Eliot filed.</p> <p>11 Didn't you file also a petition to remove?</p> <p>12 MR. FEAMAN: He did, Your Honor, yes.</p> <p>13 THE COURT: And you don't have a hearing</p> <p>14 date on that?</p> <p>15 MR. ELIOT BERNSTEIN: Well, I was going to</p> <p>16 join Peter.</p> <p>17 THE COURT: No, no. But I hadn't</p> <p>18 previously given you a hearing date?</p> <p>19 MR. ELIOT BERNSTEIN: Oh, no. Yeah, we</p> <p>20 were scheduled and then we were scheduled for</p> <p>21 spillover but we delayed it. I am trying to</p> <p>22 get counsel.</p> <p>23 THE COURT: Okay. Now I remember. Okay.</p> <p>24 There was some discussion about not going</p> <p>25 forward because you wanted some additional time</p>

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<p>10:09:28-10:10:03 Page 6</p> <p>1 to get counsel. What happened with that? 2 <b>MR. ELIOT BERNSTEIN:</b> You don't want to 3 know. 4 <b>THE COURT:</b> Okay. 5 <b>MR. ELIOT BERNSTEIN:</b> But it hasn't 6 matured into counsel. 7 <b>THE COURT:</b> Okay. All right. Okay. 8 So -- 9 <b>MR. FEAMAN:</b> We also thought that delaying 10 it would be -- 11 <b>THE COURT:</b> The creditor and Eliot have 12 companion petitions to remove Ted, correct? 13 <b>MR. FEAMAN:</b> Correct. 14 <b>THE COURT:</b> All right. Is that the 15 status? 16 <b>MR. PANKAUSKI:</b> That is the status, Your 17 Honor. 18 <b>THE COURT:</b> Okay. So what's the issue 19 then, a hearing date or how long or what's? 20 <b>MR. PANKAUSKI:</b> No. We oppose 21 Mr. Feaman's client, who is a creditor of the 22 estate, from trying to remove a trustee in 23 probate court. 24 <b>THE COURT:</b> Okay. All right. Let me deal 25 with Eliot's first because Eliot's was set</p>	<p>10:11:08-10:11:49 Page 8</p> <p>1 creditor, Mr. Stansbury, he doesn't have 2 standing to remove a trustee -- to remove Ted 3 as trustee. 4 <b>THE COURT:</b> Okay. You agree, depending 5 upon where it's filed, that Eliot does have 6 standing? 7 <b>MR. PANKAUSKI:</b> Eliot has standing to seek 8 Ted's removal, yes. 9 <b>THE COURT:</b> Okay. 10 <b>MR. ELIOT BERNSTEIN:</b> And, Your Honor, I 11 put in a motion to respond to their contempt 12 nonsense and -- 13 <b>THE COURT:</b> I didn't get the last thing 14 you said. 15 <b>MR. ELIOT BERNSTEIN:</b> I put in a motion to 16 respond to their contempt motion they put in 17 here today. 18 <b>THE COURT:</b> I didn't see that. 19 <b>MR. ELIOT BERNSTEIN:</b> Okay. In that 20 motion in case Mr. Feaman somehow isn't, you 21 know, allowed to argue, the law says that you 22 on your own initiative based on review of a 23 trustee's conduct can under I think it's 24 736.0201, blah, blah, blah, is able to make 25 that decision on your own. And right now we</p>
<p>10:10:12-10:10:57 Page 7</p> <p>1 earlier but we delayed that, correct? 2 <b>MR. PANKAUSKI:</b> Yes, Your Honor. 3 <b>THE COURT:</b> Okay. So his matter needs to 4 get set. 5 <b>MR. PANKAUSKI:</b> Well -- 6 <b>THE COURT:</b> Or not. 7 <b>MR. PANKAUSKI:</b> Yes, Your Honor. 8 <b>THE COURT:</b> Okay. 9 <b>MR. PANKAUSKI:</b> If Eliot wants to be heard 10 on it, that's correct. I mean, we would argue 11 that he has to file a complaint under 736.0201. 12 We don't have jurisdiction. And the trust code 13 is pretty clear, he needs to go file a separate 14 civil action. 15 <b>THE COURT:</b> Okay. I haven't looked at his 16 pleadings, and I don't know where they are. So 17 these, both Eliot's and the creditor's 18 petitions are set in the probate case, correct? 19 <b>MR. PANKAUSKI:</b> Yes, Your Honor. 20 <b>THE COURT:</b> So is the issue whether a 21 petition to remove a trustee can take place in 22 the estate case or needs to be filed by 23 separate action in civil court? 24 <b>MR. PANKAUSKI:</b> That is one of the issues. 25 And regarding Mr. Feaman's client, the</p>	<p>10:11:59-10:13:40 Page 9</p> <p>1 have got evidence that assets are missing that 2 they told you -- 3 <b>THE COURT:</b> Hold on. This is UMC time. I 4 don't want to start getting into that. I am 5 trying to get you hearing times now, so. 6 <b>MR. ELIOT BERNSTEIN:</b> Okay. I am sorry. 7 <b>THE COURT:</b> So let me deal with that 8 first. Okay. So the first question is it's 9 not so much a hearing time on Mr. Feaman's 10 client but whether -- it's actually a request 11 to dismiss his petition, correct? 12 <b>MR. PANKAUSKI:</b> Yes, Your Honor. 13 <b>THE COURT:</b> For lack of standing? 14 <b>MR. PANKAUSKI:</b> Yes, Your Honor. 15 <b>THE COURT:</b> Have you filed any pleading 16 directed to that? 17 <b>MR. PANKAUSKI:</b> Yes, Your Honor. 18 <b>THE COURT:</b> Okay. Can I see it? 19 <b>MR. PANKAUSKI:</b> Yes. May I approach? 20 <b>THE COURT:</b> Sure. 21 <b>MR. PANKAUSKI:</b> So this is trustee's 22 motion to dismiss petition to remove Ted S. 23 Bernstein as trustee. Thank you. 24 <b>THE COURT:</b> Okay. Mr. Feaman, I will let 25 you be heard on the standing issue.</p>

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<p>10:13:47-10:15:18 Page 10</p> <p>1 <b>MR. FEAMAN:</b> Thank you. 2 Our motion, Your Honor, that we filed 3 addresses the -- may I sit, Your Honor? 4 <b>THE COURT:</b> Yes, sure. 5 <b>MR. FEAMAN:</b> Our motion addresses the 6 issue of standing right up front beginning at 7 the top of page two. And I can summarize that 8 for you orally or allow you a minute to glance 9 at it. 10 <b>THE COURT:</b> Okay, go ahead. 11 <b>MR. FEAMAN:</b> Thank you, Your Honor. 12 So we begin, Your Honor, with Florida 13 Statute 736.0706 which says that the settlor, a 14 co-trustee, or a beneficiary may request the 15 court to remove a trustee. 16 So then the question is what is the code 17 definition of a beneficiary? For that, Your 18 Honor, we turn to Florida Statute 736.0103 sub 19 4 where beneficiary is defined. There, Your 20 Honor, beneficiary is defined very broadly as, 21 quote, a person who has a present or future 22 beneficial interest in a trust, vested or 23 contingent. 24 Now, in this particular probate estate, 25 Your Honor, Mr. Stansbury is a creditor of the</p>	<p>10:16:52-10:17:50 Page 12</p> <p>1 insufficient to pay them. 2 Therefore, Your Honor, if we assume that 3 Mr. Stansbury's interest admittedly and one in 4 the future because his claim has not been 5 litigated, and admittedly contingent 6 nonetheless, the trust assets may be called 7 upon to satisfy Mr. Stansbury's claim against 8 the estate. And that trust falls within the 9 definition of 733.707. 10 Therefore, Mr. Stansbury would have 11 standing because of how beneficiary is defined 12 as any person who has a future beneficial 13 interest in a trust, vested or contingent. 14 Mr. Stansbury falls into that broad 15 definition. And because you look at the 16 inventory of the Simon Bernstein Estate, it 17 only has a million dollars, his claim on its 18 face is 2.5 million. Then Mr. Stansbury could 19 very well need those trust assets to satisfy 20 his claim. Or, more accurately, the personal 21 representative may have to go to the trust. 22 Mr. Stansbury has a direct interest in 23 preserving the assets of the trust. Therefore, 24 if we have information to think that those 25 assets are being wasted by the present</p>
<p>10:15:35-10:16:36 Page 11</p> <p>1 Simon Bernstein Estate to the extent of in 2 excess of \$2.5 million dollars, which was given 3 in a proffer when we had our mediation in the 4 underlying case. The assets of the Simon 5 Bernstein trust are a little over one million 6 dollars at this time. 7 So because the assets of the -- estate I 8 mean. Because the assets of the Simon 9 Bernstein Estate are facially insufficient to 10 meet the claim of Mr. Stansbury, what happens 11 then? 12 For that we turn to Florida Statute 13 733.7073, which is also on page two of our 14 motion, which states, quote -- and this deals 15 with the payment of claims and the order of 16 claims in an estate. 17 And it states, Any portion of a trust with 18 respect to which a decedent who is the 19 grantor -- and that's this case; Mr. Bernstein 20 was the grantor of this revocable lifetime 21 trust -- the grantor has at the decedent's 22 death a right of revocation, which we have; is 23 liable for the expenses of the administration 24 and obligations of the decedent's estate to the 25 extent that the decedent's estate is</p>	<p>10:18:06-10:18:55 Page 13</p> <p>1 successor trustee of the trust, that is Mr. Ted 2 Bernstein, then we have sought to remove him so 3 that those assets of the trust of which 4 Mr. Stansbury may claim some day are protected. 5 <b>THE COURT:</b> Okay. What do you say? 6 <b>MR. PANKAUSKI:</b> Absolutely not, Your 7 Honor. First of all, Mr. Feaman is trying to 8 tell you that his client, who is a claimant, 9 not a creditor, his claim has not been 10 established, is a beneficiary whose interest is 11 a future interest or vested. And Mr. Feaman's 12 claimant client is not vested. He is not a 13 beneficiary. He is a claimant. We know the 14 difference between a beneficiary and someone 15 making a claim against the estate of Simon 16 Bernstein. 17 The personal representative is an 18 interested person in the trust, right? 19 Mr. O'Connell can go to Ted, the trustee, and 20 say, hey, I need to do things or I want to seek 21 your removal. But a claimant is not an 22 interested person in the trust. 23 Mr. Feaman's client is neither a settlor, 24 a beneficiary, or a named trustee of the Simon 25 Bernstein trust.</p>

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<p>10:19:07-10:20:03 Page 14</p> <p>1 <b>THE COURT:</b> Okay. So my question is is 2 there any case law on whether a claimant in an 3 estate can be deemed to be a beneficiary under 4 736? 5 <b>MR. PANKAUSKI:</b> None. 6 <b>MR. FEAMAN:</b> We could not find any, Your 7 Honor. So we are relying upon -- if I may hand 8 Your Honor the statute? 9 <b>THE COURT:</b> Okay. Thanks. 10 <b>MR. FEAMAN:</b> You are welcome. 11 <b>THE COURT:</b> Right. That's what you quoted 12 in your motion? 13 <b>MR. FEAMAN:</b> Yes. The statutory 14 definition of beneficiary, and it's clear the 15 statute says a beneficiary has standing, the 16 statutory definition of a beneficiary is very 17 broad and states that a person who has a future 18 beneficial interest, vested or contingent. And 19 therefore, Your Honor, we respectfully strongly 20 suggest that Mr. Stansbury clearly has standing 21 to seek the relief that he has requested. 22 <b>THE COURT:</b> So if I have to go to 733.707, 23 let me take a look at that for a second again. 24 <b>MR. FEAMAN:</b> It's this one, Your Honor. 25 <b>THE COURT:</b> Okay. All right. Thanks.</p>	<p>10:22:04-10:22:55 Page 16</p> <p>1 first in the probate court, get a judgment, or 2 have a claim satisfied by the estate. Then he 3 turns to Mr. O'Connell and says, Mr. O'Connell, 4 please satisfy my judgment. If Mr. O'Connell 5 doesn't have sufficient funds, he then turns to 6 Ted Bernstein and says, Mr. Bernstein, please 7 give me money from your dad's. 8 <b>THE COURT:</b> But pending that process the 9 claimant, who is Mr. Feaman's client, says, I 10 want to remove Ted. And the key seems to be 11 does he occupy, as he is making that request 12 now, the position of being a beneficiary? 13 <b>MR. PANKAUSKI:</b> No, because he neither has 14 a present interest to the trust, he is not 15 vested, and he doesn't have a future interest 16 to the trust. If he were vested this would be 17 a different story. But the Simon Bernstein 18 trust -- 19 <b>THE COURT:</b> Well, he says he has an 20 interest in a future interest in the trust if 21 the estate is insufficient to meet his claim, 22 and his claim becomes ripe, it's determined 23 there's insufficient funds. Then he says 24 he's -- you know, he would then take action 25 against the trust or go to the PR to invade the</p>
<p>10:20:54-10:21:50 Page 15</p> <p>1 Well, 733.707 speaks a little differently 2 than, Mr. Feaman, than I think the way you are 3 interpreting it. That to me says if there's a 4 trust, which there is here, where the decedent 5 is also the grantor, which is the case here, 6 and there's a right of revocation, which is the 7 case here, then the trust could be liable for 8 expenses of administration and obligations of 9 the estate. The trust could be. 10 <b>MR. FEAMAN:</b> Correct. 11 <b>THE COURT:</b> But that doesn't -- that's not 12 a definitional section that indicates that how 13 a claimant of an estate could be deemed to be a 14 beneficiary. I am not getting that leap. 15 <b>MR. FEAMAN:</b> Sure. This -- 16 <b>THE COURT:</b> I mean, because what I am 17 getting at is 733.707 says what it says. So 18 someone could look to a trust to pay for 19 obligations of an estate based upon what that 20 statute says. 21 You agree with that, Mr. Pankauski? 22 <b>MR. PANKAUSKI:</b> Yes, Your Honor. 733.707 23 sets out the order of payments and the process. 24 <b>THE COURT:</b> Right. 25 <b>MR. PANKAUSKI:</b> Mr. Feaman has to win</p>	<p>10:23:07-10:24:06 Page 17</p> <p>1 trust. 2 <b>MR. PANKAUSKI:</b> Exactly. He's got to go 3 to the PR. And his interest is not vested. 4 The Simon Bernstein trust says nothing about 5 Mr. Feaman's clients. And he is trying to 6 convince you that a claimant in an estate is a 7 beneficiary of Mr. Bernstein's trust. 8 <b>THE COURT:</b> Hold on. Let me finish 9 reading something else. 10 <b>MR. PANKAUSKI:</b> And there's no case law on 11 that. 12 <b>MR. FEAMAN:</b> Your Honor, counsel keeps 13 using the word vested. That's not the only 14 thing it says under the definition of 15 beneficiary. 16 <b>THE COURT:</b> No, it says vested or 17 contingent. 18 <b>MR. FEAMAN:</b> Or contingent. And if 19 Mr. Stansbury has reason to believe that the 20 assets of the trust are being wasted, he should 21 have the right. 22 <b>THE COURT:</b> But the question is at this 23 stage as a claimant -- 24 <b>MR. FEAMAN:</b> Why should he have to wait 25 until his claim is finally liquidated after</p>

<p>10:24:17-10:25:04 Page 18</p> <p>1 trial, then the estate is insufficient in terms 2 of the trust? 3 <b>THE COURT:</b> Because that may be what the 4 legislature intended. 5 <b>MR. FEAMAN:</b> And now the trust is bare. 6 And then Mr. Stansbury, who maybe had a chance 7 to save what assets were there back when his 8 claim was future and contingent, now he gets to 9 the point where it's present and vested, and 10 now because of the intervening timeframe the 11 assets have been dissipated. 12 <b>THE COURT:</b> So let me ask you. 736.0103, 13 the definitional section of beneficiary, 14 there's no cases that speak about when a 15 claimant can be deemed a beneficiary? 16 <b>MR. FEAMAN:</b> Not that we could find. 17 <b>THE COURT:</b> And you didn't find any 18 either? 19 <b>MR. PANKAUSKI:</b> No, because it doesn't 20 exist in the history of jurisprudence for 21 trusts. A claimant is not a trust beneficiary. 22 He may be a creditor of the estate. 23 <b>MR. FEAMAN:</b> Claimant is a potential 24 beneficiary of the trust in a situation unique 25 like this where the trust assets may be called</p>	<p>10:26:34-10:27:23 Page 20</p> <p>1 could have been the opportunity? 2 <b>THE COURT:</b> Well, wouldn't others who have 3 standing, such as either Mr. O'Connell or 4 Eliot, be able to deal with that issue? 5 Because they clearly have standing. 6 <b>MR. FEAMAN:</b> Yes. Mr. Stansbury would 7 like to deal with it too because he has a 8 potential claim on that trust. 9 <b>THE COURT:</b> I am just not sure though that 10 under the statutory scheme where he is right 11 now as claimant puts him in a position to be 12 deemed a beneficiary. 13 All right. Let me think about it. You 14 know, I mean, I haven't seen this before. And 15 do you have a proposed order? 16 <b>MR. FEAMAN:</b> I do. 17 <b>THE COURT:</b> Thanks. If either side has a 18 proposed order I will take a look at it. 19 <b>MR. PANKAUSKI:</b> It's just blank, Your 20 Honor. 21 <b>MR. FEAMAN:</b> That's all we have. 22 <b>THE COURT:</b> Blank with envelopes is great. 23 So I will rule on this. 24 And then what else do we have to do now 25 that you are here?</p>
<p>10:25:13-10:26:19 Page 19</p> <p>1 upon to satisfy my client's claim. 2 <b>MR. PANKAUSKI:</b> That's not a beneficiary. 3 That's a claimant. 4 <b>THE COURT:</b> That's the difference I think 5 I have to figure out. 6 Mr. Feaman, when your client moves, 7 assuming this is what happens, from claimant to 8 creditor, he then gets a class of -- he becomes 9 a numbered class of creditors order of -- then 10 I deal with 733.707 and determine how to pay 11 him from what's left. And then if there's 12 insufficient assets then the trust could be 13 looked at as a source. 14 <b>MR. FEAMAN:</b> Correct. 15 <b>THE COURT:</b> But the trust can be liable 16 for obligations of the estate once I find what 17 those obligations are. But right now I don't 18 know what those obligations are. And the fact 19 that your client is a creditor doesn't put him 20 yet into a position where I could order his 21 claim to be paid because it hasn't been 22 determined yet. 23 <b>MR. FEAMAN:</b> And what happens, 24 respectfully, Your Honor, if when that time 25 comes the trust cupboard is bare when there</p>	<p>10:27:33-10:28:04 Page 21</p> <p>1 <b>MR. ELIOT BERNSTEIN:</b> I have got an 2 interim distribution that I put in before 3 anything he is about to say that depends on my 4 kids being in school tomorrow that he has 5 delayed and fakaktad around here long enough. 6 So before he gets into the whole Eliot is 7 contemptuous -- 8 <b>THE COURT:</b> Well, I just want to be able 9 to know if I need to set hearings on things, 10 that's why. This is UMC. I can't have 11 evidentiary hearings. 12 <b>MR. ELIOT BERNSTEIN:</b> This is -- they are 13 asking for your decision to allow my children 14 to go to school today which they are in school 15 but will be out tomorrow because of -- 16 <b>THE COURT:</b> Who is asking for that? 17 <b>MR. ELIOT BERNSTEIN:</b> They are, meaning he 18 said he is coming to the court to -- I have got 19 a letter here. He is coming to the court to 20 ask for -- 21 <b>THE COURT:</b> What's going on, Mr. Rose? 22 <b>MR. ROSE:</b> Two different things. You want 23 to deal with this children in school? 24 <b>THE COURT:</b> Yes. 25 <b>MR. ROSE:</b> Okay.</p>

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1 **THE COURT:** I mean, I don't know anything.  
2 **MR. ROSE:** That's fine.  
3 **THE COURT:** This is UMC.  
4 **MR. ELIOT BERNSTEIN:** Can I deal with it  
5 first?  
6 **THE COURT:** But see, I am not -- I am just  
7 -- remember, at UMC I don't deal with  
8 children's school issues because how could I --  
9 I don't even have any pleadings dealing with  
10 this.  
11 **MR. ELIOT BERNSTEIN:** You do. I filed  
12 them.  
13 **THE COURT:** Yeah, but I mean, are they set  
14 for hearing for today?  
15 **MR. ELIOT BERNSTEIN:** I thought so. I put  
16 it in for a hearing today.  
17 **THE COURT:** Do you have a notice for  
18 hearing?  
19 **MR. ELIOT BERNSTEIN:** I did. I filed one.  
20 **MR. PANKAUSKI:** He filed it yesterday.  
21 **MR. ELIOT BERNSTEIN:** No. Interim  
22 distributions was filed last week. Yesterday I  
23 filed for the motion -- my response to his  
24 contempt nonsense.  
25 **THE COURT:** All right. Okay. So there's

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1 a motion for interim distribution. Okay. And  
2 there's a notice of hearing was filed yesterday  
3 for today?  
4 **MR. ELIOT BERNSTEIN:** No. No. It was  
5 filed last week for the interim.  
6 **THE COURT:** For today?  
7 **MR. ELIOT BERNSTEIN:** I filed one  
8 yesterday for the response to his contempt  
9 stuff he wanted to hear today.  
10 **THE COURT:** Okay. All right. Put the  
11 contempt stuff aside. Let's deal with the  
12 interim distribution issue.  
13 **MR. ELIOT BERNSTEIN:** Okay. Thank you,  
14 sir.  
15 **THE COURT:** Okay. Is that something I can  
16 do at UMC?  
17 **MR. ROSE:** I don't know if I can answer  
18 that question directly. Can I just tell you  
19 briefly where we are?  
20 **THE COURT:** All right.  
21 **MR. ROSE:** It might help you.  
22 **THE COURT:** Go ahead.  
23 **MR. ROSE:** I don't know which proceeding  
24 we are in, but --  
25 **THE COURT:** Okay.

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1 **MR. ELIOT BERNSTEIN:** Can I take the  
2 first?  
3 **THE COURT:** Right now it's Eliot says  
4 there's pending this petition for interim  
5 distribution --  
6 **MR. ROSE:** Okay.  
7 **THE COURT:** -- from the estate. Okay.  
8 All right. So direct it to that.  
9 **MR. ROSE:** Okay. So Mr. Eliot Bernstein  
10 has made a request for an interim distribution  
11 from something to pay for the private school  
12 tuition of his three children.  
13 **THE COURT:** Okay.  
14 **MR. ROSE:** He made that request probably  
15 the very end of July. And I, as Ted's counsel,  
16 offered to discuss it with him so we could  
17 figure out where we were.  
18 **THE COURT:** And Ted's role in the estate  
19 is what?  
20 **MR. ROSE:** If I could?  
21 **THE COURT:** You represent Ted?  
22 **MR. ROSE:** But not in this estate. That's  
23 what I am trying to explain to you.  
24 **THE COURT:** Go ahead.  
25 **MR. ROSE:** There's two different sides.

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1 There's a Simon side and a Shirley side. On  
2 the Simon side I don't believe you can do  
3 anything because there's a creditor's claim.  
4 The creditor has just told you within the last  
5 five minutes that his claim exceeds the value  
6 of all the assets in the estate.  
7 **THE COURT:** Okay.  
8 **MR. ROSE:** So I don't think you could make  
9 an interim distribution over the creditor's  
10 objection.  
11 **THE COURT:** All right.  
12 **MR. ROSE:** So that takes the Simon side  
13 out of it, which tells me that I am going to  
14 suggest to you that we would need to be in the  
15 Shirley proceeding to discuss that.  
16 **THE COURT:** Stop for one second.  
17 So, Mr. O'Connell, you are the PR in the  
18 Simon estate?  
19 **MR. O'CONNELL:** Yes, sir.  
20 **THE COURT:** Okay. All right. He would be  
21 the person --  
22 **MR. O'CONNELL:** I asked him.  
23 **MR. ELIOT BERNSTEIN:** He did ask me, Your  
24 Honor.  
25 **THE COURT:** Okay. That would deal with

1 that subject. Okay.  
2 **MR. ELIOT BERNSTEIN:** Here's the problem.  
3 **THE COURT:** Okay.  
4 **MR. ELIOT BERNSTEIN:** He is an alleged  
5 trustee of the most documented (sic) -- he  
6 can't be, Ted. That's something we have  
7 been --  
8 **THE COURT:** I am talking about  
9 Mr. O'Connell.  
10 **MR. ELIOT BERNSTEIN:** No, no. I know. So  
11 I made a petition to the trustee, a request  
12 under the welfare distributions that they are  
13 required to pay. It's not even discretionary.  
14 **THE COURT:** So is your request in the  
15 estate or in the trust?  
16 **MR. ELIOT BERNSTEIN:** Both.  
17 **THE COURT:** Both?  
18 **MR. ELIOT BERNSTEIN:** Both Simon and  
19 Shirley. I made it everywhere I could because  
20 the future of my kids depends on it.  
21 **THE COURT:** All right.  
22 **MR. ELIOT BERNSTEIN:** And he is playing  
23 more games.  
24 **THE COURT:** Okay. All right. But stop.  
25 Remember, folks. Okay. Here's my question to

1 everybody. I will let the lawyers answer this  
2 because they know the rules.  
3 Is this something that I can do at UMC?  
4 **MR. PANKAUSKI:** No, Your Honor.  
5 **THE COURT:** I mean, UMC has certain rules  
6 that allows oral argument on filed motions. I  
7 can't take testimony. I can't swear anyone in.  
8 I can't take figures. I can't make  
9 determinations.  
10 **MR. ELIOT BERNSTEIN:** They are asking  
11 simply for your approval to allow Ted to make a  
12 distribution that he says he is willing to make  
13 as long as you approve it. I don't know  
14 what -- they've delayed it to day of school,  
15 the filing these contempt and reconstruct trust  
16 to fake crimes. It's crazy; I know. But we  
17 are now in a situation where Mr. Rose has said  
18 he was coming here today, and I have his  
19 letter, to basically get you to approve Ted who  
20 is obligated to make these payments, approve  
21 it. That's all we need.  
22 **THE COURT:** And you want that?  
23 **MR. ELIOT BERNSTEIN:** Yeah, I want him to  
24 approve the payment.  
25 **THE COURT:** So you want what they are

1 asking?  
2 **MR. ELIOT BERNSTEIN:** I want them to get  
3 -- well, I want you to approve it but not under  
4 their term.  
5 **THE COURT:** Oh, okay.  
6 **MR. ELIOT BERNSTEIN:** I have got an order  
7 for --  
8 **THE COURT:** But remember, if there's a  
9 dispute I have to hear --  
10 **MR. ELIOT BERNSTEIN:** But they are not  
11 disputing.  
12 **THE COURT:** All right. Go ahead,  
13 Mr. Rose.  
14 **MR. ROSE:** If he would let me speak. If I  
15 could speak?  
16 **THE COURT:** Let him tell me what's going  
17 on.  
18 **MR. ROSE:** Right. Okay. First of all,  
19 this man is essentially trying to -- no one has  
20 any ill will towards him or his children. You  
21 have to understand that. We don't. He will  
22 take whatever happens and it will be on the  
23 internet tomorrow, and he is trashing --  
24 **THE COURT:** Let's go past that.  
25 **MR. ROSE:** But it's important to

1 understand. We have boxes. Okay? We live in  
2 two boxes. There's a Simon box and a Shirley  
3 box.  
4 **THE COURT:** Okay.  
5 **MR. ROSE:** I am trying to explain to you  
6 that in the Simon box Ted as trustee cannot do  
7 anything because Mr. Stansbury won't allow  
8 because he has just told you there's two and a  
9 half million dollars. That's box number one.  
10 So what I am saying to you is, regardless of  
11 what he wants to do --  
12 **THE COURT:** That's the Simon trust you are  
13 talking about?  
14 **MR. ROSE:** Well, Ted is not the PR of the  
15 Simon estate. To the extent there's money in  
16 the Simon trust he cannot obviously pay out any  
17 money. Mr. Stansbury has just told you he is  
18 concerned with what happens in the Simon trust.  
19 So I am saying to you as an officer of the  
20 court there's nothing we can do in the Simon  
21 box. And I want to end that. And then we can  
22 talk about the Shirley box because I have no  
23 interest in his children not going to school,  
24 nor does my client.  
25 **THE COURT:** Well, tell me about the



1 Shirley trust then.  
2 **MR. ROSE:** We have to finish the Simon  
3 box, and I don't think -- unless his client  
4 said to you, I consent to the money coming out  
5 of any of the trust or the estate, there's  
6 nothing we can do in the Simon box. We should  
7 finish it.  
8 **THE COURT:** Switch to the Shirley.  
9 **MR. ROSE:** Okay. In the Shirley trust.  
10 Ted is by name in the document the successor  
11 trustee. He is by name in the document the  
12 successor personal representative of the estate  
13 of Shirley Bernstein.  
14 **MR. ELIOT BERNSTEIN:** No.  
15 **THE COURT:** Go ahead.  
16 **MR. ROSE:** We are going to switch now and  
17 we are now going to be in the Shirley case. I  
18 am not sure what's pending. There is the  
19 Shirley estate in which there's no assets in  
20 the estate because while he was alive it all  
21 went to Mr. Simon Bernstein.  
22 In the Shirley trust we have initiated an  
23 action. There's now an action pending to  
24 construe the trust. It has nothing directly to  
25 do with why we are here today. But there's a

1 pending action now. And there's a request to  
2 Ted Bernstein to make an interim distribution.  
3 **THE COURT:** Out of Shirley's trust?  
4 **MR. ROSE:** Out of Shirley's trust.  
5 **THE COURT:** And that is done by Eliot?  
6 **MR. ROSE:** He has made a request. We  
7 offered -- Ted has made an interim distribution  
8 to every beneficiary. Eliot refused the  
9 interim distribution to him last year. I think  
10 there were hearings before I was involved in  
11 the case where Your Honor addressed that with  
12 Eliot. I mean, there was an interim  
13 distribution to each of the beneficiaries, and  
14 Eliot refuses to take.  
15 Now he is coming in and says, I need  
16 something different. I need money for my  
17 children's tuition. I have no interest in  
18 doing anything but figure out what we can do.  
19 That's why I tried to have a discussion with  
20 him about the issue.  
21 In the Shirley trust side we have a  
22 problem because there's a dispute mostly  
23 between Mr. Bernstein and the trust and the  
24 beneficiaries as to who are the beneficiaries.  
25 Mr. Bernstein contends that he --

1 **THE COURT:** Eliot?  
2 **MR. ROSE:** Eliot contends that he might be  
3 an individual beneficiary of the Shirley  
4 Bernstein trust. The way the documents appear  
5 to be drafted, Simon Bernstein had a power of  
6 appointment to appoint the assets in the  
7 Shirley Bernstein trust, and he appointed it to  
8 his ten grandchildren. Over a year ago, before  
9 I was involved, the trustee made an interim  
10 distribution to the ten beneficiaries. Eliot  
11 refused that money. Now he is saying, I want  
12 to make -- I want you to make a distribution to  
13 St. Andrews School. We don't care. We are  
14 fine to make that with a couple caveats.  
15 Number one, Mr. Bernstein, who wants the  
16 money, is challenging whether -- who the  
17 beneficiaries are. Number two, there may be  
18 questions whether if his children are the  
19 beneficiaries and not him, I don't want  
20 Mr. Bernstein to be sued by his children. And  
21 he has filed an indigency paper indicating he  
22 has absolutely no money, no job, no income, no  
23 this, no that. His children go to a very  
24 expensive school paid by his father while he  
25 was alive.

1 I don't care about paying the school. I  
2 don't want Mr. Ted Bernstein to be sued if he  
3 makes the distribution and now you have a  
4 dispute.  
5 So what I did is I e-mailed the  
6 beneficiaries and asked if anybody had an  
7 objection, if anyone had an objection to the  
8 trustee making an emergency interim  
9 humanitarian distribution to Eliot Bernstein or  
10 his -- well, it's really money for his children  
11 for school. I also asked that he sign a --  
12 **THE COURT:** And the response was what?  
13 **MR. ROSE:** Well, the response was -- one  
14 of them is here. I have not received any  
15 objections. But Eliot Bernstein has objected.  
16 You know, we asked that he sign the same type  
17 of a receipt and clawback agreement that  
18 everyone else did. And we would need some  
19 protection for Ted that he can never be sued  
20 for making this interim distribution.  
21 Mr. Pankauski would raise the question of  
22 whether -- of the jurisdiction to do this where  
23 we are here now and -- but I didn't wait for  
24 the last minute. I had that immediate  
25 conference call with Mr. Bernstein.

1 **THE COURT:** Okay.  
2 **MR. ROSE:** Your Honor was on vacation last  
3 week. I think today is the first day we can be  
4 here.  
5 His children are not pawns. They are not  
6 people that are being used for anything. We  
7 are here where we are.  
8 If there's a way to resolve it that  
9 satisfies the Court's concerns, and  
10 particularly you'd have to order Ted to do  
11 this, and I think you'd have to enjoin anyone  
12 from suing him ever for making this  
13 distribution and give him protection. Because,  
14 you know, he is an officer. He is a fiduciary  
15 in this trust. I don't have a problem. If the  
16 payment needs to be done tomorrow, that's not  
17 my creating. We could have done this in May,  
18 June or July.  
19 **THE COURT:** Okay. Slow down a second.  
20 Here's the thing. Let me get to the bottom  
21 line here.  
22 **MR. ROSE:** Right.  
23 **THE COURT:** As I have always said at prior  
24 times we have been here, this is UMC.  
25 **MR. ROSE:** I understand.

1 **THE COURT:** So there are rules. Those  
2 rules are going to be followed. And I  
3 announced last time they are going to be  
4 strictly followed. Okay.  
5 So in light of that, if you folks can  
6 reach an agreement to deal with this issue and  
7 can give me an agreed order this morning, I  
8 will consider it. But that requires an  
9 agreement. Okay? So that's step one.  
10 Step two is absent that, whatever request  
11 is made in this, like all other areas, you file  
12 a pleading. And if I have to take evidence,  
13 you set it for an evidentiary hearing. If I  
14 can do it by five minute oral argument, you set  
15 it for UMC. If you need more than five minutes  
16 in oral argument, you specially set it. And  
17 that's the way it goes.  
18 So do you want to take a few moments and  
19 talk to Eliot and anyone else you have to talk  
20 to to see if you can reach an agreed order on  
21 this while we are here this morning?  
22 **MR. ELIOT BERNSTEIN:** May I just say  
23 something on the record?  
24 **THE COURT:** Okay.  
25 **MR. ELIOT BERNSTEIN:** Since he has done

1 his whole thing there?  
2 **THE COURT:** All right. But I asked him a  
3 question. Let him answer it.  
4 **MR. ELIOT BERNSTEIN:** Okay.  
5 **THE COURT:** Go ahead.  
6 **MR. ROSE:** I provided him -- everyone  
7 that's got the interim distribution signed a  
8 receipt and return agreement that if Your Honor  
9 ordered the money to be returned it would be  
10 returned.  
11 **THE COURT:** Okay.  
12 **MR. ROSE:** In this case the money would be  
13 spent directly to a school. It would never be  
14 coming back. So we would need protection that  
15 if it's determined that Eliot was the  
16 beneficiary, that he would agree that this  
17 counts against his distribution.  
18 **THE COURT:** Okay. I understand all. I  
19 understand everything you have said.  
20 **MR. ROSE:** I have given him the papers he  
21 would need to sign --  
22 **THE COURT:** Okay.  
23 **MR. ROSE:** -- and review and the order  
24 that Your Honor would want to sign.  
25 **THE COURT:** Okay.

1 **MR. ROSE:** And I think he's going to say  
2 he won't do it because he doesn't negotiate  
3 with terrorists and whatever else he --  
4 **THE COURT:** Don't speak for him.  
5 **MR. ELIOT BERNSTEIN:** Your Honor?  
6 **THE COURT:** Now, listen, this is final  
7 word.  
8 **MR. ELIOT BERNSTEIN:** Got it.  
9 **THE COURT:** This is UMC. You are way over  
10 your time limit.  
11 **MR. ELIOT BERNSTEIN:** I totally get it,  
12 and I am sorry for that.  
13 **THE COURT:** All right. Go ahead.  
14 **MR. ELIOT BERNSTEIN:** For this whole mess.  
15 But I just like to set the record straight.  
16 **THE COURT:** Well, I don't want you to. I  
17 want you to deal with this issue.  
18 **MR. ELIOT BERNSTEIN:** Okay. What he just  
19 said, I want to set that straight.  
20 They want me to take a distribution to  
21 what they know are knowingly wrong  
22 beneficiaries that were achieved through a  
23 fraudulent document scheme, and that's been  
24 admitted to.  
25 **THE COURT:** No. Slow down. Slow down.

1 See, that's not what they've asked.  
2 **MR. ELIOT BERNSTEIN:** No, that's what they  
3 are asking he just said.  
4 **THE COURT:** No, that's not what he said.  
5 I heard what he said.  
6 **MR. ELIOT BERNSTEIN:** He wants me to take  
7 interim distributions like everybody else.  
8 **THE COURT:** No. Here's what he said.  
9 Money is going to go from the trust to you  
10 and/or your children.  
11 **MR. ELIOT BERNSTEIN:** Right.  
12 **THE COURT:** Okay? It's money passing.  
13 Okay. When you get the money, you would, one,  
14 sign a receipt. Okay? That means you get it.  
15 **MR. ELIOT BERNSTEIN:** That's okay. I am  
16 not -- it's a waiver. It's got all kinds of --  
17 **THE COURT:** Well, I don't know what else  
18 is in there.  
19 (Overspeaking)  
20 **MR. ELIOT BERNSTEIN:** It's participating  
21 in fraud. We went through this September '13  
22 and you wouldn't approve it back then because  
23 you weren't going to approve me participating  
24 in a fraud.  
25 **THE COURT:** All right. But,

1 Mr. Bernstein, I can't --  
2 **MR. ELIOT BERNSTEIN:** That's what he is  
3 asking me to do for the third time. Okay. Use  
4 my kids as hostages for school --  
5 **THE COURT:** I have asked you not to do  
6 that. I will instruct you one more time. I  
7 don't want that type of talk in my courtroom.  
8 **MR. ELIOT BERNSTEIN:** What type?  
9 **THE COURT:** Hostage, children. Listen to  
10 me carefully.  
11 **MR. ELIOT BERNSTEIN:** Okay.  
12 **THE COURT:** Stop. Okay?  
13 **MR. ELIOT BERNSTEIN:** Yes.  
14 **THE COURT:** You are pushing the wrong  
15 buttons.  
16 **MR. ELIOT BERNSTEIN:** Okay.  
17 **THE COURT:** Okay? If you push this button  
18 again it's going to be adverse to you. I have  
19 asked you not to do that stuff.  
20 **MR. ELIOT BERNSTEIN:** Okay.  
21 **THE COURT:** You know, this is a dignified  
22 process. Mr. Bernstein, you cut that out right  
23 now.  
24 **MR. ELIOT BERNSTEIN:** Okay.  
25 **THE COURT:** All right? I am talking to

1 you. All right? This is a dignified process.  
2 You keep it that way. Okay? Everyone else is  
3 participating fine. You can have disputes, but  
4 we deal with them in a civilized manner in the  
5 courtroom. Okay? Everyone is civil and  
6 professional here as they speak. That's the  
7 rule. Okay.  
8 You can go out and speak. If you can  
9 reach an agreement, fine. If not, set it.  
10 Fine. Okay? And I will rule on this.  
11 **MR. FEAMAN:** Thank you. I have an order.  
12 **THE COURT:** Thanks.  
13 **MR. FEAMAN:** There's an order that grants  
14 and a separate order that denies.  
15 **THE COURT:** Okay. Thank you. And I will  
16 take a look at it.  
17 **MR. FEAMAN:** With envelopes.  
18 **THE COURT:** All right.  
19 **MR. ELIOT BERNSTEIN:** And I have an order  
20 if you would like to look at for the payments  
21 you would have to sign.  
22 **THE COURT:** I am only going to do an  
23 agreed order for UMC purposes.  
24 **MR. ELIOT BERNSTEIN:** Okay.  
25 **THE COURT:** I can't do anything that's not

1 agreed to. Show them the order. Maybe you  
2 guys can work out the form. You got to try to  
3 get past some of these barriers to get to the  
4 bottom line.  
5 **MR. ELIOT BERNSTEIN:** I am not going to  
6 participate in fraud.  
7 **THE COURT:** All right. No one --  
8 **MR. ELIOT BERNSTEIN:** That's what they are  
9 asking me to do.  
10 **THE COURT:** Okay.  
11 **MR. PANKAUSKI:** Are you going to sign the  
12 release?  
13 **THE COURT:** All right. Go outside and  
14 talk. If you can work on this, fine. And  
15 while I'm in another hearing you can bring in  
16 an agreed order.  
17 **MR. ROSE:** We had other matters. We will  
18 reset them.  
19 **THE COURT:** Yes.  
20 **MR. ROSE:** That's fine, Your Honor. We'll  
21 reset them.  
22 **THE COURT:** Thanks.  
23  
24 (Proceedings concluded at 10:44 a.m.)  
25

1                   C E R T I F I C A T E

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4 The State of Florida

5 County of Palm Beach

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7                   I, Lisa Mudrick, RPR, FPR, certify that I  
8 was authorized to and did stenographically report  
9 the foregoing proceedings, pages 1 through 41, and  
10 that the transcript is a true record.

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12                   Dated September 15, 2014.

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Hon. Martin Colin - 08/19/2014  
Estate of Simon Bernstein

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