

1 IN THE FIFTEENTH JUDICIAL CIRCUIT COURT  
2 IN AND FOR PALM BEACH COUNTY, FLORIDA  
3 DIVISION IY  
4 CASE NO: 502012CP004381SB

5  
6 IN RE:  
7 ESTATE OF SIMON BERNSTEIN,  
8 Deceased.

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12 Proceedings before the Honorable  
13 MARTIN COLIN

14

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16 Tuesday, August 19, 2014  
17 200 West Atlantic Avenue  
18 South Palm Beach County Courthouse  
19 Delray Beach, Florida 33444  
20 10:06 - 10:44 a.m.

21

22

23 Reported by:  
24 Lisa Mudrick, RPR, FPR  
25 Notary Public, State of Florida

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

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<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

10:28:53-10:29:21 Page 23

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.

10:29:28-10:30:17 Page 24

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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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 502011CP000653XXXXSB

IN RE: THE ESTATE OF  
SHIRLEY BERNSTEIN,

Deceased.

---

ELIOT IVAN BERNSTEIN, PRO SE,

Petitioner.

vs.

TESCHER & SPALLINA, P.A. (AND ALL  
PARTNERS, ASSOCIATES AND OF COUNSEL);  
ROBERT L. SPALLINA, ESQ., PERSONALLY;  
et al.,

Respondents.

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HEARING BEFORE THE HONORABLE MARTIN H. COLIN

Tuesday, August 19, 2014

South Palm Beach County Courthouse  
200 West Atlantic Avenue, 2nd Floor  
Delray Beach, Florida 33444

12:04 - 12:24 p.m.

**CERTIFIED COPY**

Everman & Everman, Inc.  
1101 N Olive Ave West Palm Beach FL 33401

1 The following proceedings were taken in the  
2 above-entitled cause before JUDGE MARTIN H. COLIN, on the  
3 2nd Floor, in the South Palm Beach County Courthouse,  
4 City of Delray Beach, State of Florida, beginning at  
5 12:04 p.m., on Tuesday, the 19th day of August, 2014.

6 Appearances at said time and place were as follows:

7  
8 ELIOT IVAN BERNSTEIN, PETITIONER, PRO SE

9 On behalf of Ted Bernstein:

10 ALAN B. ROSE, ESQ.  
11 MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS  
12 505 S. Flagler Drive, Suite 600  
13 West Palm Beach, Florida 33401

14 On behalf of Molly Simon, Alexandra Bernstein,  
15 Michael Bernstein and Eric Bernstein:

16 JOHN P. MORRISSEY, ESQ.  
17 JOHN P. MORRISSEY, P.A.  
18 330 Clematis Street, Suite 203  
19 West Palm Beach, Florida 33401

20 Also present:

21 BRIAN O'CONNELL, ESQ., PERSONAL REPRESENTATIVE OF THE  
22 ESTATE OF SIMON BERNSTEIN

23 - - -

24 THE COURT: All right, so now we're back on  
25 the Bernstein record, and for the reporter's  
benefit, counsel, give your appearances again.

MR. ROSE: Alan Rose on behalf of Ted  
Bernstein as trustee of the Shirley Bernstein  
trust.

1 THE COURT: Okay.

2 MR. ELIOT BERNSTEIN: Eliot Bernstein on  
3 behalf of Eliot Bernstein.

4 MR. MORRISSEY: John Morrissey here on  
5 behalf of Molly Simon, Alexandra Bernstein,  
6 Michael Bernstein and Eric Bernstein.

7 MR. O'CONNELL: Brian O'Connell, Your  
8 Honor, personal representative of the Estate of  
9 Simon Bernstein.

10 THE COURT: Okay. All right, so what do we  
11 have?

12 MR. ROSE: Mr. O'Connell is not technically  
13 in the case, but he's helping, and he helped us  
14 out in the hallway.

15 THE COURT: Okay.

16 MR. ROSE: It's a little bit of an unusual  
17 situation because of the time exigency that's been  
18 presented by the children's need for tuition  
19 payments. So it's been represented to us that  
20 there are three minor children who will not be  
21 permitted to attend the school they've been  
22 attending without these distributions. It's the  
23 trustee's --

24 THE COURT: Without payment to them.

25 MR. ROSE: Without payment to the school.

1           It's the trustee's position and belief that there  
2           are different ways in which the money may be  
3           distributed ultimately, but we are not aware of  
4           any scenario in which some money doesn't get  
5           distributed either to the three minor children of  
6           Eliot Bernstein or to Eliot Bernstein. So we  
7           believe that there will be ultimately a  
8           distribution to one of them. We've not determined  
9           yet who. We don't know if it should be the minor  
10          children. We don't know if it should be all the  
11          grandchildren, or if it should be some of the  
12          grandchildren. We don't know if it should be the  
13          children of Simon and Shirley Bernstein. That's  
14          to be determined in a trust construction action  
15          that's separate.

16                 In the meantime and in the interim, on this  
17                 emergency basis what we are trying to structure is  
18                 a way to make payment directly to the St. Andrews  
19                 School so that we don't prejudice the rights of  
20                 these three children. So we have a receipt and  
21                 partial distribution agreement that we have  
22                 modified and edited, and I would like  
23                 Mr. Bernstein to sign that now, and he'll initial  
24                 it, and I'll retype it up and send them a clean  
25                 copy of exactly the same words that they can sign

1 later today, and we have an order that we'd like  
2 Your Honor to enter, we'll have to submit, because  
3 we have to modify, but it will be an agreed order.

4 THE COURT: Okay, so why don't you read to  
5 me or publish what your agreement is. How about  
6 that? So, Mr. Bernstein, listen to that carefully.

7 MR. ELIOT BERNSTEIN: To what?

8 THE COURT: To the agreement. I'm asking  
9 him to read into the record the agreement.

10 MR. ELIOT BERNSTEIN: Can I take a picture  
11 of that too?

12 THE COURT: You'll get a copy of it.

13 MR. ELIOT BERNSTEIN: I meant the other one  
14 on your computer.

15 MR. ROSE: You may while I read.

16 MR. ELIOT BERNSTEIN: Go ahead.

17 MR. ROSE: For the record, whenever I read  
18 the word distribution, we have agreed that this is  
19 without prejudice to Mr. Bernstein's right to  
20 contest that other prior distributions were  
21 proper, improper, and that's provided in here, but  
22 these are distributions being made by the trustee  
23 for the benefit of these -- of these  
24 beneficiaries.

25 So it says Receipt of Partial Distribution,

1           dated August 19, 2014. The undersigned, Eliot  
2           Bernstein, individually, and it will -- it will  
3           read and Candice Bernstein, individually, and  
4           Eliot Bernstein and Candice Bernstein, as parents  
5           and natural guardians of Daniel Bernstein, Jacob  
6           Bernstein and Joshua Bernstein, hereby acknowledge  
7           that they will receive from the trustee of the  
8           above trust the following: Distribution in the  
9           amount of, payable to St. Andrews School for the  
10          benefit of Daniel, \$42,000; payable to St. Andrews  
11          School for the benefit of Jacob, \$46,000; and  
12          payable to St. Andrews School for the benefit of  
13          Joshua, \$45,500.

14                 This isn't in the document, but it's been  
15                 represented to us that these are the amounts  
16                 necessary to cover last year's arrearages, this  
17                 year's tuition and some amount of money for books  
18                 and necessities, that -- that those are the agreed  
19                 upon numbers, and the total is 133,500.

20                 The condition of this distribution is the  
21                 agreement by the undersigned to return to the  
22                 trustee upon demand any property determined by the  
23                 court to have been improperly received and its  
24                 income since distribution or if the undersigned  
25                 had not -- not had the property to return to the



1 said trustee the value of the property at date of  
2 disposition and it's income and gain received.  
3 The undersigned shall have no obligation to return  
4 the property unless it's determined by a court to  
5 have been improperly distributed.

6 Further, to the extent that it is  
7 determined that these moneys should have been  
8 distributed to Eliot Bernstein individually rather  
9 than to his children or trusts for the benefit of  
10 his children --

11 MR. ELIOT BERNSTEIN: Wait, wait. I  
12 thought we took that out of there by the way.

13 MR. ROSE: No.

14 MR. ELIOT BERNSTEIN: We're not making  
15 distributions to the children. We're waiting for  
16 the court to determine who the distributions  
17 ultimately go to.

18 THE COURT: Listen to the clause.

19 MR. ELIOT BERNSTEIN: I did. That's not  
20 what we agreed to.

21 MR. ROSE: See, these are distributions.  
22 We just don't know who they should go to, so --

23 THE COURT: I'm following it so far. So I  
24 mean, so far, I mean, you all have done a good job  
25 to make sure this is not prejudiced. So let him

1 continue to read it because I think it's on point.

2 MR. ELIOT BERNSTEIN: Okay.

3 THE COURT: I mean, I know what you want to  
4 accomplish. I'm just remaining silent until he  
5 reads it into the record. Go ahead.

6 MR. ROSE: And just as you're listening to  
7 the rest of the story, we're going to ask you, as  
8 part of our agreed order, for you to enter an  
9 injunction that would prevent anyone, Eliot, his  
10 wife and children, from ever suing the trustee  
11 just for making these three payments.

12 THE COURT: I understand.

13 MR. ROSE: Okay, okay. To the extent it is  
14 determined that these moneys should have been  
15 distributed to Eliot Bernstein, individually,  
16 rather than to his children or to trusts for his  
17 -- for the benefit of his children, Eliot agrees  
18 that he would have used this money for the benefit  
19 of his children, and he agrees that this  
20 distribution of \$133,500 would constitute part of  
21 any distribution to which he would be entitled.

22 Eliot and Candice, individually, and Eliot  
23 and Candice, as parents and natural guardians on  
24 behalf of Daniel, Jacob and Joshua, agree that the  
25 trustee and its professional shall have no --

1 shall have absolutely no liability to anyone for  
2 making this distribution and shall be indemnified  
3 and held harmless from suit by Eliot and Candice,  
4 and Eliot and Candice, as parents and natural  
5 guardians of Daniel, Jacob and Joshua.

6 The distributions contemplated hereunder  
7 are subject to approval by the probate court. If  
8 the court determines that Daniel, Jacob and Joshua  
9 are beneficiaries of the Shirley Trust, these  
10 payments will constitute distributions to them or  
11 for the benefit of them. If the court determines  
12 that Eliot is a beneficiary of the Shirley Trust,  
13 the full amount of \$133,500 shall count against  
14 any distribution to Eliot. This does not  
15 constitute an admission, concession or waiver by  
16 Eliot and Candice Bernstein that any prior  
17 distributions to any parties other than Eliot or  
18 his children were proper nor waives any other  
19 claims. This agreement was made voluntarily and  
20 not under duress, pressure or coercion by the  
21 trustee.

22 That's the agreement of the parties, but  
23 it's subject to the court also entering an order,  
24 and the order, if I can hand it to you, -- or  
25 would you rather read it on my screen, or me read

1 it out loud?

2 THE COURT: The agreed order you're going  
3 to type up?

4 MR. ROSE: Yeah.

5 THE COURT: I don't need to see that as  
6 long as you both agree to the form of the order.

7 MR. ROSE: And the significant language, I  
8 would point out, and this is -- You understand the  
9 trustee's being sued. I'm being sued. You know,  
10 this is a contentious case --

11 THE COURT: Let me say something to you. I  
12 understand exactly what's going on. I haven't  
13 missed a thing, okay, and I've listened to -- You  
14 finished the agreement, correct?

15 MR. ROSE: Yes.

16 THE COURT: So I've listened to it in a  
17 couple of -- with a couple of directions. One is  
18 to actually determine what your deal is; two,  
19 because Eliot's pro se, I have a little bit of an  
20 extra duty, because he's not a lawyer and he's  
21 heavily involved in the litigation, but he still  
22 doesn't know all the rules and substantive things  
23 to make sure that what I hear from the agreement  
24 and the order meets what -- the best that I know  
25 of falls within the situation of what you want to

1 accomplish, okay? So that's kind of how I do it.  
2 It's not special treatment of Eliot, but I do that  
3 whenever there's a pro se on one side and a lawyer  
4 on the other in particular, not that you're  
5 doing -- not that you're taking advantage, but  
6 just, you know, as smart as Eliot may think he is,  
7 this is legal stuff and he -- and some of the  
8 stuff may pass him by.

9 So before you get to the order, let me say  
10 this: I mean, from the moment this matter got  
11 spoken about, the -- and Eliot brought to my  
12 attention that there was this issue of funding the  
13 schooling for his children, I think you've done a  
14 really good job, all sides, in crafting this  
15 agreement because it seems to meet the two  
16 intentions of it: One, get the money to the  
17 school for the children, and, two, do it as we  
18 frequently do, without prejudice to any other  
19 claims that may be existing and yet give credit  
20 for the fact that the payments were made. So it's  
21 actually very simple, I mean, in the light -- For  
22 example, in family law, we do this stuff all the  
23 time. So this is a very common method of  
24 accomplishing it. You preserve your claims, and  
25 on the other hand you acknowledge this, and then

1 as a result of it, we don't have a situation where  
2 you can shake hands with one set of hands and then  
3 punch the other with the other set of hands. So  
4 by virtue of this act taking place, no one can get  
5 sued, no one can get challenged for the fact that  
6 they're entering into an agreement because, if  
7 that was the case, no one would ever enter into  
8 agreements.

9 So I've listened to what you've said, and  
10 understanding what the purpose of it is, I think  
11 you've covered all of it, okay? So I'm satisfied  
12 that it meets the best interests of the parties,  
13 collectively, individually, makes good sense and  
14 away you go.

15 MR. ROSE: We do have language in the order  
16 apropos of what Your Honor just said, that the  
17 court finds that no beneficiary objected to this,  
18 and that it's in the best interest of Eliot  
19 Bernstein and his children that these  
20 distributions be made.

21 THE COURT: Now, let me caution you. "No  
22 beneficiary", does that include Feaman's client?  
23 Because he says he's a beneficiary, although I  
24 haven't determined that yet.

25 MR. ROSE: He -- That's why we're in this

1 Shirley box. He's dropped his claim against the  
2 Shirley box.

3 THE COURT: Okay. All right, thank you.

4 MR. ELIOT BERNSTEIN: By the way, Your  
5 Honor, they have asked Mr. Feaman to waive his  
6 claims to make the school payment, which kind of  
7 makes him a -- I'm just saying --

8 THE COURT: No, that doesn't make him a  
9 beneficiary. See, there you go being a pro se,  
10 complicating matters.

11 MR. ELIOT BERNSTEIN: It seems strange.

12 THE COURT: So let's not go there.

13 MR. ROSE: I only asked in the Simon box.  
14 Now we're in the Shirley box. And this is the  
15 important part if it's agreed to, and it's going  
16 to be an agreed order so it's not appealable, and  
17 it provides that Eliot, individually, and his  
18 wife, individually, -- I'm adding that because  
19 we've added her to this agreement -- Eliot and  
20 wife, individually, Eliot and Candice, as  
21 guardians of their three minor children, and any  
22 other beneficiaries are enjoined and precluded  
23 from filing or pursuing any action against the  
24 trustee in connection with the trustee's  
25 distributions provided under this agreement, and

1 I'll add the word "and order". The court finds --

2 MR. ELIOT BERNSTEIN: Can we put in  
3 regarding the school payments herein so that --

4 THE COURT: Regarding this matter, this  
5 matter.

6 MR. ROSE: Right.

7 THE COURT: He covered that. This matter.

8 MR. ELIOT BERNSTEIN: Okay, if you're  
9 comfortable --

10 THE COURT: It's not more than -- I mean,  
11 this is a contained matter.

12 MR. ELIOT BERNSTEIN: If you're  
13 comfortable, I'm comfortable.

14 MR. ROSE: And my client -- And we're not  
15 talking out of school, but my client just wants to  
16 make certain Your Honor understands, if there's a  
17 suit about this, we would expect to come in and  
18 have Your Honor enforce an injunction against him  
19 only as to this narrow issue.

20 THE COURT: I got it. I got it. I mean,  
21 look, this is not --

22 MR. ROSE: I understand.

23 THE COURT: -- complex.

24 MR. ROSE: And this is a baby step, but it  
25 is an important step to take, and we will be



1 back --

2 THE COURT: That's appropriate language.

3 MR. ROSE: Now, we would ask -- He has not  
4 agreed to this. We would -- We don't believe,  
5 since it involves three minors, it should be  
6 published on the Internet. It may not be  
7 appropriate, and we will be back to you on other  
8 issues on things being on the Internet at a  
9 different time, but we're concerned because you  
10 have minor children --

11 THE COURT: So what is it you're asking me?

12 MR. ROSE: We ask that this be kept  
13 confidential and not published online. It can be  
14 shared with the parties, and Mr. Bernstein didn't  
15 agree to that. It's part of our deal, but I think  
16 it would be --

17 THE COURT: What about that, Mr. Bernstein?

18 MR. ELIOT BERNSTEIN: No.

19 THE COURT: Why not?

20 MR. ELIOT BERNSTEIN: Because there's no  
21 reason.

22 THE COURT: Okay, how about if I find  
23 there's a reason?

24 MR. ELIOT BERNSTEIN: Okay, if you find a  
25 reason, I --

1 THE COURT: I find there's a reason to keep  
2 it confidential. I think it's in the interest of  
3 your children.

4 MR. ELIOT BERNSTEIN: Which?

5 THE COURT: Your children.

6 MR. ELIOT BERNSTEIN: The order is going to  
7 be confidential?

8 THE COURT: Well, yeah, for now, for now,  
9 okay, that this deal, okay, because it's a deal,  
10 okay, remain confidential between the parties.  
11 Okay, it's good for everybody that it does that.

12 MR. ELIOT BERNSTEIN: Well, I've got to  
13 take it to -- See, the problem I have is I do most  
14 of my work online, so lawyers that are working  
15 with me --

16 THE COURT: Lawyers are not, are not  
17 excluded. Your lawyers are included. I mean,  
18 parties are included. Lawyers are included.  
19 Support staff's included.

20 MR. ELIOT BERNSTEIN: Okay, if you're  
21 comfortable, I'm comfortable.

22 THE COURT: And there's a good reason for  
23 that. I want to have an understanding, though, of  
24 something else that's important.

25 Did you want to say something,

1 Mr. Morrissey?

2 MR. MORRISSEY: Yeah, I thought of  
3 something separate and apart from that.

4 THE COURT: Go ahead.

5 MR. MORRISSEY: Okay. This could be  
6 considered a settlement on behalf of minors in  
7 excess of \$15,000, so you might --

8 THE COURT: Guardian is waived.

9 MR. MORRISSEY: There might want to be a  
10 sentence in the order --

11 THE COURT: You might want to put that.

12 MR. MORRISSEY: -- that says --

13 THE COURT: Yeah, it's a claim that the  
14 children could have if the children wind up being  
15 beneficiaries. To the extent to which they need a  
16 guardian, I find that Eliot and Candice are the  
17 natural guardians and appropriate to make  
18 decisions for them. Your pocket's not being  
19 picked. I'm just finding you're the guardians in  
20 charge of making these decisions. I don't have to  
21 have an outside guardian make the decisions for  
22 the children.

23 MR. BERNSTEIN: Okay.

24 THE COURT: Here's the other thing I want  
25 to make sure. This is important. So move a

1 little aside so Ted --

2 MR. ROSE: I'm sorry.

3 THE COURT: So mechanically, okay, once  
4 this order is entered, Ted is going to write  
5 checks on the trust account of the Shirley Trust;  
6 is that true?

7 MR. TED BERNSTEIN: Yes, sir.

8 THE COURT: And those three checks are  
9 going to be sent to the school. Okay, how is the  
10 school going to know what those checks are for?  
11 They're going to see a check from a trust.  
12 They're going to go, "Hey, thanks," you know,  
13 like that.

14 MR. O'CONNELL: I think, Judge, that's a  
15 good question. I think they've broken them down  
16 by child.

17 THE COURT: Well, I know that. Okay, so on  
18 the check then, on the check you need to be able  
19 to put descriptive language and the transmittal  
20 that indicates that this is for arrears -- tuition  
21 arrears and current tuition for the 2014/2015  
22 school year; is that what --

23 MR. TED BERNSTEIN: Correct.

24 THE COURT: Understand how that goes?

25 MR. TED BERNSTEIN: Yes.

1 THE COURT: Here's the other thing I want  
2 to make sure is clear: The children -- Those  
3 checks go. School starts when?

4 MRS. BERNSTEIN: Tomorrow.

5 THE COURT: Tomorrow. And this you could  
6 either add into the order or somewhere. I want  
7 the following provision: If for any reason,  
8 whether because the children are withdrawn from  
9 the school or otherwise, the school is not  
10 permitted to disburse any of those moneys to  
11 anyone else other than -- without court order.

12 MR. ELIOT BERNSTEIN: Okay, totally fair.

13 THE COURT: So technically, if you withdrew  
14 your kids three days from now, you can't go into  
15 the school and say --

16 MR. ELIOT BERNSTEIN: Give me money.

17 THE COURT: -- give me money.

18 MR. ELIOT BERNSTEIN: Gotcha.

19 THE COURT: No one can do that. Okay, so  
20 the school will hold the money and not disburse,  
21 so it means you're going to have to notice the  
22 school on this order.

23 MRS. BERNSTEIN: I believe --

24 MR. ROSE: This would be my suggestion,  
25 Your Honor, if I may: I think the agreement would

1 be confidential, and the order --

2 THE COURT: The agreement is confidential  
3 and the order won't be because the order is going  
4 to be online anyway, but the agreement doesn't  
5 have to be. All right, but that's -- because we  
6 want the school to know, so if someone walks in,  
7 knocks on the door and says, "Hey, by the way, I  
8 want to take \$500 because I wanted to buy the kids  
9 school clothing," the answer is no. No one --  
10 Only the school can use that money --

11 MR. ELIOT BERNSTEIN: Right.

12 THE COURT: -- internally.

13 MR. ELIOT BERNSTEIN: Perfect.

14 THE COURT: Everyone has that  
15 understanding.

16 MR. ROSE: I guess for the record, it's in  
17 their account. They can buy clothing in the  
18 school store, but they can't use it outside the  
19 school.

20 THE COURT: Right. They can't go shopping  
21 and that kind of stuff. All right, okay.

22 I think you -- Hey, look, let me tell you,  
23 so, you know, I mean, I didn't know when you folks  
24 left whether you'd get this. I thought you  
25 should. You did. So it tells me that, even in

1 this type of contentious litigation, you can still  
2 create something that's beneficial and preserve  
3 your rights to go -- you know, that you have as to  
4 other issues. And there is no such thing as, if  
5 we dispute on the one hand one thing, we can't  
6 ever agree to something else. Okay, so now you've  
7 done a really good job because you've proven to  
8 yourselves that you can continue to do what  
9 happens in litigation. You agree what you can  
10 agree upon, and you disagree, but it's all done  
11 civilly and professionally and done in just this  
12 type of manner in the courtroom because that's  
13 where we do our battles, in the courtroom, based  
14 upon the rules.

15 Yes, sir.

16 MR. O'CONNELL: To mention one thing to  
17 build on that, Your Honor, to give you a little  
18 report, I think I have everyone's agreement to a  
19 mediation at least on one issue having to do with  
20 the creditor, whether he gets his claim satisfied  
21 or settled or so forth, and hopefully it will  
22 ripen into a broader sort of an agreement.

23 THE COURT: Okay. All right, good.

24 MR. O'CONNELL: Just to let you know,  
25 that's sort of in the works.

1 THE COURT: Okay, all right.

2 MR. ROSE: I will prepare the agreement and  
3 order, and I will circulate them.

4 THE COURT: All right, but now I have to  
5 ask some questions. So raise your right hand,  
6 raise your right hand, raise your right hand, the  
7 three of you.

8 Thereupon,

9 TED BERNSTEIN, ELIOT BERNSTEIN and CANDICE BERNSTEIN,  
10 being duly sworn by the Court to tell the truth,  
11 responded and testified as follows:

12 MR. ELIOT BERNSTEIN: Yes, sir.

13 MR. TED BERNSTEIN: Yes.

14 MRS. BERNSTEIN: Yes.

15 THE COURT: Okay, starting with Ted, have  
16 you heard the agreement announced by Mr. Rose as  
17 edited a little bit by Eliot and Mr. Rose?

18 MR. TED BERNSTEIN: I have, Your Honor.

19 THE COURT: Is that your agreement in your  
20 capacity as trustee of the Shirley Trustee?

21 MR. TED BERNSTEIN: It is.

22 THE COURT: Okay, are you entering into  
23 that agreement freely and voluntarily, intending  
24 to be bound by it?

25 MR. TED BERNSTEIN: I am.



1 THE COURT: Eliot, state your name.

2 MR. ELIOT BERNSTEIN: Eliot Ivan Bernstein.

3 THE COURT: Okay, and did you a hear the  
4 agreement announced by Mr. Rose and edited in part  
5 by you and him?

6 MR. ELIOT BERNSTEIN: I did, sir.

7 THE COURT: Is that your agreement?

8 MR. ELIOT BERNSTEIN: Yes, sir.

9 THE COURT: Are you entering into that  
10 agreement freely and voluntarily, intending to be  
11 bound by it?

12 MR. ELIOT BERNSTEIN: Yes, sir.

13 THE COURT: Candice.

14 MRS. BERNSTEIN: Yes, Candice Bernstein.

15 THE COURT: Okay. Stand up so I can see  
16 you. Hand down.

17 Did you hear the agreement announced by the  
18 parties?

19 MRS. BERNSTEIN: Yes, I did.

20 THE COURT: Is that your agreement?

21 MRS. BERNSTEIN: Yes.

22 THE COURT: Are you intending -- Did you  
23 enter into that agreement freely and voluntarily?

24 MRS. BERNSTEIN: Yes.

25 THE COURT: And do you intend to be bound

1 by it?

2 MRS. BERNSTEIN: Yes.

3 THE COURT: Okay, good. So you're going to  
4 type that up and kind of keep that on the shelf  
5 because that will mean that, you know, now you're  
6 bound by the agreement. Okay, so if for some  
7 reason -- You're going to type that up, correct?  
8 What are you going to do with this?

9 MR. ROSE: We're going to type up the  
10 agreement -- the agreement as edited and the order  
11 immediately when I get to my office and circulate  
12 it and get it to you this afternoon.

13 THE COURT: Okay. If for some reason that  
14 doesn't get signed, then whatever's on the record  
15 here is the agreement, but you need to obviously  
16 sign the written agreement because that's what's  
17 going to allow me to sign the agreed order. So  
18 you can fax over to me a copy of the agreement,  
19 which I'll just throw it out because you're going  
20 to keep the agreement confidential, and then send  
21 me an original order, and then send me a cover  
22 sheet that gives me a fax to return it. I'll fax  
23 it back to Mr. Rose so he can circulate the order.

24 MRS. BERNSTEIN: Thank you.

25 MR. ELIOT BERNSTEIN: Sounds good.

1 THE COURT: You may want to get a certified  
2 copy of the order to give to the school at some  
3 point, but I'll let you guys decide that.

4 MR. ROSE: Okay.

5 MR. ELIOT BERNSTEIN: I don't think they  
6 need anything.

7 THE COURT: All right, very good. Thanks.

8 MR. ROSE: Thank you, Your Honor.

9 (The hearing concluded at 12:24 p.m.)

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1 CERTIFICATE OF REPORTER

2 - - -

3

4 I, Lisa Higbee, Court Reporter, State of  
5 Florida at Large, certify that I was authorized to and  
6 did stenographically report the foregoing proceedings and  
7 that the transcript, page 1 through 26, is a true and  
8 complete record of my stenographic notes.

9

10 Dated this 22nd day of August, 2014 in Palm  
11 Beach County, Florida.

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DocuSigned by:

*Lisa Higbee*

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18  
19  
20 Lisa Higbee,  
Court Reporter

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