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

\_\_\_\_\_  
IN RE: )  
ESTATE OF SIMON L. BERNSTEIN )  
\_\_\_\_\_)

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

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I N D E X

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

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

4 (Tescher 3, two-page letter, 1/14/2014.)

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16 Shirley Bernstein Family Foundation, Inc.)

17 (Tescher 10, Florida Department of State,  
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20 (Tescher 11-A, Reconciliation Detail,  
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22 (Tescher 11-B, Reconciliation Detail,  
23 period ending 11/30/2006.)

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25 period ending 1/31/2007.)



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

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

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

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

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

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

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

24 MR. BLOCK: What date is Friday?

25 MR. FEAMAN: Friday is the 11th.

1 MR. BLOCK: Okay. Good enough.

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

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

1 I agree wholeheartedly.

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

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

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

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

1 his deposition in the future for other matters.

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

6 MR. BLOCK: Well --

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

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

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

18 You can swear in the witness.

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

25 BY MR. ROSE:

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

3           A.    Donald R. Tescher.

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

7           A.    Yes; and yes.

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

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

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

13          A.    Yes.

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

16          A.    No.

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

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

21          **Q.    Is your --**

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

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

25          A.    Yes, sir.

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

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

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

7                   (Discussion off the record.)

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

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

12           A.    Yes, sir.

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

15           A.    Yes.

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

17           A.    Yes.

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

19           A.    Yes.

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

23           A.    Yes, I did.

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

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

3           A.    I believe so.

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

7           A.    Yes, sir.

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

9           A.    Yes, I do.

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

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

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

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

20          A.    That is correct.

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

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

24          A.    Yes, sir.

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

1 the will and the trust for Shirley Bernstein?

2 A. Yes, it was.

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

6 Are you familiar with that document?

7 A. Yes, sir.

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

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

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

20 A. Yes.

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

25 A. No.



1 MR. FEAMAN: Objection to the form.

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

7 A. Yes.

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

10 Do you see that?

11 A. Yes, sir.

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

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

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

19 A. Yes, sir.

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

22 A. Yes, sir.

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

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

2           A.    Yes.

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

7           A.    Yes, sir.

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

10          A.    Generally.

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

14          A.    Yes, we were.

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

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

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

23          A.    Yes, indirectly.

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

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

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

7           A.    Yes, sir, for one day.

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

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

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

17          A.    Yes, I did.

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

19          A.    I selected Theodore.

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

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

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

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

11 A. Not at all.

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

15 A. I do not.

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

17 A. There has been --

18 MR. FEAMAN: Objection to the form.

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

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

1 to be handled.

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

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

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

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

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

22 A. That is correct.

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

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

2 MR. FEAMAN: Objection to the form.

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

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

11 A. Unfortunately, no, I do not.

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

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

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

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

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

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

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

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

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

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

14 A. Ted?

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

18 A. That is correct.

19 MR. FEAMAN: Objection to form.

20 MR. ROSE: What's the objection?

21 MR. FEAMAN: No predicate. Overly broad.

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

1 A. Yes, sir.

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

4 A. Yes, we were.

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

10 A. Our firm did; yes.

11 Q. Did Ted generally follow your advice?

12 A. Yes.

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

15 A. No.

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

18 A. Well, I take that --

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

24 A. Yes. One of the --

25 MR. FEAMAN: Objection.



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

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

5 A. Yes, there were.

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

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

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

19 A. Assumedly.

20 MR. FEAMAN: Objection to form.

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

25 A. Yes.

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

6           MR. FEAMAN:  Objection to the form.

7           A.    I thought it was ludicrous, frankly.

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

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

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

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

23           A.    Not at that time; no.

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

1 MR. FEAMAN: Objection to the form.

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

4 Q. One second, please.

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

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

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

15 A. Correct.

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

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

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

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

3 MR. FEAMAN: Objection to the form.

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

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

12 A. Correct.

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

19 A. Yes, it could true up.

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

24 MR. FEAMAN: Form.

25 A. From a practical standpoint, given the

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

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

10 MR. FEAMAN: Objection to the form.

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

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

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

21 THE WITNESS: Is that Peter?

22 MR. FEAMAN: Yeah.

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

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

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

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

10 MR. ROSE: That's fine.

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

20 MR. FEAMAN: Okay. Very good.

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

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

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

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

8                           EXAMINATION

9 BY MR. FEAMAN:

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

12           A.    Yes, sir.

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

18           A.    Yes, sir.

19           Q.    Can you --

20           A.    I have that in front of me.

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

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

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

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

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

9           A.     That's correct.

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

12          A.     That's correct.

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

15          A.     The day before me.

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

17          A.     He executed --

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

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

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

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

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



1       **resignation form?**

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

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

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

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

11          A.    Yes, I did.

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

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

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

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

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

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

1 little bit of a loss.

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

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

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

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

11 MR. ROSE: Okay.

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

15 A. Yes.

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

20 Do you see that?

21 A. Yeah, but I --

22 **Q. Okay.**

23 A. Go ahead. I'm sorry.

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

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

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

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

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

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

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

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

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

21          A.    Yes, sir.

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

23          A.    Okay.

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

1           A.    This is a definition provision.

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

5           A.    Correct.

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

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

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

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

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

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

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

1 a child of the grantor; is that correct?

2 A. They would be related to the grantor.

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

5 A. He was the grantor. He died.

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

8 A. He certainly is.

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

11 A. Yes.

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

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

16 A. Yes, sir.

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

19 Could you turn there?

20 A. Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14          A.    Yes, sir.

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

17          A.    Yes.

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

23                   Did I read that correctly?

24          A.    You read it correctly.

25          Q.    When you refer to "estate planning

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

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

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

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

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

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

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

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

24 A. Yes, sir.

25 MR. FEAMAN: Alan, I believe you have



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

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

6 A. Yes, sir.

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

8 A. Yes, sir.

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

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

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

16 A. Sure.

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

20 A. That is correct.

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

23 A. March 1, 2014.

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

1     **fair to say?**

2             A.     Yeah, obviously.

3             **Q.     Okay.**

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

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

11            A.     That is correct.

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

14            A.     That's correct.

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

17            A.     Yes.

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

19            A.     Yes, sir.

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

24            A.     Correct.

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

1 A. Yes.

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

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

4 I guess I am right now; yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9             A.     I believe that's correct.

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

12            A.     That's correct.

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

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

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

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

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

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

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

5           A.    Yes, sir.

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

8           A.    She is a legal secretary.

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

10          A.    She still works there.

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

15          A.    Yes.

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

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

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

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

1 probation. And that's all I know.

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

3 A. No.

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

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

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

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

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

24 A. I believe that's correct.

25 **Q. And Simon --**

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

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

6 MR. ROSE: There's no issue.

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

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

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

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

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

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

3           A.    Moran.

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

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

9           Q.    Okay.

10          A.    I believe I --

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

14          A.    I believe that's correct.

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

18          A.    That would be correct.

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

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

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

24          A.    Yes.

25          Q.    Is that a relative of yours?



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

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

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

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

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

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

14          A.     That's correct.

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

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

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

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

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

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

7           **A. Not at that time.**

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

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

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

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

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

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

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

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

18 A. I don't recall exact dates.

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

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

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

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

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

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

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

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

9 A. No.

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

14 A. That is correct.

15 Q. Do you recall when that was?

16 A. January of 2014.

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

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

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

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

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

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

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

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

14 A. Our associate.

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

16 A. Lauren Galvani.

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

18 A. January 2013.

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

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

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

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

1 Hold on one moment.

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

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

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

7 A. That is the unaltered document.

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

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

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

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

19 A. I don't know.

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

22 A. I don't know.

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

1           A.    You'll have to ask her.

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

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

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

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

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

14          A.    Yes, it was.

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

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

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

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

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

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

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

16 A. Mr. Spallina or Ms. Galvani.

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

19 A. I was the president.

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

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

24 Q. And the one attached to your affidavit?

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



1 of me.

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

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

5 **Q. Your best recollection.**

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

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

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

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

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

18 MR. FEAMAN: No problem.

19 (Recess was taken.)

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

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

24 COURT REPORTER: Okay.

25 MR. FEAMAN: Thank you.

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

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

11 Q. Your intent to resign.

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

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

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

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

25 A. I do not recall when he specifically

1 withdrew.

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

4 A. Yes, sir.

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

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

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

14 A. I have no knowledge.

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

17 MR. FEAMAN: Okay. Very well.

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

22 MR. FEAMAN: Okay.

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

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

1 to anybody --

2 Q. Okay.

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

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

9 A. Yes, sir.

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

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

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

17 A. Yes, sir.

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

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

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

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

5 Do you have the original of that document?

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

7 Q. No, 2008.

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

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

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

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

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

16 Q. Okay.

17 A. I don't have my --

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

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

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

1           A.    No, sir; it was not.

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

3           A.    In Simon Bernstein's office.

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

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

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

15          A.    That is correct.

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

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

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

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

4           A.    I think so.

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

7           A.    In what sense?

8           Q.    In any sense.

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

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

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

16           A.    No.

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

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

21                    Okay.

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

1                   Do you see that?

2           A.    Yes, sir.

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

5                   Are you familiar with that company?

6           A.    Yes.

7           Q.    What is that company?

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

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

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

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

17          A.    Yes, sir.

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

20          A.    7 -- yes, it was.

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

25                   Do you see that on Exhibit 6?



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

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

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

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

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

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

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

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

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

4 What address is that?

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

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

8 A. Correct.

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

11 A. Yes.

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

14 A. Correct.

15 Q. As of January 2012; correct?

16 A. Correct.

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

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

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

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

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

4             A.     I can't answer that question.

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

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

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

15            A.     Mr. Feaman --

16                    MR. ROSE:  Objection to form.

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

19                    Do you want to restate your question?

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

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

24                    "Manager," sir.

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

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

3       A.    I personally don't know.

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

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

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

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

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

15      A.    No, we did not.

16      **Q.    Who did?**

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

18      **Q.    All right.**

19      A.    Their prior counsel obviously, not us.

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

25      A.    I don't believe so.

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

3           A.    Oppenheimer.

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

6           A.    Stanford.

7           **Q.    Stanford?**

8           A.    Yes.

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

11          A.    I don't know.

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

13          A.    Why would I?

14          **Q.    I don't know.**

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

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

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

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

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

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

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

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

15 MR. FEAMAN: Yeah. Right.

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

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

21 A. That's correct.

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

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

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

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

8           **Q.    Okay. And so --**

9           A.    That I'm aware of.

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

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

18          **Q.    Okay.**

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

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

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

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

1       **premarked Exhibit 7 --**

2           A.    Yes, sir.

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

4           A.    Yes, sir.

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

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

8           MR. FEAMAN:  Yes, it is.

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

11           Do you see that?

12          A.    Yes, sir.

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

15          A.    That's correct.

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

18          A.    That is correct.

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

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

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



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

3 Q. Okay. Very good.

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

6 A. That's correct.

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

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

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

13 MR. ROSE: Object to form.

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

18 That would be your law partner; correct?

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

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

23 A. The manager died.

24 Q. Okay.

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

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

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

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

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

14 A. I don't recall.

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

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

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

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

1 Amended and Restated Trust Agreement and --

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

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

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

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

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

14 MR. ROSE: Object to the form.

15 A. I --

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

17 A. I have no personal knowledge.

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

19 A. Mr. Spallina --

20 **Q. Okay.**

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

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

25 A. Okay. Yes, sir.

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

4 Do you see that?

5 A. Yes, sir.

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

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

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

12 Is that the entity we just identified --

13 A. Yes, sir.

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

16 A. Yes, sir.

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

21 A. Yes, sir. Yes, sir.

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

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

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

3 A. I guess; yes.

4 Q. Okay. All right.

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

7 A. Yes, sir.

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

11 A. Yes.

12 Q. Do you see that?

13 A. Yes, sir.

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

17 A. Yes, sir.

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

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

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

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

3           A. Yes, sir.

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

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

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

11                   **Do you see that?**

12          A. Yes, sir.

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

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

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

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

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

23          A. All types of business consulting.

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

1 bookkeeping services and office administration  
2 services.

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

5 A. Yes, it is, sir.

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

9 A. She was the manager.

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

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

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

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

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

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

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

4 A. I believe I do understand that.

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

8 A. I don't recall.

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

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

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

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

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

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



1 down the page.

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

4           Do you see that, sir?

5           A. Yes, sir.

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

8           Do you see that?

9           A. Yes, sir.

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

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

18           I don't have any immediate knowledge.

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

21          A. Yes, sir.

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

25          A. That is correct, sir.

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

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

6                     Do you recall what that was for?

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

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

13           A.     Yes, sir.

14           Q.     -- which is a reconciliation detail.

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

18           A.     Yes, sir.

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

22                     Do you know what that was for?

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

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

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

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

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

7 A. Yes, sir.

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

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

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

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

18 A. No.

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

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

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

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

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

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

7           A.    I would presume that we did.

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

11          A.    Yes, sir.

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

15          A.    Yes.  Yes, sir.

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

18          A.    No, sir.

19          **Q.    Ever?**

20          A.    No, sir.

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

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

1 sure.

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

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

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

7 A. Now, you --

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

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

14 **Q. So --**

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

17 **Q. Yes.**

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

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

23 A. Owner of the policy, sir.

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

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

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

4 **Q. Right.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **Q. Okay.**

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

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

7 A. Right.

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

11 Do you see that?

12 A. Yes.

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

16 A. Yes, it is.

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

21 Do you see that?

22 A. Yes, sir.

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

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



1 have.

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

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

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

9 A. Well...

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

13 A. I'm not aware.

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

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

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

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

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

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

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

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

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

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

1 unfair to the other participants.

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

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

10 A. I don't know.

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

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

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

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

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

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

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

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

9 THE WITNESS: Irwin Block.

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

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

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

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

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

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

22 THE WITNESS: Sure.

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

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

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

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

10          A.    I --

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

13          A.    I -- I --

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

17          A.    I don't have an answer.

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

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

1 -- you know, not an uncommon proceeding.

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

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

9 **Q. And --**

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

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

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

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

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

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

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

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

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

7 A. Yes, sir.

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

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

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

12 **Q. Pardon me?**

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

15 **Q. Okay.**

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

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

20 A. No, sir.

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

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

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

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

5 A. Yeah, I see it.

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

10 Do you see that?

11 A. I see that.

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

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

18 Q. Okay.

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

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

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

25 Q. No, in Illinois?



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

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

6 Are you aware of that?

7 A. Yes, sir.

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

10 A. No.

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

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

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

24 MR. ROSE: Object to the form.

25 A. I don't recall.

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

3           A.    Yes, sir.

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

5           A.    Yes.

6           Q.    Was that prepared in your office?

7           A.    Yes, sir.

8           Q.    Okay.  And who prepared it?

9           A.    I believe that I did.

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

14          A.    Yes, sir.

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

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

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

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

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

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

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

6 A. That is -- that is correct.

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

12 A. I don't know.

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

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

25 MR. ELIOT BERNSTEIN: Okay. This is Eliot

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

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

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

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

17 A. I'm not your lawyer anymore.

18 Q. Well, you were never my lawyer.

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

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

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

25 I think you understand it's an improper

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

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

4 A. I am --

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

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

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

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

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

3 That was our determination. The family --

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

5 A. Yes, we were.

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

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

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

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

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

15 **Q. And the --**

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

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

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

23 A. Yes, sir.

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

25 A. Yes, sir.

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

3           A.    Well, they were paid --

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

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

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

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

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

13          A.    He --

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

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

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

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

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

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

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

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

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

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

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

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

22              THE WITNESS: Yes, sir.

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

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



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

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

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

7 MR. BLOCK: Go ahead, Peter.

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

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

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

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

19 THE WITNESS: Thank you, Peter.

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

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

24 MR. ROSE: Anybody else?

25 MR. ELIOT BERNSTEIN: This is Eliot

1 Bernstein. I'd like to ask some questions.

2 EXAMINATION

3 BY MR. ELIOT BERNSTEIN:

4 Q. Don, do you have any medical conditions  
5 that would impair your deposition today?

6 A. No, sir.

7 MR. BLOCK: I object to the form of that  
8 question. That's an insult. It's not an  
9 appropriate question.

10 Q. Are you on any medications today?

11 A. I am on medication every day.

12 Q. Well, what medications?

13 A. Cholesterol-lowering medications and  
14 diabetes control medications.

15 MR. FEAMAN: I think the question would  
16 be, are you on any medications that would impair  
17 your ability to recall events?

18 THE WITNESS: Absolutely not.

19 MR. ROSE: Eliot, if you don't mind, I  
20 might try to jump in to move things along, if  
21 that's okay with other counsel?

22 MR. BLOCK: No, that's not okay with me.

23 MR. ROSE: All right. I won't do it then.

24 Q. (By Mr. Eliot Bernstein) Did you ever  
25 represent Ted, Don, as the trustee of the life

1 **insurance trust 1995 lost trust?**

2 A. I -- I can't answer that. I don't know.  
3 I mean, we prepared at one point a draft of  
4 declaratory action that would have been filed by  
5 Ted Bernstein. We did not -- that was never  
6 pursued; and I don't know that we, in fact,  
7 represented him in connection with the -- that  
8 trust.

9 **Q. Are you aware, Don, that Kimberly Moran,**  
10 **your notary public and legal assistant, forged**  
11 **documents of the Bernstein family members?**

12 MR. BLOCK: Objection.

13 A. I believe that we talked about that  
14 earlier, Eliot.

15 **Q. No, we didn't. We talked about**  
16 **fraudulently notarizing documents.**

17 **I'm asking you did she forge signatures of**  
18 **Bernstein family members?**

19 A. I believe that I said that she signed  
20 them.

21 **Q. Did she sign their signatures for them?**

22 A. That's what I said.

23 **Q. Okay. So I was asking if she forged them.**  
24 **That would be forgery from my limited, you know,**  
25 **understanding.**

1                   **Did your firm send those forged documents**  
2 **and fraudulently-notarized documents to the court?**

3           A.     Kimberly Moran filed those documents in  
4 the court.

5           **Q.    No.  I asked you did your firm?**

6           A.     Kimberly Moran is an employee of my firm.  
7 She filed the documents in the court.

8           **Q.    Oh.  Under your firm's name?**

9           A.     We're the -- we're the attorneys of record  
10 at the time.

11          **Q.    Okay.  That's what I was asking.**

12                   **You said, you know, after Mr. Manceri**  
13 **resigned, your resigning, Don's resigning -- or**  
14 **Robert Spallina, your partner's, resigned, all of**  
15 **you resigned.  Would you say that was due to the**  
16 **pro se efforts of myself, Eliot Bernstein, and my**  
17 **investigatory efforts to bring to light the forgery**  
18 **and fraudulent documents and other matters?**

19          A.     No, sir.

20                   MR. BLOCK:  Object to the form of the  
21 question.  It's entirely improper.

22          A.     Actually, you've been the impediment.

23          **Q.    Excuse me?**

24          A.     I said, actually, you've been the  
25 impediment.

1           **Q.    I can't understand you.**

2           A.    You have actually been the impediment,  
3           Eliot.

4           **Q.    Okay.  I'll ask the question again.**

5           A.    I answered it already:  No.

6           **Q.    So how did you come to know Kimberly Moran**  
7           **forged a fraudulent document?  You said --**

8           A.    Asked and answered.

9           **Q.    Yeah.  You said earlier that it was the**  
10          **governor's office notified Kimberly Moran.**

11                   **Were you in possession at that time of**  
12          **petitions I filed with the court in May of 2013?**

13          A.    That petition -- that petition was served  
14          the day before I left to drive up to Cape Cod for  
15          the summer.

16          **Q.    Yeah.  So you were in possession of the**  
17          **petition I served in May of 2013; right?**

18          A.    I was in possession of that petition.

19          **Q.    Okay.  In that petition it shows the**  
20          **forged and fraudulent documents and lays out, you**  
21          **know, a schematic of those documents.**

22                   **What did you do once you saw that to**  
23          **report Kimberly Moran, investigate Kimberly Moran,**  
24          **notify the governor's office, notify the court,**  
25          **anybody?**

1 MR. BLOCK: Object to the form of the  
2 question.

3 What does this have to do with the issues  
4 before the court?

5 MR. ELIOT BERNSTEIN: Well, this has to  
6 do, sir, with the fact that Mr. Tescher is involved  
7 in forged and fraudulent documents.

8 MR. BLOCK: Okay. Now you've --

9 MR. ELIOT BERNSTEIN: And the firm --

10 MR. BLOCK: I'm not going to permit you to  
11 castigate him on the record and things of that  
12 nature. You can ask him questions. You cannot  
13 make statements accusing anyone of a crime. If you  
14 do, I will adjourn the session.

15 MR. ELIOT BERNSTEIN: Great. Okay.

16 **Q. So --**

17 A. You've got four minutes, Eliot.

18 **Q. What?**

19 A. You have four minutes, Eliot.

20 **Q. Well, I'd like to continue this deposition**  
21 **then.**

22 A. Do whatever you'd like to do, Eliot.

23 **Q. Yes. I have a lot more questions; and I**  
24 **don't like the nature of this deposition -- you**  
25 **know, trying to cut off short people from asking**

1 **their questions.**

2 A. You mean the same reason that you won't  
3 allow yourself to be deposed?

4 MR. ROSE: Listen, let's let Eliot ask his  
5 questions -- if you ask a question where you would  
6 like information from Mr. Tescher. Please ask your  
7 next question.

8 THE WITNESS: Why don't we let his puppet  
9 ask the questions.

10 MR. ELIOT BERNSTEIN: Excuse me?

11 THE WITNESS: Never mind. I withdraw that  
12 comment.

13 MR. ELIOT BERNSTEIN: You seem hostile.

14 MR. ROSE: This is not a -- this is not an  
15 opportunity to just have a discussion. Ask your  
16 questions.

17 **Q. Well, my question is that it appears that,**  
18 **Don Tescher, you have a -- a problem with me. You**  
19 **stated on the record before that you've had**  
20 **discussions with unknown family members regarding**  
21 **Eliot -- myself -- personal fitness to be named in**  
22 **the trust, but yet I find no evidence of that.**

23 MR. BLOCK: Eliot, this is not a  
24 proceeding for you to comment and make comments.  
25 You're not asking questions. This is your last

1 chance.

2 MR. ELIOT BERNSTEIN: Okay. I'll just ask  
3 questions.

4 Q. Who were the beneficiaries of Shirley's  
5 estate and trust in 2008?

6 A. Your dad.

7 Q. My dad was -- okay.  
8 And her trusts?

9 A. Your dad.

10 Q. Were any children named as beneficiaries?

11 A. Not as long as your dad was alive.

12 Q. How about when he died? Who was the  
13 beneficiary?

14 A. Based upon his exercise of the power of  
15 appointment, all 10 grandchildren were the  
16 beneficiaries.

17 Q. Okay. Well, let's skip back.

18 When Shirley died, who were her --  
19 excluding Simon's whatever alleged power of  
20 appointment -- who were the beneficiaries then?

21 A. Under the default provisions of her  
22 document?

23 Q. Who was named?

24 A. Unfortunately, you're pro se; and you  
25 don't know how to ask the question right.



1 MR. BLOCK: Donald, stop.

2 THE WITNESS: Okay. Well, what am I  
3 supposed to do here?

4 MR. BLOCK: If you can't answer it, tell  
5 him you can't answer his question. You don't know  
6 what he's talking about.

7 THE WITNESS: Okay.

8 A. I can't answer your question. I'm not  
9 sure what you're talking about.

10 **Q. Okay. Were -- was anybody excluded from**  
11 **the estates and trusts of Shirley Bernstein?**

12 A. Yes, if -- if the assets passed under  
13 Shirley's trust at your father's demise, without  
14 him exercising his power of appointment, the assets  
15 would have passed to your siblings -- other than  
16 Pam, and Ted, and you -- passed to you -- you,  
17 Jill, and Lisa.

18 **Q. Were there lineal descendants excluded as**  
19 **well?**

20 A. The issue is you were all alive.  
21 What difference does it make?

22 **Q. Well, it all makes a difference to -- if**  
23 **Ted will be qualified to -- to act as the PR in any**  
24 **capacity. So that's why that -- okay.**

25 **Do you know why Ted and Pam were excluded?**

1           A.    Not -- well, not directly from Si.  I  
2 would only know indirectly from what was related to  
3 me by my partner.

4           **Q.    Are you aware that the alleged power of**  
5 **appointment that Simon allegedly executed would**  
6 **only be able to change the beneficiaries to the --**  
7 **to Lisa, Jill, and Eliot and their lineal**  
8 **descendents, as Ted and Pam were already considered**  
9 **predeceased?**

10          A.    I don't agree with you.  No.

11           MR. ROSE:  Object to the form.  Calls for  
12 a legal conclusion.

13          A.    I'll give a legal conclusion:  No.

14           **Q.    When did you meet Ted Bernstein; and how**  
15 **did you meet him?**

16          A.    Prior to 2007 -- perhaps 2005 or '6; and I  
17 met him in connection with the insurance arbitrage  
18 program that they were marketing in Florida.

19           **Q.    Did you ever notify your firm or Robert**  
20 **Spallina that Ted and Pam had been disinherited**  
21 **from the estates and trusts of Simon and Shirley,**  
22 **along with their lineal descendents?**

23          A.    No.  Not during their lifetimes.

24           **Q.    Are you in possession of a letter from Pam**  
25 **Simon's attorney sent to your law firm that**

1 describes her anger at Simon's decision to cut her  
2 and Ted out of the estate entirely; and as it was  
3 revealed to her attorney by your law firm while  
4 Simon was alive?

5 A. I think that was all part of the telephone  
6 conversation that your father had with you and your  
7 siblings.

8 Q. No, it was before that by a lot.

9 But --

10 A. At some point --

11 MR. BLOCK: You can't make statements.

12 Ask questions.

13 A. At some point --

14 Q. Yeah.

15 A. At some point --

16 Q. At some point?

17 A. At some point you children knew what was  
18 going to be in the documents.

19 As to when, I'm not 100 percent certain,  
20 but we --

21 Q. Your affidavit states they didn't know.

22 A. They didn't know prior to Shirley's death.

23 Q. Oh. I'm not talking about that affidavit.

24 That looks like a court document. Was that ever  
25 filed with the court -- that affidavit?

1           A.    I don't -- I don't know.  I provided it to  
2 Mr. Rose.

3           MR. BLOCK:  That's enough.

4           **Q.    Did you provide it to him to file it as a**  
5 **document with the court?**

6           A.    I wasn't sure what he intended to use it  
7 for.

8           **Q.    Well, it's titled "In the Circuit Court of**  
9 **the 15th Judicial Circuit in and for Palm Beach**  
10 **County Florida, Case No. 502012CP004391XXXXSB,"**  
11 **that it's an "Affidavit of John Tescher."**

12                    **So you are signing this as a court**  
13 **document; correct, as an affidavit to the court?**

14           A.    I signed it as an affidavit.

15           **Q.    To the court?**

16                    **Did you serve this court document to**  
17 **anybody?**

18           A.    No.

19           **Q.    Is there any certification at the bottom**  
20 **of the document that it's a court document and that**  
21 **you're delivering it?**

22           A.    No.

23           **Q.    So to the best of your knowledge, was it**  
24 **delivered to the court?**

25           A.    To the best of my knowledge, it has not

1 been delivered to the court.

2 **Q. Did you have any part or your firm have**  
3 **any part in nominating Janet Crain as manager of**  
4 **the Bernstein Family Realty?**

5 COURT REPORTER: Janet?

6 THE WITNESS: C-r-a-i-n, I think.

7 **Q. Excuse me?**

8 A. Could you repeat the question, Eliot? I'm  
9 sorry -- or the court reporter read it back.

10 **Q. Did you or your firm have any part in**  
11 **nominating Janet Crain as manager of Bernstein**  
12 **Family Realty?**

13 A. I don't know that.

14 **Q. Have you read the BFR operating**  
15 **document -- the Bernstein Family Realty?**

16 A. I don't believe that I have.

17 **Q. Do you know how a successor would be**  
18 **chosen in the event that Si died?**

19 A. I can't answer that.

20 **Q. As the personal representative of Si's**  
21 **estate you can't answer how that entity would flow**  
22 **to a successor?**

23 A. His estate had no interest in that entity.  
24 He was merely a manager.

25 **Q. Right. And when he died, they had no**

1 interest in -- in knowing if the next manager was  
2 the estate or what was to happen; right, is what  
3 you're saying; you didn't know what was going to  
4 happen?

5 A. Is there a question there?

6 Q. Yes. You didn't look at the documents of  
7 Bernstein Family Realty and determine how the  
8 successor after Si died was to be determined.

9 A. I did not look at them.

10 Q. When your firm was notified that Simon  
11 Berstein's accounts at Legacy Bank were being used  
12 months after his death and had been frozen, what  
13 steps did your firm take to marshal in the accounts  
14 of Simon and figure out who had been using those  
15 accounts during that time and how much money was  
16 used during the time after his death?

17 A. I was not involved in that.

18 MR. BLOCK: Object.

19 Q. Were you sent emails by Eliot Bernstein,  
20 myself, to you, Don, regarding the money at Legacy  
21 Bank that had been frozen?

22 A. Who were the owners of those accounts?

23 Q. Simon Bernstein.

24 A. Simon Bernstein individually?

25 Q. He was the only signatory on the accounts

1 as the -- we don't know. We've tried to get the  
2 documents from your firm -- didn't get them.

3 So once you -- once you found out that  
4 accounts of Simon Bernstein's estate were being  
5 used, what did you do?

6 A. I can't answer that. I -- I don't know  
7 what you're talking about.

8 **Q. Did your firm contact Legacy Bank?**

9 A. I don't know. My partner perhaps did. I  
10 don't know.

11 **Q. You don't know? Weren't you involved in**  
12 **all the emails that corresponded through regarding**  
13 **the Legacy Bank transactions?**

14 A. We had a division of responsibilities  
15 within the firm with respect to the --

16 **Q. Okay. As the managing partner or**  
17 **president, you're responsible for all business;**  
18 **right?**

19 MR. BLOCK: Object to your statement.

20 **Q. As president you're responsible for all**  
21 **the decisions at your firm; correct?**

22 MR. ROSE: Object to the form.

23 A. No; incorrect.

24 **Q. Okay. So you also received all of Eliot**  
25 **Bernstein's court petitions which also detail in**

1 detail your firm's involvement in contacting Legacy  
2 Bank.

3 Are you still unaware of your firm's  
4 contacting Legacy Bank regarding Simon Bernstein's  
5 accounts being used postmortem?

6 A. I can't answer the question, Eliot.

7 Q. Are you aware that the estate of Simon was  
8 closed by Simon while he was deceased?

9 A. Asked and answered.

10 Q. The estate of Shirley was closed by Simon  
11 after he's the personal representative months after  
12 he was deceased.

13 A. Asked and answered.

14 Q. What was your answer?

15 A. Go back and look at the transcript.

16 MR. ELIOT BERNSTEIN: Okay. Can we look  
17 at it?

18 THE WITNESS: Alan, it's now 5:10.

19 MR. ROSE: Yeah. For the record, I -- I  
20 did warn Mr. Feaman he was using the time, and Mr.  
21 Eliot Bernstein indicated his consent that Mr.  
22 Feaman could use the time. I used about 20  
23 minutes.

24 Could you indulge maybe 10 more minutes so  
25 we could let Mr. -- Eliot finish before the hearing



1 Friday? I would appreciate it.

2 THE WITNESS: Okay.

3 MR. ROSE: I would also ask Mr. -- Eliot  
4 to ask questions that are directly related to the  
5 hearings that are upcoming.

6 **Q. Have you ever received accountings or done**  
7 **accountings for the Shirley Bernstein Trust or the**  
8 **Simon Bernstein Trust or the Shirley Bernstein**  
9 **estate?**

10 A. The Shirley Bernstein estate had one asset  
11 -- the probate estate -- tangible personal  
12 property.

13 **Q. Did you prepare an accounting for the**  
14 **Shirley Bernstein estate?**

15 A. I believe we did.

16 **Q. Did you distribute that accounting?**

17 A. It's in the court file.

18 **Q. Do you have in your possession an**  
19 **accounting for the Simon Bernstein Trust?**

20 A. Simon Bernstein Trust?

21 **Q. Yes.**

22 A. No.

23 **Q. No?**

24 A. No.

25 **Q. You never prepared an accounting for the**

1 **Simon Bernstein Trust?**

2 A. Not yet.

3 **Q. Well, are you going to -- do you plan on**  
4 **it?**

5 A. Yes.

6 **Q. Are you resigned -- you've resigned in all**  
7 **your capacities?**

8 A. Yes, we have.

9 **Q. Well, how are you going to prepare the**  
10 **accounting?**

11 MR. BLOCK: Eliot, please don't argue with  
12 him.

13 MR. ELIOT BERNSTEIN: I'm not arguing.  
14 I'm asking a question.

15 **Q. How are you planning on preparing the**  
16 **accounting?**

17 A. We have the information necessary to  
18 prepare the accounting.

19 **Q. Why has no accounting been prepared to**  
20 **date?**

21 A. We've been somewhat consumed with all of  
22 the other minutia that's going on that we've had to  
23 address and deal with.

24 **Q. Are you aware that legally you have to**  
25 **prepare an accounting when you resign as the**

1 trustee?

2 A. I'm aware of what our obligations are.

3 Q. Have you fulfilled those obligations  
4 legally?

5 A. We have not prepared an accounting yet.

6 Q. Does that fall within the legal statutes?

7 A. Eliot, we have not prepared an accounting  
8 yet.

9 Q. Okay. Does that fall within the legal  
10 statutes?

11 A. I don't understand your question.

12 MR. ROSE: I think he's answered your  
13 question. I'd ask you to ask your next question,  
14 as we have a limited amount of time.

15 Q. Okay. Has the successor trustee -- Ted,  
16 who you nominated -- prepared an accounting?

17 A. I wouldn't know.

18 MR. ELIOT BERNSTEIN: Oh, Alan, would you  
19 know that?

20 THE WITNESS: You can't ask Alan  
21 questions, Eliot. You can ask me questions.

22 MR. ELIOT BERNSTEIN: Oh.

23 Q. Has the Palm Beach County Sheriff  
24 contacted you --

25 MR. BLOCK: Don't answer that question.

1           And, Eliot, if you don't want me to cut  
2 you off, ask appropriate questions dealing with  
3 the --

4           **Q. Has the Palm Beach County Sheriff**  
5 **contacted you, Don?**

6           A. I can't answer that question, Eliot.

7           **Q. Have they contacted you or your firm**  
8 **regarding the estates and trusts of Simon and**  
9 **Shirley?**

10          A. My firm has not been contacted.

11          **Q. Have you personally?**

12          A. I have not talked to the Palm Beach County  
13 Sheriff's department.

14          **Q. Has Detective Ronny Miller left messages**  
15 **for you?**

16          MR. BLOCK: Okay. That's it. Don't  
17 answer.

18          A. I'm through answering those questions,  
19 Eliot.

20          MR. ROSE: Eliot, Mr. Block has indicated  
21 you're not -- that question will not be answered.

22                 Ask your next question.

23          **Q. Are you aware that your partner has gone**  
24 **to the Palm Beach Sheriff -- County's department?**

25          A. Well, since you've --

1 MR. BLOCK: I'm going to adjourn this if  
2 you keep that up. Ask questions about --

3 MR. ELIOT BERNSTEIN: Well, these are very  
4 relevant --

5 MR. BLOCK: -- what's coming up.

6 MR. ELIOT BERNSTEIN: These are very  
7 relevant questions to -- his firm is under  
8 investigation and if they're being contacted by the  
9 sheriff's department. If they've responded or if  
10 they've been avoiding. So it has relevance. It  
11 has relevance -- 'cause Ted Bernstein is also party  
12 to those investigations; and they've all gone  
13 together.

14 So I'd like to get some questions answered  
15 about it. If Don Tescher is in a position at this  
16 point -- with fraud and forgery and all these other  
17 things -- to be able to nominate a successor while  
18 they're under investigation.

19 **Q. Okay. So back to my questions.**

20 **Don, are you aware that your partner has**  
21 **gone to the Palm Beach Sheriff's -- County --**  
22 **regarding the estates and trusts of Simon and**  
23 **Shirley Bernstein?**

24 **A. Yes, because you published the report.**

25 **Q. Are you aware that in that report that you**

1 **referenced just now that it's alleged that Ted**  
2 **Bernstein made improper distributions?**

3 A. I disagree with your interpretation.

4 **Q. Are you aware that your partner has**  
5 **admitted to altering trust documents in Shirley's**  
6 **estate?**

7 A. I am aware.

8 **Q. Why would you alter estate documents?**

9 A. I'm not at liberty to answer that  
10 question.

11 **Q. Well, you're the PR -- you were the PR --**

12 MR. ROSE: Okay.

13 A. I'm not --

14 **Q. Did -- did your firm prepare the wills and**  
15 **trusts of Simon and Shirley?**

16 A. Our firm prepared the wills and trusts for  
17 Simon and Shirley.

18 MR. BLOCK: That has been asked and  
19 answered. And I will not permit the same questions  
20 to be asked and answered -- for the matter, to be  
21 asked.

22 **Q. Did the -- in Simon Bernstein's 2012**  
23 **documents, are you aware that the governor's office**  
24 **has now issued a ruling that the documents were**  
25 **improperly notarized by a one Lindsay Baxley, a/k/a**

1 **Lindsay Giles?**

2 A. Of course I'm aware of that. You  
3 published it.

4 **Q. Are you aware today of any reasons Ted**  
5 **Bernstein shouldn't be a fiduciary of either of the**  
6 **estate of Simon or Shirley?**

7 A. No.

8 **Q. Are you aware that the documents are now**  
9 **-- to question as to who the ultimate beneficiaries**  
10 **will be based on the documents you've submitted --**  
11 **in the fraudulent documents and altered documents,**  
12 **etcetera?**

13 A. I've seen your pleadings.

14 **Q. So you're stating you are aware that --**  
15 **that we are claiming that Ted --**

16 MR. BLOCK: Eliot, you cannot -- Eliot you  
17 cannot make statements.

18 **Q. Are you aware that Ted and his lineal**  
19 **descendents may be excluded as beneficiaries?**

20 A. May be? I don't believe -- I don't  
21 believe that they are. But, again, that will be up  
22 to a court to determine.

23 **Q. In the resignation letter, Don, you say**  
24 **that you want to make reparations to the parties**  
25 **that were damaged by the fraudulent document.**

1           A.    I don't believe I used the word  
2 "Reparations."

3           **Q.    What word did you use?**

4           A.    Well, let's look at it.

5           MR. ROSE:  Objection.  The document speaks  
6 for itself.

7           THE WITNESS:  Yeah.  It does.

8           **Q.    Okay.  You wanted to make reparations to**  
9 **parties that were damaged by the fraudulent**  
10 **documents --**

11          A.    Incorrect.

12          **Q.    -- or words to that effect.**

13          A.    Incorrect.

14          **Q.    Correct?**

15          A.    Incorrect.

16          **Q.    Oh.  Incorrect?**

17          A.    Incorrect.

18          **Q.    Okay.  You wanted to make -- what did you**  
19 **say in your resignation letter?**

20          A.    Why don't you take a look at it?

21          **Q.    Well, I'm asking you.**

22          MR. BLOCK:  He answered the question.  
23 That's all.

24          **Q.    Well, take a look -- it's not an answer.**  
25 **It's not responsive.**



1           A.    Quote: "I am obviously upset and  
2 distraught over this chain of events and will do  
3 all that I reasonably can do to correct and  
4 minimize any damages to the Bernstein family."

5           Okay. That's what I said.

6           **Q.    Okay. What have you done to date to do  
7 that?**

8           A.    We haven't gotten to that point, because  
9 you're fighting about everything else other than  
10 that.

11          **Q.    What do you mean I'm "fighting"?**

12          A.    You all -- all of you -- are fighting over  
13 disqualifying your brother, disqualifying Alan  
14 Rose, disqualifying John Pankauski, fighting over  
15 who should be the successor to Si's -- a personal  
16 representative of Si's estate, removing Ted  
17 Bernstein as the trustee of Si's trust,  
18 attorney/client issues. All of these things.

19                You haven't gotten to the heart of the  
20 matter yet, 'cause you're dealing with all the  
21 peripheral stuff.

22          **Q.    Are you aware that all of those problems,  
23 Don, start from your firm's withholding documents  
24 from beneficiaries beyond statute; and the fact  
25 that there's fraud, and forgery, and all kinds of**

1 **other things in the documents which have caused all**  
2 **of these problems?**

3 MR. ROSE: Object to the form.  
4 Argumentative. Not a question.

5 A. It's not a question. There's nothing for  
6 me to respond to.

7 **Q. Are you aware, Don, that your firm is the**  
8 **cause of the problems in the estate at this time?**

9 A. No.

10 **Q. Are you aware that you sent documents to**  
11 **Christine Yates at Scott law firm that were**  
12 **fraudulent?**

13 A. I am aware of that.

14 MR. ROSE: Object to the form of the last  
15 question.

16 **Q. Were you a part of those documents, Don?**

17 A. No, sir.

18 **Q. Did you know those documents that were**  
19 **being transmitted to her were fraudulent?**

20 A. All of the -- none of those documents were  
21 fraudulent at all but for the proposed -- the  
22 amendment to Shirley Bernstein's trust.

23 **Q. Right. Right. And --**

24 A. So let's be accurate when we ask the  
25 question, Eliot; okay?

1           **Q.   Who could be damaged by that document?**

2           A.   Frankly, nobody is going to be damaged,  
3 because I believe that your father had the right to  
4 exercise his power of appointment and appoint it to  
5 all 10 grandchildren.

6           **Q.   Well, you're referring to the 2012**  
7 **document, right, that Simon gets his power of**  
8 **appointment allegedly from; correct?**

9           A.   He gets his power of appointment from your  
10 mother's 2008 trust.

11           MR. ROSE: For the record, Eliot, the  
12 proceedings we're having Friday are in the Simon  
13 Bernstein estate. You have a limited amount of  
14 precious time; and I would hope you would use it  
15 wisely.

16           MR. ELIOT BERNSTEIN: Well, the fraud  
17 occurred in both estates. We're trying to show  
18 that Ted's not qualified -- obviously as well as  
19 you -- to be involved in this case because of your  
20 involvement in the fraud and forgeries that have  
21 occurred; and your law firm's -- or Mr. Tescher's  
22 law firm has been involved in those frauds,  
23 forgeries, altered documents; therefore, it's all  
24 relevant to the qualifications of Mr. Tescher's  
25 ability to choose a successor while he's under

1 investigation and everything else and appoint Ted,  
2 who's similarly under investigation -- and for all  
3 of these related matters.

4 So I do believe this is very pertinent to  
5 the qualifications of both Ted, Mr. Tescher, and  
6 you, Mr. Rose.

7 MR. BLOCK: You are now attacking Mr.  
8 Rose?

9 MR. ELIOT BERNSTEIN: Yes. He was part of  
10 the same thing.

11 THE WITNESS: Irwin, we're all part of the  
12 conspiracy, Irwin.

13 MR. BLOCK: We're not part of any  
14 conspiracy.

15 MR. ELIOT BERNSTEIN: To change  
16 beneficiaries of my mother's estate, that's for  
17 sure.

18 MR. ROSE: Eliot, you're not here to make  
19 speeches. Please ask a question, and then he'll  
20 give an answer, then you'll ask your next question.  
21 Then, when you're done with questions, or when you  
22 run out of time, or when someone believes it's  
23 appropriate to terminate the deposition, we'll  
24 terminate the deposition.

25 **Q. Mr. Tescher, you're a good friend of**

1 **Ted's, as you said.**

2 **Are you aware that he graduated college or**  
3 **didn't graduate college?**

4 A. Did you say I'm a good friend of Ted's?

5 **Q. I said you're a friend.**

6 A. Okay. I'm an acquaintance of Ted's. I  
7 have been out with Ted socially on one occasion.

8 **Q. Do you sit on the board of his charity,**  
9 **the Ted and Deborah Bernstein Foundation?**

10 A. I don't believe I do.

11 **Q. Okay. Does your firm or your partner?**

12 A. Not that I'm aware of.

13 **Q. Okay. Are you a director of his charity?**

14 A. No.

15 **Q. Any of them?**

16 A. No.

17 **Q. Okay. Are you aware that Ted declared**  
18 **bankruptcy?**

19 A. Only because you published it someplace.

20 **Q. Do you think that makes him a worthy**  
21 **candidate for PR and trustee?**

22 A. Well, do you think everybody who's -- how  
23 about Mr. Trump? Maybe he could be the successor  
24 PR. He's had several bankruptcies.

25 MR. BLOCK: Eliot, finish.

1           **Q.    Have you notified your carriers --**

2           A.    Our carrier is involved.

3           **Q.    Has the firm sought representation?**

4           A.    I'm sorry.    What?

5           **Q.    Has your firm sought legal representation**  
6 **in these matters?**

7                   MR. BLOCK:    Don't answer that question.  
8 That's entirely inappropriate for the issue before  
9 the court on Friday.

10          A.    My counsel's directed me not to respond to  
11 your question.

12          **Q.    Regarding the life insurance policy in**  
13 **Illinois, if the Illinois action wasn't instigated,**  
14 **would Ted have any interest in the policy?**

15          A.    I don't understand the question.

16          **Q.    Without the Illinois breach of contract**  
17 **lawsuit, would Ted have an interest in the**  
18 **insurance policy, the Heritage life policy?**

19          A.    I don't know.

20          **Q.    If it went to the estate, what would**  
21 **happen?**

22          A.    If it went to the estate, it would pour  
23 down to the trust, to the extent there was anything  
24 left after administration expenses, taxes, and  
25 claims of creditors; and it would be divided among

1 the 10 grandchildren.

2 **Q. So Ted wouldn't receive any benefits?**

3 A. That's correct.

4 **Q. Would Pam?**

5 A. Same thing with Pam.

6 **Q. Okay.**

7 A. It would only go to the 10 grandchildren  
8 under that set of circumstances.

9 **Q. Now, you said that your first line of**  
10 **action when -- with the insurance policy was to**  
11 **seek a probate court order; is that correct?**

12 A. No. I said we would seek -- we would file  
13 a declaratory action in the circuit court in Palm  
14 Beach County.

15 That's not necessarily the probate court.

16 **Q. Okay. So when you realized that the trust**  
17 **was missing, that was your intended course;**  
18 **correct?**

19 A. That was our intended course.

20 **Q. Okay. And you realize that prior to that**  
21 **intended course your partners filed a claim without**  
22 **notifying any court to proceed the benefits of the**  
23 **policy to your law firm; is that correct?**

24 MR. ROSE: Object to the form.

25 A. It -- these are asked-and-answered

1 questions. We've been through this when we went  
2 through the documents.

3 **Q. No, I didn't hear the answer to that**  
4 **before.**

5 MR. ELIOT BERNSTEIN: Can you read that  
6 back to him court reporter?

7 A. It goes back to Exhibit --

8 **Q. My question, Don, is simple.**

9 A. Yeah.

10 **Q. You said your first course of action was**  
11 **to go seek a court order in Florida.**

12 **My question is, prior to that you sought a**  
13 **different course of action.**

14 A. I'm sorry. Eliot, the first course of --

15 **Q. That's correct.**

16 A. My first course of legal action.

17 **Q. Well, filing an insurance claim as trustee**  
18 **is a legal action; right?**

19 A. No. It's not.

20 **Q. Oh. It's not? Why -- was the claim**  
21 **approved?**

22 A. Of course not.

23 **Q. Well, why?**

24 A. Because nobody has yet produced the '95  
25 trust.



1           **Q.    So what happened?  The insurance company**  
2 **denied the claim?**

3           A.    They paid the funds into the registry of  
4 the court.

5           **Q.    No.  No.  Did they deny the claim first?**

6           A.    They said they can't approve the claim.  
7 They didn't deny the fact that they owe somebody  
8 1.6 million.

9           **Q.    I didn't ask that question, Don.  That**  
10 **goes into the breach of contract lawsuit.  I'm just**  
11 **dealing with the insurance right here.**

12                   **So insurance claim filed by your partner**  
13 **as trustee of a lost trust that your firm and --**  
14 **and you now claim never to have received was denied**  
15 **by the carrier; correct?**

16           A.    Correct.

17           **Q.    Were you notified by the carrier that you**  
18 **would need a court order to approve the beneficiary**  
19 **scheme you were proposing to the insurance company?**

20           A.    There was conversations -- I don't know if  
21 there's writings or not; I don't recall -- there  
22 were conversations that were held with the in-house  
23 counsel for the carrier.

24                   MR. ROSE:  Just for the record, we're not  
25 trying the life insurance case.  There's already

1 been an administrator ad litem.

2 MR. ELIOT BERNSTEIN: Ted Bernstein and  
3 Don Tescher would get involved in these estates  
4 that would remain through our hearings.

5 Q. So, Don, what you just said as your first  
6 course of action, it is your firm's intent to put  
7 the money into your firm's trust account with  
8 Robert Spallina acting as trustee; is that correct?

9 A. No.

10 Q. Okay. What was the first thing you did  
11 regarding the life insurance?

12 A. You'll have to ask Mr. Spallina that  
13 question.

14 Q. Well, do you speak to Mr. Spallina  
15 frequently?

16 A. Yes. But I was not initially involved.  
17 And so I don't want to speak out of turn as to the  
18 -- the order of events and what -- what exactly  
19 transpired.

20 Q. Well, were you on phone calls with  
21 Bernstein family members regarding the life  
22 insurance?

23 A. I was on some phone calls, Eliot.

24 Q. Do you recall phone calls where you were  
25 suggesting a document your firm prepared that would

1 **replace the lost trust?**

2 A. No.

3 **Q. Are you in --**

4 A. That would be declaratory action to  
5 establish a lost trust.

6 **Q. Was that before or after you filed a death**  
7 **claim with Robert Spallina as trustee?**

8 A. I can't answer. I don't know the timing.

9 **Q. Okay. And Kimberly Moran, you're aware**  
10 **she was arrested?**

11 A. Asked and answered.

12 **Q. And you're aware she was convicted of a**  
13 **felony offense?**

14 A. I don't -- I think adjudication was  
15 withheld, pending a satisfactory probationary  
16 period.

17 So before you go around claiming that  
18 she's a convicted felon, you'd better check.

19 **Q. Okay. Were you aware that the day Simon**  
20 **died Ted Bernstein claimed that Simon's girl**  
21 **friend, Maritza Cucchio, had murdered Simon?**

22 A. No.

23 **Q. You're not aware of that?**

24 A. No.

25 **Q. And you've read Eliot Bernstein's -- my**

1     **petitions -- to the court which deal with that,**  
2     **so --**

3           A.    Yes.  But am I aware of it?  Other than,  
4     you know --

5           **Q.    So you are aware?  Excuse me.**

6                   **Now you are aware?**

7           A.    Other than what you've, you know, belched  
8     forth in your pleadings, I'm not aware of that.

9           **Q.    Oh.  In my pleadings I included a**  
10    **sheriff's report that has the --**

11                   COURT REPORTER:  We can't hear you.

12                   (Discussion off the record.)

13           **Q.    Are you aware that the sheriff was**  
14    **contacted -- into the house?**

15                   THE WITNESS:  Alan, I'm sorry.  But I'm  
16     done.  It's 5:35.  I've tried to be cooperative.  
17     He's going into things --

18                   MR. ELIOT BERNSTEIN:  This is very  
19     important stuff here, Don.

20           **Q.    So you were aware that the police -- the**  
21    **Palm Beach County Sheriff came to Simon's house the**  
22    **day he died.**

23           A.    I am generally aware --

24                   MR. ROSE:  He said he was not aware.  Ask  
25     your next question.

1 MR. ELIOT BERNSTEIN: Wait. Alan, are you  
2 representing him? Or are you objecting to Don --

3 MR. ROSE: Don, you can talk -- if you  
4 have legal questions, consult your counsel, Mr.  
5 Feaman.

6 For me, I'm just -- Tescher has told you  
7 twice he didn't know; and he's also indicated that  
8 he's not going to sit for this any longer.

9 MR. ELIOT BERNSTEIN: He didn't say he was  
10 aware. He changed his statement after he made the  
11 "no" statement.

12 That's why I'm trying to clarify: Are you  
13 representing him?

14 MR. FEAMAN: Mr. Rose, I do not represent  
15 Mr. Bernstein. I don't appreciate it if you would  
16 make misrepresentations in the record. Thank you.

17 MR. ELIOT BERNSTEIN: -- said that.

18 **Q. My question again, Don: Were you aware**  
19 **that Ted Bernstein had made claims to the Palm**  
20 **Beach County Sheriff that Simon Bernstein was**  
21 **murdered?**

22 A. The only thing I know is that they  
23 instituted an investigation.

24 **Q. Okay. And are you aware that a coroner's**  
25 **investigation was instigated by Ted Bernstein?**

1 A. I believe so.

2 Q. Okay. And when you became aware of these  
3 things, what did you do to preserve and protect the  
4 properties of Simon's home for a criminal  
5 investigation possibly?

6 A. The homes -- the homes were sealed as far  
7 as I know; access was limited.

8 Q. Did you contact the Palm Beach County  
9 Sheriff --

10 A. No.

11 Q. -- of any information you had regarding  
12 Maritza Cucchio?

13 A. I don't believe so. I personally did not.

14 Q. Were you aware of a document that was  
15 removed from Simon's premises by Rachel Walker that  
16 was a contract and check for Maritza Cucchio?

17 A. That's in the document production that we  
18 made.

19 Q. My question is --

20 A. But everybody should be --

21 Q. My question is, are you aware of that  
22 document?

23 A. I became aware of it.

24 Q. And when you became aware of it, did the  
25 document that -- did you honor it?

1 A. Couldn't honor it. It wasn't signed.

2 **Q. And what did it allege to do?**

3 MR. ROSE: You have the document. And  
4 doesn't it speak for itself?

5 A. The document speaks for itself. It's in  
6 our discovery.

7 **Q. Did you turn that document over to the  
8 Palm Beach County Sheriff?**

9 A. No.

10 **Q. Okay. To the best of your knowledge, did  
11 anybody turn that document over to the Palm Beach  
12 County Sheriff?**

13 A. I'm unaware.

14 **Q. Did you notify the court that Simon  
15 Bernstein was alleged to have been murdered when he  
16 was --**

17 A. No.

18 **Q. -- alleged to have been murdered?**

19 A. No.

20 **Q. When Simon Bernstein died, he was the  
21 personal representative of Shirley's estate;  
22 correct?**

23 A. That is correct.

24 **Q. Was the successor then chosen?**

25 A. No, not at that time, because --

1           **Q.    Oh.    At what time was the successor**  
2 **chosen?**

3           A.    Subsequently, when we moved to reopen the  
4 estate.

5           **Q.    And that was after Eliot Bernstein filed**  
6 **petitions to reopen the estate based on the**  
7 **fraudulent and forged documents.**

8           A.    We filed the pleading to reopen the estate  
9 of Shirley.

10           MR. ROSE:   How many more hours or days of  
11 questions do you have for Mr. Tescher?

12           MR. ELIOT BERNSTEIN:   Oh, I've got --

13           THE WITNESS:   Oh, we could go on probably  
14 for weeks with him.

15           MR. ROSE:   I want to find out on the  
16 record how many hours or days you have for further  
17 questioning.

18           MR. ELIOT BERNSTEIN:   Yeah, I know.   But  
19 it all has to do with his character and fitness.  
20 And, you know, with forged and fraudulent  
21 documents --

22           MR. ROSE:   I understand.   But you're  
23 beyond the scope of cross-examination of my  
24 questions.   And we can't go on tonight.   So I'm  
25 asking you:   How much longer do you have for



1 tonight so that Mr. Tescher can decide if he's  
2 going to sit for further deposition or -- if you're  
3 just going to go on all night, then, you know, that  
4 just cannot happen. And we have a limited amount  
5 of time; that he was kind enough to make himself  
6 available for the narrow issues that were to be  
7 heard this week.

8 So can you answer how many hours, or  
9 weeks, or minutes of questions do you have left?

10 MR. ELIOT BERNSTEIN: I've got a number of  
11 questions left. And I've got plenty of time.

12 THE WITNESS: Well, I don't, Eliot.

13 MR. ELIOT BERNSTEIN: Okay. So when do  
14 you want to continue this deposition?

15 THE WITNESS: I don't know.

16 MR. ROSE: Do you have any more questions?  
17 We've all agreed you can take his deposition later  
18 on other matters.

19 Do you have any more questions you want to  
20 have him answer before we have the hearing on  
21 Friday? And I would suggest that you try to wrap  
22 it up very quickly.

23 MR. ELIOT BERNSTEIN: Okay. Well, I'm  
24 going to take the time and ask the questions I  
25 have.

1 THE WITNESS: I have to be someplace in 19  
2 minutes.

3 MR. ELIOT BERNSTEIN: Good. Then we  
4 should probably schedule some time.

5 How's tomorrow morning?

6 THE WITNESS: Not good.

7 MR. ROSE: Yeah. I'm not available  
8 tomorrow morning. And this is the time we have for  
9 his testimony.

10 MR. ELIOT BERNSTEIN: Well, I want to keep  
11 the deposition open to get all the questions  
12 answered, so --

13 MR. BLOCK: Eliot, you will have the  
14 opportunity to ask all the questions you want to at  
15 a future date.

16 MR. ELIOT BERNSTEIN: No, no, but some of  
17 these questions are pertinent to the hearing.

18 MR. BLOCK: This is not. You're not a  
19 lawyer; and most of your questions were repetitious  
20 to what Peter had already asked. This is a waste  
21 of time.

22 **Q. Did you, Don, notify the US federal court**  
23 **or the probate court that you have an alleged 2000**  
24 **insurance trust that was executed?**

25 A. I don't think so, but I'm not certain.

1           **Q. Did you send that trust document to any of**  
2 **the parties at any time?**

3           A. If we had it, it's in the discovery.

4           **Q. Did you send it to any beneficiaries or**  
5 **interested person?**

6           A. No, it was a 2000 trust that was never  
7 funded.

8           **Q. Is the Heritage policy named in that**  
9 **trust?**

10          A. I don't recall, Eliot.

11          **Q. If I told you that the Heritage policy was**  
12 **named in that trust, would you think it's relevant?**

13          A. It might be, but, again, I believe that  
14 that trust was done at a time where Mr. Gortz  
15 trying to get your father to put the policy  
16 ownership into a life insurance trust.

17          **Q. Are you aware that your firm has**  
18 **correspondences that refer to secreting that**  
19 **document from the courts because -- that it does**  
20 **not inure a benefit to Pam Simon?**

21          A. No, I'm not aware of that.

22          **Q. It's in your production document.**

23          A. I'm not aware of that. You asked if I was  
24 aware. I'm telling you I'm not aware of that.

25          **Q. Okay. After Ted and Pam found out from**

1 Robert Spallina talking to Pam's attorney about  
2 their disinheritance, what occurred?

3 Were they okay with that?

4 What happened?

5 A. Pam was hurt over it, as I recall.

6 Q. What about Ted?

7 A. I don't think he had any significant bad  
8 reaction.

9 Q. Are you aware of any problems between Ted  
10 and Simon in the two years leading up to Simon's  
11 death?

12 A. No.

13 Q. None at all?

14 A. No.

15 MR. ROSE: Asked and answered.

16 Q. Again, you've read all of my petitions;  
17 correct?

18 A. Does that mean that I knew because you  
19 said it?

20 Q. I'm just asking. Were you on a May 2012  
21 conference call with Simon Bernstein and his  
22 children?

23 A. I was not on that call.

24 Q. You were on that call?

25 A. I was not on that call.

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**Q. Okay.**

A. I was in Cape Cod.

MR. ROSE: I move to strike the comment.

**Q. It was a telephone call; correct?**

A. Yes, it was a telephone call.

**Q. And why was the telephone call held by Si?**

A. Because Si asked Robert to arrange it.

**Q. Are you aware that Robert Spallina stated to the Palm Beach County Sheriff in the report you referred to before that you and he discussed trying to make Ted's children beneficiaries and were going to use, I believe, a scrivener trust or something you called it; and then you then decided together that you couldn't do that, so you decided a course -- this is according to Mr. Spallina's statement -- together; and then he executed a fraudulent amendment?**

MR. ROSE: Object to the form.

A. I'm not aware of -- I'm not aware of that being the facts.

**Q. What are you aware of facts then?**

MR. BLOCK: Stop that.

MR. ELIOT BERNSTEIN: The question's very relevant. It's very relevant, because it deals with Ted, again, having a conflict where his

1 children may not be beneficiaries; and, therefore,  
2 Ted and his lineal descendants will be completely  
3 excluded from the estate; and, therefore, it  
4 affects his ability to properly make decisions on  
5 behalf of the estates or trusts.

6 MR. ROSE: That's an argument you'll make  
7 to the court, but that's not something you need to  
8 argue with the witness about. You need to ask a  
9 question.

10 MR. ELIOT BERNSTEIN: I'm just asking if  
11 he's aware of Mr. Spallina's statements to the Palm  
12 Beach County Sheriff regarding he and Mr.  
13 Spallina's decision to use a fraudulent document  
14 that Mr. Spallina then executed fraudulently and  
15 transferred to other parties.

16 A. I'm aware of the report --

17 MR. ROSE: Object to the form.

18 A. I'm aware of the report, but it is not  
19 wholly accurate.

20 **Q. In that May meeting, were Ted and Pam's --**  
21 **Ted and Pam or their lineal descendants at that**  
22 **time beneficiaries of the estates and trusts of**  
23 **Simon and Shirley in any way at any time?**

24 A. The 2008 trust; right?

25 **Q. Yeah.**

1           A.     (Witness reviews document.) I'm looking  
2 at Shirley's 2008 trust; and in the event that  
3 Simon did not exercise his power of appointment,  
4 then it would pass to other than Ted, Pam, and  
5 their respective lineals.

6           **Q.     So they were disinherited at that point of**  
7 **the meeting.**

8           A.     Under Shirley's trust, if it passed under  
9 her trust; that's correct.

10          **Q.     And Shirley's trust had been funded**  
11 **already?**

12          A.     Yeah. Shirley was deceased.

13          **Q.     Yeah. I know. And who closed the estate**  
14 **of Shirley?**

15          A.     The documents were filed by Kimberly Moran  
16 in our office.

17          **Q.     No. Who closed -- Kimberly Moran didn't**  
18 **close the estate of Simon; did she?**

19          A.     Oh, I'm sorry. I thought you said  
20 Shirley. I apologize, Eliot.

21          **Q.     Shirley. I did say Shirley.**

22          A.     Okay.

23          **Q.     So Kimberly Moran wasn't the personal**  
24 **representative; was she?**

25          A.     She filed the papers in the court.

1           **Q.    Yeah.    So who closed the estate of Shirley**  
2 **Bernstein?**

3                   **What person was acting --**

4           MR. ROSE:   Objection.   Relevance to the --  
5 it's not what we're here to talk about.

6           MR. ELIOT BERNSTEIN:   It is what I'm here  
7 to talk about.   It is, in fact, critical to Don  
8 Tescher's capacity to make any decisions of who  
9 should be successor when he could be involved in a  
10 lot of criminal acts here.   So...

11          A.    She filed the papers; and we did not have  
12 knowledge that she had done what she did.

13           **Q.    Okay.    But I'm not asking about the**  
14 **waivers that she fraudulently notarized for six**  
15 **people.**

16          A.    But how else do you close the estate,  
17 Eliot?   That's how you close the estate.

18           **Q.    Don, are you aware that a signature was**  
19 **forged for Simon postmortem by Kimberly Moran?**

20          A.    We've been through that.

21          MR. ROSE:   Asked and answered.

22           **Q.    Was your answer yes to that?**

23          MR. BLOCK:   He doesn't have to answer  
24 again.

25                   Go on with your questions that were not



1 asked before.

2 **Q. Well, what date did Shirley Bernstein's**  
3 **estate close?**

4 A. I don't know. I don't have access to that  
5 information here with me.

6 **Q. What if I told you it was closed in around**  
7 **January of 2013?**

8 A. I have no reason to know whether that's  
9 accurate or not.

10 **Q. Okay. Was Simon alive or dead in January**  
11 **of 2013?**

12 A. He was deceased. He died in 2012.

13 **Q. He was deceased. Okay.**

14 **And you're aware that Martin Coleman --**  
15 **before threatening you and your partner -- well, I**  
16 **don't know if you were there, but your partner, and**  
17 **Ted, and Mr. Manceri -- the Miranda warnings that**  
18 **-- and I'm not sure you've reviewed the transcript,**  
19 **but in issuing you warnings of -- Miranda warnings**  
20 **being read to you -- are you aware that that Judge**  
21 **Colin determined that Si Bernstein acted as a**  
22 **personal representative in January 2013 as if alive**  
23 **to close the estate of Shirley?**

24 MR. ROSE: Objection. Argumentative. And  
25 I think it's time to move for a protective order to

1 terminate the deposition, 'cause your questions are  
2 not proper questions of a witness, particularly  
3 relating to the hearings that are coming up.

4 MR. ELIOT BERNSTEIN: Are you acting as  
5 his counsel again?

6 MR. BLOCK: Don't answer him. You don't  
7 have to answer him.

8 MR. ELIOT BERNSTEIN: Yeah. Right, don't  
9 answer.

10 **Q. Yes or no?**

11 A. Eliot, I'm done.

12 MR. ELIOT BERNSTEIN: Are you moving for a  
13 protective order?

14 THE WITNESS: Irwin, what do we do?

15 MR. ROSE: Well, the witness is out of  
16 time for today. I think you've had a sufficient  
17 opportunity to ask questions.

18 MR. ELIOT BERNSTEIN: Yeah, I think we  
19 should move for a protective order, 'cause this  
20 deposition, I believe, is conducted under fraud.

21 MR. BLOCK: Okay. You want to move for a  
22 protective order, go ahead and file it; and the  
23 deposition is over.

24 THE WITNESS: Thank you all very much.

25 MR. ELIOT BERNSTEIN: I just asked if we

1 should, since Alan asked.

2 MR. BLOCK: Well, that's up to you.

3 MR. ELIOT BERNSTEIN: Well, Alan was the  
4 one asking.

5 MR. ROSE: Eliot, you're not asking  
6 questions. You're arguing with the witness.

7 MR. ELIOT BERNSTEIN: I was asking  
8 questions; and you're not answering. So let's  
9 continue.

10 Do you want to answer the question or not?

11 MR. BLOCK: I don't even know --

12 MR. FEAMAN: Court reporter, can you read  
13 back the last question, please?

14 (Question read: "He was deceased. Okay.  
15 And you're aware that Martin Coleman --  
16 before threatening you and your partner --  
17 well, I don't know if you were there, but  
18 your partner, and Ted, and Mr. Manceri --  
19 the Miranda warnings that -- and I'm not  
20 sure you've reviewed the transcript, but  
21 in issuing you warnings of -- Miranda  
22 warnings being read to you -- are you  
23 aware that that Judge Colin determined  
24 that Si Bernstein acted as a personal  
25 representative in January 2013 as if alive

1 to close the estate of Shirley?")

2 A. I don't recall that.

3 **Q. Have you read the transcript of that**  
4 **hearing?**

5 A. I don't recall that.

6 **Q. Did you read the transcript of that**  
7 **hearing?**

8 MR. BLOCK: Asked and answered.

9 A. I believe that I did at some point, but I  
10 do not recall it.

11 **Q. Are you aware that Judge Colin threatened**  
12 **to issue Miranda warnings to your partner, Ted, and**  
13 **Mr. Manceri?**

14 MR. ROSE: Object to form.

15 A. I'm aware that the words "Miranda  
16 warnings --"

17 MR. BLOCK: It's up to you as to whether  
18 you want to adjourn this. He's totally out of  
19 line.

20 THE WITNESS: He's incredibly out of line.  
21 You've got one more question, Eliot.

22 MR. ELIOT BERNSTEIN: I'm not sure why,  
23 but...

24 THE WITNESS: Because it's almost 6  
25 o'clock.

1           **Q. Well, were you, Don, aware of any problems**  
2 **between Simon Bernstein and his four other children**  
3 **prior to his death?**

4           A. Not specifically.

5           **Q. Was the May 2012 meeting to resolve**  
6 **problems?**

7           A. It was to resolve what Si wanted to do.

8           **Q. Was Si being urged by anybody to make any**  
9 **changes?**

10          A. I can't tell you that. Si -- I can tell  
11 you -- and you know this, Eliot -- your father was  
12 a strong-willed guy. People didn't tell him what  
13 to do.

14          **Q. Unless they do things for him after he's**  
15 **dead. That's the problem I'm having.**

16               MR. BLOCK: That's it.

17               MR. ROSE: If that's what -- I think at  
18 this point we need to terminate the deposition.  
19 Mr. Tescher is going to leave anyway. I don't  
20 think that's an appropriate question. So --

21               MR. ELIOT BERNSTEIN: Well, I'm not done  
22 with my questions. So I'd like to continue at some  
23 point. At what point are we going to continue?

24               MR. ROSE: At some point after the  
25 hearings on Friday when it gets scheduled on proper

1 notice to all counsel. At this point Mr. Tescher's  
2 time is up.

3 MR. ELIOT BERNSTEIN: I didn't get to  
4 finish all of my questions.

5 MR. ROSE: First of all, we have a limited  
6 hearing on limited issues in a limited amount of  
7 time; and so far it sounds like you have days or  
8 weeks worth of questions. So if that's -- if  
9 you're not going to finish in the next five or 10  
10 minutes -- which you've indicated you're not -- Mr.  
11 Tescher has indicated he needs to leave.

12 The deposition is concluded; and we'll  
13 take it up with the court.

14 Unless you have five or 10 minutes of  
15 critical questions which you need for the hearings  
16 this week -- which I have urged you for the past  
17 hour to ask -- I think we're probably finished at  
18 this point.

19 MR. ELIOT BERNSTEIN: I am asking very  
20 pertinent questions.

21 THE WITNESS: Eliot, I'm getting up, and  
22 I'm walking out of this room.

23 MR. ELIOT BERNSTEIN: Okay. Let the  
24 record reflect that.

25 THE WITNESS: Let the record reflect it.

1 COURT REPORTER: Does anybody want to tell  
2 the court reporter a transcript order or what they  
3 need?

4 MR. ROSE: I made my arrangements with the  
5 court reporter.

6 THE WITNESS: I don't waive reading.

7 MR. FEAMAN: What did you order?

8 THE WITNESS: I haven't ordered anything.  
9 I'm saying I'm not waiving reading.

10 MR. FEAMAN: I'm sorry. I was talking to  
11 Alan.

12 THE WITNESS: Oh. I'm sorry.

13 MR. ROSE: I ordered my direct exam and my  
14 direct exam only. And I've made my arrangements.

15 Anyone else can make their arrangements  
16 quickly, 'cause I'm going to terminate the  
17 conference call.

18 MR. FEAMAN: Alan, just slow down a  
19 second. Will you?

20 All right, Madam court reporter, I'll take  
21 a copy of what Alan has ordered at the same time  
22 that Mr. Rose has requested delivery for him.

23 As far as my direct is concerned, I'll  
24 order it.

25 And what time are you delivering the first

1 part of the transcript?

2 COURT REPORTER: I understand you want it  
3 tomorrow, Mr. Rose?

4 MR. ROSE: I want my direct and my direct  
5 only tomorrow. That was my arrangement.

6 MR. FEAMAN: Okay. I would like a copy of  
7 what you deliver to Mr. Rose at the same time as  
8 delivered to Mr. Rose; and then, as far as my  
9 direct -- or my portion of the exam -- I'll need it  
10 by the close of business tomorrow.

11 COURT REPORTER: So, Mr. Rose, you only  
12 want -- you don't want -- ever -- the rest of this  
13 transcript?

14 MR. ROSE: At this time I don't want --  
15 I'm not going to expend precious resources of the  
16 estate or the trust on the questions from Mr.  
17 Feaman, from Mr. Eliot Bernstein -- only want what  
18 I've requested in advance to try to conserve  
19 resources.

20 COURT REPORTER: So I know, how is the  
21 witness going to review his entire transcript of  
22 nobody orders it?

23 MR. ELIOT BERNSTEIN: I'm ordering the  
24 entire transcript. Eliot Bernstein.

25 MR. BLOCK: You'd better get your money in



1 advance, court reporter.

2 MR. ELIOT BERNSTEIN: That's another  
3 defamatory comment of me, but okay. I'm sorry.

4 MR. ROSE: Eliot, I'm sorry, this is Alan  
5 Rose; I apologize. How quickly -- the court  
6 reporter needs to know how quickly you would like  
7 it.

8 If you would like it -- I'm sure she'll do  
9 whatever you ask, but you need to specify with her;  
10 okay?

11 MR. ELIOT BERNSTEIN: Okay. Tomorrow  
12 afternoon by 5.

13 MR. ROSE: Just so you're aware, it will  
14 be a fairly expensive fee to get it that quickly.  
15 And as Mr. Block suggested, you will need to make  
16 arrangements with the court reporter directly.

17 MR. ELIOT BERNSTEIN: Okay. Can I give  
18 you my email?

19 COURT REPORTER: Yes, please give me your  
20 email.

21 MR. BLOCK: This is Irwin. I'm hanging  
22 up.

23 MR. FEAMAN: Okay. It's  
24 I-v-i-e-w-i-t@i-v-i-e-w-i-t.tv.

25 COURT REPORTER: Thank you. Signing off.

1           MR. FEAMAN: I just want to make sure that  
2 we're okay.

3           COURT REPORTER: Yes. You want your  
4 direct and Alan Rose's direct examination.

5           MR. FEAMAN: Correct.

6           (Whereupon the deposition ended at  
7 6:02 p.m.)

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1 DEPONENT'S ERRATA SHEET  
2 AND SIGNATURE INSTRUCTIONS  
3

4  
5 The original of the Errata Sheet has  
6 been delivered to Alan Rose, Esq.

7 When the Errata Sheet has been  
8 completed by the deponent and signed, a copy  
9 thereof should be delivered to each party of record  
10 and the ORIGINAL retained by Alan Rose, Esq. to  
11 whom the original deposition transcript was  
12 delivered.  
13

14  
15 INSTRUCTIONS TO DEPONENT  
16

17 After reading this volume of your  
18 deposition, indicate any corrections or changes to  
19 your testimony and the reasons therefor on the  
20 Errata Sheet supplied to you and sign it. DO NOT  
21 make marks or notations on the transcript volume  
22 itself.  
23

24 REPLACE THIS PAGE OF THE TRANSCRIPT WITH THE  
25 COMPLETED AND SIGNED ERRATA SHEET WHEN RECEIVED.

1 Commonwealth of Massachusetts  
2 Middlesex, ss.  
3  
4

5 I, P. Jodi Ohnemus, Notary Public  
6 in and for the Commonwealth of Massachusetts,  
7 do hereby certify that there came before me  
8 on the 9th day of July, 2014, the deponent herein,  
9 who was duly sworn by me; that the ensuing  
10 examination upon oath of the said deponent was  
11 reported stenographically by me and transcribed  
12 into typewriting under my direction and control;  
13 and that the within transcript is a true record of  
14 the questions asked and answers given at said  
15 deposition.

16 I FURTHER CERTIFY that I am neither  
17 attorney nor counsel for, nor related to or  
18 employed by any of the parties to the action  
19 in which this deposition is taken; and, further,  
20 that I am not a relative or employee of any  
21 attorney or financially interested in the outcome  
22 of the action.  
23

24 IN WITNESS WHEREOF I have hereunto set my  
25 hand and affixed my seal of office this  
10th day of July, 2014, at Waltham.

\_\_\_\_\_  
\_\_\_\_\_

20 P. Jodi Ohnemus, RPR, RMR, CRR  
21 CSR, Notary Public,  
22 Commonwealth  
23 of Massachusetts  
24 My Commission Expires:  
25 3/14/2021

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ATTACH TO DEPOSITION OF: DONALD R. TESCHER  
CASE: IN RE: ESTATE OF SIMON BERNSTEIN

ERRATA SHEET

INSTRUCTIONS: After reading the transcript of your deposition, note any change or correction to your testimony and the reason therefor on this sheet. DO NOT make any marks or notations on the transcript volume itself. Sign and date this errata sheet (before a Notary Public, if required). Refer to page 163 of the transcript for errata sheet distribution instructions.

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I have read the foregoing transcript of my deposition and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

\_\_\_\_\_  
DONALD R. TESCHER

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

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