

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

IN RE:

CASE NO. TBD
HON. JUDGE MARTIN H. COLIN

ELIOT BERNSTEIN, INDIVIDUALLY;
ELIOT BERNSTEIN AS TRUSTEE F/B/O
D.B., JA. B. AND JO. B. UNDER THE
SIMON L. BERNSTEIN TRUST DTD 9/13/12¹

Plaintiff,

v.

SIMON L. BERNSTEIN AMENDED
AND RESTATED TRUST AGREEMENT,
(DATED JULY 25, 2012);
SIMON L. BERNSTEIN TRUST
AGREEMENT (DATED MAY 20, 2008);
ROBERT L. SPALLINA, ESQ., INDIVIDUALLY;
ROBERT L. SPALLINA, ESQ., AS FORMER ALLEGED CO-
TRUSTEE;
ROBERT L. SPALLINA, ESQ., AS FORMER COUNSEL
TO THE FORMER ALLEGED CO-TRUSTEES;
DONALD R. TESCHER, ESQ., INDIVIDUALLY;
DONALD R. TESCHER, ESQ., AS FORMER ALLEGED CO-
TRUSTEE;
DONALD R. TESCHER, ESQ., AS FORMER COUNSEL
TO THE FORMER ALLEGED CO-TRUSTEES;
THEODORE STUART BERNSTEIN, INDIVIDUALLY;
THEODORE STUART BERNSTEIN, AS ALLEGED
SUCCESSOR TRUSTEE;
THEODORE STUART BERNSTEIN, AS TRUSTEE FOR HIS
CHILDREN;
TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,
ASSOCIATES, OF COUNSEL AND EMPLOYEES);
LISA SUE FRIEDSTEIN, INDIVIDUALLY AS A BENEFICIARY;

¹ Eliot has never seen a copy of this Trust for his family or even a draft, nor does he know what his fiducial responsibilities are under it and it was only discovered through a related Trust Construction lawsuit recently filed by Defendant Theodore Bernstein in which Eliot was sued thereunder as Trustee for his minor children.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

LISA SUE FRIEDSTEIN, AS TRUSTEE FOR HER CHILDREN AS BENEFICIARIES;
JILL MARLA IANTONI, INDIVIDUALLY AS A BENEFICIARY;
JILL MARLA IANTONI, AS TRUSTEE FOR HER CHILD AS A BENEFICIARY;
PAMELA BETH SIMON, INDIVIDUALLY;
PAMELA BETH SIMON, AS TRUSTEE FOR HER CHILD AS A BENEFICIARY;
JOSHUA ENNIO ZANDER BERNSTEIN AS A BENEFICIARY;
JACOB NOAH ARCHIE BERNSTEIN AS A BENEFICIARY;
DANIEL ELIJSHA ABE OTTOMO BERNSTEIN AS A BENEFICIARY;
ALEXANDRA BERNSTEIN AS A BENEFICIARY;
ERIC BERNSTEIN AS A BENEFICIARY;
MICHAEL BERNSTEIN AS A BENEFICIARY;
MATTHEW LOGAN AS A BENEFICIARY;
MOLLY NORAH SIMON AS A BENEFICIARY;
JULIA IANTONI AS A BENEFICIARY;
MAX FRIEDSTEIN AS A BENEFICIARY;
CARLY FRIEDSTEIN AS A BENEFICIARY;
JOHN AND JANE DOE'S (1-5000),

Defendants².

COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE OF THE ALLEGED SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT, (DATED JULY 25, 2012) AND THE ALLEGED SIMON L. BERNSTEIN TRUST AGREEMENT (DATED MAY 20, 2008)

COMES NOW, Eliot Ivan Bernstein ("Eliot" or "Plaintiff"), beneficiary of the alleged SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT, (DATED JULY 25, 2012) and beneficiary of the alleged SIMON L. BERNSTEIN TRUST AGREEMENT (DATED MAY 20, 2008) and Eliot Bernstein as Trustee F/B/O his three minor children under

² That the term "Beneficiary" used for Defendants is not defined yet as the dispositive documents are being challenged due to the already proven and further alleged Frauds that have taken place in the estates and trusts of Simon and Shirley Bernstein and the true and proper beneficiaries must be determined by this Court after removal of TED.

COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE...

Thursday, October 2, 2014

the SIMON L. BERNSTEIN TRUST DTD 9/13/12 (see footnote 1), and pursuant to §736.0706, Fla. Stat. (2013), files this **“COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE OF THE ALLEGED SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT, (DATED JULY 25, 2012) AND THE SIMON L. BERNSTEIN TRUST AGREEMENT (DATED MAY 20, 2008,”** (together the two trusts hereinafter referred to as "Trusts" or "Simon Trusts³"), and in support states⁴, on information and belief, as follows:

1. Plaintiff Eliot Ivan Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is a Beneficiary of the alleged Simon Trusts.
2. Plaintiff Eliot Ivan Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is Eliot Bernstein as Trustee F/B/O his three minor children under the alleged SIMON L. BERNSTEIN TRUST DTD 9/13/12 (see footnote 1), who are also Beneficiaries under the alleged Simon Trusts.

ELIOT HAS STANDING

3. Eliot has standing to seek removal. The provisions of §736.0706(1), §736.0103, and §733.707(3), Fla. Stats. (2014) govern the issue of who has standing to seek removal of a trustee. Section 736.0706(1) Fla. Stat. (2014) states:

³ The Court should note that NO COMPLETE TRUSTS OR WILLS HAVE EVER BEEN PROVIDED to beneficiaries with all of the Schedules, Addendums, Attachments and Codicils attached to show what the Corpus of each entity is.

⁴ Eliot also states that much of this pleading has been politely borrowed from the honorable Creditor William Stansbury and his honorable counsel Peter Feaman, Esquire’s filing to remove Theodore Stuart Bernstein as a Fiduciary in the Estates and Trusts of Simon and Shirley Bernstein, for good and just cause. Their Petition was not heard and denied due to lack of standing, not for the substantive issues contained therein, since Eliot has standing he will argue the pleading as a beneficiary or guardian for three beneficiaries with beneficial interests, Pro Se. Eliot has done some Pro Se editing to the prior document filed.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

*(1) The settlor, a cotrustee, or a **beneficiary** may request the court to remove a trustee, or a trustee may be removed by the court on the court's own initiative. (emphasis added)*

§736.0103, Fla. Stat. (2014), defines a "beneficiary":

*(4) "Beneficiary" means a person who has a **present or future beneficial interest in a trust, vested or contingent**, or who holds a power of appointment over trust property in a capacity other than that of trustee. (emphasis added)*

4. That if Eliot in his individual capacity is prohibited from having standing as he is not named in the alleged 2012 Amended and Restated Simon Trust as a beneficiary and his children are, then Eliot can argue on their behalf individually, until the Court can determine the remedies from the defects in the dispositive documents already proven, which may likely invalidate the 2012 Amended and Restated Trust document entirely leaving Eliot a beneficiary in the 2008 Simon trust.
5. That if the validity of the alleged 2012 Will and Amended and Restated Trust are found invalid and there are already multiple serious construct defects and further parole evidence of fraudulent document tampering, then the 2008 Will and Trust will prevail, wherein Eliot is a 1/3rd beneficiary of the 2008 Simon Trust.

THAT THIS COURT HAS THE AUTHORITY UNDER FLORIDA LAW TO REMOVE TED AS TRUSTEE OF THE TRUSTS.

6. Under Florida law, this Court has broad authority to affect trust administration. Under §736.0201, Fla. Stat. (2014), the Court has the following power:

736.0201. Role of court in trust proceedings

* * * *

(4) A judicial proceeding involving a trust may relate to the validity, administration, or distribution of a trust, including proceedings to:

COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE...

Thursday, October 2, 2014

- (a) Determine the validity of all or part of a trust;
 - (b) **Appoint or remove a trustee**;
 - (c) Review trustees' fees;
 - (d) Review and settle interim or final accounts;
 - (e) Ascertain beneficiaries; determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments; instruct trustees; and determine the existence or nonexistence of any immunity, power, privilege, duty or right;
 - (f) Obtain a declaration of rights;
 - (g) Determine any other matters involving trustees and beneficiaries.
- (emphasis added)

7. That there exists a Legal Standard for Removal of Trustee. When removal of a trustee is at issue, the following statutory provisions of §736.0706, Fla. Stat. (2014) are to be considered:

736.0706. Removal of trustee

* * * * *

- (2) **The court may remove a trustee if:**
 - (a) **The trustee has committed a serious breach of trust;**
 - (b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;
 - (c) **Due to unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries;** or
 - (d) **There has been a substantial change of circumstances** or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

TED's removal is warranted by Subsections (2) (a), (c) and/or (d). Additionally, §736.0802, Fla. Stat. (2014) describes the primary duty of a trustee:

736.0802. Duty of loyalty

- (1) As between a trustee and the beneficiaries, a trustee shall administer the trust **solely** in interests of the beneficiaries.
- (2) Subject to the rights of persons dealing with or assisting the trustee as provided ins. 736.1016 a ... transaction ...which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction ... (emphasis added)

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

See Aiello v. Hyland, 793 So. 2d 1150, 1152 (Fla. 4th DCA 2001) (removal of trustee was required where trustee had a conflict of interest with interests of the trust; the conflict of interest made the trustee unable to properly carry out his duty of loyalty to the trust).

8. This is an action for removal of an alleged Trustee under F.S. §736.
9. Venue of this proceeding is proper in this Court under F.S. §736

FELONY MISCONDUCT WITH THE DISPOSITIVE DOCUMENTS IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN

A TRUSTEE IS UNDER A DUTY TO KEEP ACCURATE RECORDS

10. A trustee has a duty to maintain clear, complete, and accurate books and records regarding the trust. It is important for the trustee to keep clear and complete records so that the beneficiary can tell whether the trustee has acted with prudence, loyalty, and impartiality and whether the costs of administration have been reasonable and appropriate.
11. The common law as developed through the courts of equity have held that when one becomes a trustee, he must maintain records of his transactions so complete and accurate that he can show by them his faithfulness to the trust. It is not enough for the trustee to know that he is honestly performing his duty.

In the case of *Wood v. Honeyman*, 169 P.2d 131 (Or. 1946), the beneficiaries sued the trustee for an accounting, to recover amounts converted. The trial court removed the trustee and entered a money judgment against him. On appeal, the decision was affirmed. This case held in part that “It must be apparent that when one becomes a trustee and thus undertakes to administer an estate for the benefit of another, he must maintain records of his transactions so complete and accurate that he can show by them his faithfulness to his trust. It is not enough

COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE...

Thursday, October 2, 2014

for him to know that he is honestly performing his duty. Since, generally, the burden of proof rests upon him to prove his fidelity; he must be able to sustain his position by honest records.”

12. In Florida the Florida Trust Code explicitly states that a trustee shall keep clear, distinct and accurate records of the administration of the trust.

736.0810 Recordkeeping and identification of trust property.

(1) A trustee shall keep clear, distinct, and accurate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee’s own property.

(3) Except as otherwise provided in subsection (4), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(4) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

13. That throughout this complaint and due to the already discovered fraudulent and forged documents, admitted Fraud on this Court and other frauds and torts in the Estates and Trusts of Simon and Shirley, committed in conspiratorial efforts by the former fiduciaries and attorneys at law involved in these matters, all documents referred to herein are only copies of alleged dispositive documents and beneficiaries have never seen or been provided access to the original signed documents despite repeated requests.

14. That all dispositive documents and any estates and trust documents of Simon and Shirley referenced herein contain only ALLEGED LANGUAGE and shall be considered for all purposes to be construed as ALLEGED only, until such time that the original documents are presented to beneficiaries who then have a right to have them forensically inspected to see if the copies and signatures are legally valid and if they have been tampered with.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

15. That due to these document frauds and the concealment of other documents under investigation from beneficiaries, all fiduciary parties may be acting under fraudulent documents.
16. That Donald R. Tescher, Esq. (“TESCHER”) and Robert L. Spallina, Esq. (“SPALLINA”) were ordered to turn over all their records and properties in their possession to the Curator, Benjamin Brown, Esq. and whereby no original Trusts for Simon and Shirley were turned over to him and in fact no originally signed dispositive documents were presented at all.
17. Where it now appears that Theodore Stuart Bernstein (“THEODORE” or “TED”) does not possess the original signed Simon Trust documents either and this may evidence further document tampering, destruction and/or suppression.
18. That at this time it appears that no originals exist of the Simon Trusts and the Shirley trusts and beneficiaries have been denied seeing them for over two years and where there has already been a plethora of felony document tampering, original documents are essential to review and determination by the this Court as to their validity.
19. That at this time the former removed fiduciaries of the Estate of Simon, TESCHER and SPALLINA, upon termination as Co-Trustees, Co-Personal Representatives, Counsel to themselves as fiduciaries in Simon’s estates and trusts and simultaneously acting as Counsel to TED, have produced only 1 original signature of Simon’s, on a document that is not part of the Estates and Trusts of Simon, to the Curator, Benjamin Brown, Esq., despite the Court’s Order to turn over all records and properties in their possession to the Curator.
20. That in Eliot’s deposition on September 22, 2014, it was learned that TED and his counsel Alan B. Rose, Esq. also do not have possession of the original signed Simon Trusts and

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

Shirley trusts that TED is operating as a fiduciary under. (See YouTube video of Eliot's September 22, 2014 deposition @ <http://youtu.be/NawfOrynRVY> at timeline time of (2:49:00 – 2:52:30), and the entire video is hereby incorporated by reference in entirety herein.).

21. That no original documents have been presented to beneficiaries or the new PR, Brian O'Connell, Esq. of the Simon Estate, despite repeated demands by beneficiaries.
22. That backup necessary to evaluate a Court Ordered final accounting prepared by SPALLINA and TESCHER was not included in their production documents turned over to the former Curator, Benjamin Brown, Esq., leaving the accounting with multiple unanswered questions and objected to by the former Curator, the new Personal Representative, Eliot and others.
23. That in the production documents turned over by TESCHER and SPALLINA in 2014 there were found secreted copies of alleged trust documents and analysis of those documents will lead to further criminal complaints being filed against the former fiduciaries for additional civil torts against the beneficiaries.
24. That from the conception of the May 20, 2008 Simon L. Bernstein Trust to 48 days prior to Simon's death when the alleged July 25, 2012 Simon L. Bernstein Amended and Restated Trust Agreement was allegedly executed, Eliot and his children were beneficiaries of both the Simon and Shirley Bernstein Estates and Trusts from May of 2008.
25. That TED, his sister Pamela Beth Simon ("PAMELA") and their lineal descendants have been wholly disinherited and considered PREDECEASED since the May of 2008 dispositive documents were allegedly signed by Simon and Shirley and for good and just cause.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

26. That PAMELA and her lineal descendants were wholly disinherited and considered PREDECEASED since 2000 in prior Trusts of Simon and Shirley, for good and just cause.
27. That the alleged July 25, 2012 Simon Amended and Restated Trust has been challenged and alleged fraudulent and fraudulently constructed.
28. That the alleged July 25, 2012 Simon Amended and Restated Trust has been confirmed by Governor Rick Scott's Notary Public Division to have been improperly notarized.
29. That the improper notarization of the July 25, 2012 Simon Amended and Restated Trust makes it impossible to know if Simon appeared before the Notary, Lindsay Baxley (TED'S personal assistant) on the alleged day of signing.
30. That other documents have already been found to be POST MORTEM forged, fraudulently altered and fraudulently notarized in the Estates and Trusts of Simon and Shirley and the July 25, 2012 Simon Amended and Restated Trust is alleged to have been forged, fraudulently notarized and has multiple construction flaws.
31. That the only witnesses to the alleged 2012 Simon Amended and Restated Trust are SPALLINA and Kimberly Moran ("MORAN") both of whom have already confessed to Felony criminal acts, including but not limited to,
 - i. Forgery (including Post Mortem forgery of Simon's signature and forgery of Eliot and TED's name by Moran, a Notary Public / Legal Assistant of Tescher & Spallina, PA),
 - ii. Fraudulent Notarizations (MORAN was arrested and convicted for this crime and her Notary License Revoked) and

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

- iii. Fraudulent Alteration and Dissemination of a Shirley Bernstein Trust document
(committed and admitted to by Attorney at Law SPALLINA to Palm Beach County Sheriff Investigators, while acting on behalf of TED as Fiduciary for Shirley's Trust)
- 32. That MORAN and SPALLINA'S statements cannot be relied on or trusted for any verification of documents due to their criminal acts committed.
- 33. That the 2012 Amended and Restated Simon Bernstein Trust that attempts to eliminate Eliot in favor of his children as beneficiary may be stricken entirely from the record as a further fraudulent document created Post Mortem in these matters.
- 34. That the alleged 2012 Simon Amended and Restated Trust is used to attempt to alter Shirley's already established Beneficiary Class in the 2008 Shirley Bernstein Trust Agreement.
- 35. That the 2008 Shirley Bernstein Trust Agreement became irrevocable on her date of death on December 08, 2010 through a fraudulent use of a Power of Appointment that Simon is alleged to have exercised.
- 36. That the 2012 Simon Amended and Restated Trust was used to seize dominion and control of the assets of Simon and Shirley by inserting fraudulent fiduciaries, TESCHER and SPALLINA, who inserted themselves into the documents to replace other fiduciaries who were long in place in the 2008 Shirley and Simon dispositive documents.
- 37. That nothing Simon is alleged to have done or intended to do via his alleged 2012 Amended and Restated Trust, could have legally altered the beneficiary class by adding or subtracting new beneficiaries of the 2008 Shirley estate and her irrevocable trusts once she passed away.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

38. That Eliot is designated in Shirley's beneficiary class as a 1/3rd beneficiary of Shirley's estate and irrevocable trusts since Shirley died on December 08, 2010.
39. That the Shirley and Simon dispositive documents are already found to have been tampered with, fraudulently altered, fraudulently notarized and forged, including Post Mortem fraudulent and forged document tampering in Simon and Shirley's estates and trusts and the crimes were **COMMITTED BY TED AND HIS FORMER ATTORNEYS AT LAW, TESCHER AND SPALLINA, WHO WERE THE FORMER FIDUCIARIES AND COUNSEL INVOLVED IN THE ESTATES AND TRUSTS OF BOTH SIMON AND SHIRLEY.**
40. That the fraudulent documents are in part created to change beneficiaries but also part of an effort to seize Dominion and Control over the estates and trusts by TED and his attorneys at law, TESCHER and SPALLINA, in order to begin looting the Estates and Trusts of Simon and Shirley with no accountability except to themselves.
41. That once Dominion and Control was illegally gained by TED and his minion of attorneys at law they began to loot the estates and trusts through a series of fraudulent acts that are under a series of ongoing investigation.
42. That once Dominion and Control was illegally gained by TED and his minion of attorneys at law they began billing outrageous and unaccounted for legal and fiduciary fees while simultaneously concealing, altering and destroying records and precluding beneficiaries from any financial information or access to the dispositive documents.
43. That the estates and trusts have been paying for the creation and dissemination of fraudulent legal documents and the defense of them.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

44. That legal and fiduciary fees were paid to SPALLINA, TESCHER and TED, who misused estates and trusts assets of the beneficiaries to pay for the legal fees to commit crimes against the beneficiaries.
45. That these fees illegally engrossed and enriched TED and his Attorneys at Law.
46. That legal and fiduciary fee meters have run rampant with often 6-7 attorneys attending each hearing since the September 13, 2013 hearing before this Court when the felonies were discovered by this Court.
47. That subsequent to discovering the initial felonies, lies were told for months on end by TESCHER, SPALLINA, TED and MANCERI to this Court and the beneficiaries regarding the initial crimes, misleading the Court and the Beneficiaries from the truth in efforts to cover up and conceal the extent of the crimes.
48. That only upon the expenditure of city and state funds to investigate TESCHER, SPALLINA, MANCERI, MORAN and others, were admissions of new crimes confessed to the Sheriff Investigators, including SPALLINA'S confession that he personally altered Shirley trust documents and distributed them via wire and mail to perpetrate a fraud on the beneficiaries.
49. That even the confessions appear to have problems as they appear perjurious and several of the conspirators' statements appear contradictory.
50. That there is an Illinois insurance litigation underway, again with TED at the helm claiming to be a "Trustee" of a lost trust that no executed copies exist for.
51. That the Illinois insurance litigation has been another huge waste of time and money only to reveal an alleged fraud on a federal court, insurance fraud, bank fraud and more.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

52. That TED's Attorneys at Law, TESCHER and SPALLINA, are found fraudulently aiding and abetting TED and his sister PAMELA in the Illinois Insurance Litigation in efforts to convert estate assets from the beneficiaries to themselves.
53. That Simon is alleged to have changed the estate plans of his deceased wife Shirley and himself only forty eight days before his death.
54. That these changes are alleged to have changed the beneficiaries of the Estates and Trusts of Simon and Shirley from three of their five children (Eliot, Jill and Lisa), to their ten grandchildren.
55. That in 2008 when Simon and Shirley did their plans together and mirrored, TED and his sister PAMELA and their lineal descendants were considered predeceased for all purposes of the Estates and Trusts.
56. That when Shirley died in 2010 her trusts became irrevocable with Eliot, Jill and Lisa beneficiaries.
57. That when Simon died he is alleged to have changed the plans of both he and Shirley by considering all five of his children predeceased and skipping them in favor of their grandchildren.
58. That Simon was considering making these changes not because Eliot, Jill and Lisa were not worthy of their inheritances for having taken monies and assets while living, like TED and PAMELA who were considered PREDECEASED but because they were asked by Simon if they would be willing to give up their inheritances established in the 2008 estate plans in favor of the changes, if it could be done legally, to put ONLY TED and PAMELA'S CHILDREN, ALL ADULTS, as beneficiaries.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

59. That the reason for this was that TED and PAMELA had gone insane it appears when they were tipped off from TESCHER and SPALLINA (Simon and Shirley's estate counsel) without Simon's knowledge that they were wholly disinherited with their lineal descendants when PAMELA had her attorney contact TESCHER and SPALLINA to find out about her inheritance.
60. That a family feud began between Simon and TED and PAMELA, whereby TED and PAMELA immediately began a campaign of terror on their father, using their kids as pawns and denying him access to them and precluding them from accessing him unless he met their demands and changed the Wills and Trusts to include them.
61. That this caused Simon great duress immediately after the death of his beloved wife and then making matters worse, TED and PAMELA began a campaign against his companion, Maritza Puccio calling her an Anna Nicole and whore and who TED had allegedly claimed he caught stealing.
62. That TED and PAMELA claimed PUCCIO was looting the Estates and Trusts and claimed they worried Simon was going to give everything to her and that he was acting crazy. They wanted to recruit Eliot and his sisters into boycotting Simon and withholding their children from him too, in an elderly abuse/tough love guise to force him to stop seeing PUCCIO. Eliot's sisters Lisa and Jill, believing PUCCIO was a moneygrubber, ganged up on Simon and would not see him or allow their children to see him and it was 4 of 5 of his children and 7 of 10 the grandchildren against Simon.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

63. That this drove Simon to seek mental health therapy with Patricia Fitzmaurice LCSW, as the stress was killing him both physically and mentally from this assault by his children and adult grandchildren.
64. That to resolve these disputes, a meeting was held on May 10, 2012 by Simon with his Attorneys at Law, TESCER and SPALLINA, to discuss Eliot, Jill and Lisa giving up their inheritances in the estates and trusts and instead splitting it amongst the ten grandchildren, in order to stop the assault on Simon, if it could be legally done and let him see his 7 of 10 grandchildren again.
65. That SIMON'S intent was to attempt to still cut TED and PAMELA out of ANY inheritance and anything to do with the administration of the estates and trusts because they had already been fully taken care of financially through family owned businesses they took over worth millions upon millions over the years.
66. That Simon did not want TED and PAMELA to be involved in the estates or trusts in any way or get any monies and instead their adult children were to get the monies directly and without parental control of it, as he thought that TED and PAMELA would use the monies for themselves if they got it and not give the inheritances to their children.
67. That after the May 10, 2012 meeting it appears that TED and PAMELA, outraged at what their parents had done by cutting them and their children out, were further outraged when finding out that in the new proposed plan they were still wholly cut out of the estates and trusts and the campaign of terror raged on, intensifying when Simon did not execute this plan, mostly because it could not be done legally and because he felt like he was being extorted by four of his children and the warring lasted to the day he died.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

68. That immediately upon Simon's death, TED and his attorneys at law, TESCHER and SPALLINA illegally seized Dominion and Control over the estates and trusts of both Simon and Shirley with TED with an alleged set of fraudulent and forged dispositive documents.
69. That TESCHER and SPALLINA claimed that Simon had executed a 2012 Amended and Restated Trust just 48 days before he died, never noticing anyone of these changes and in these new documents TESCHER and SPALLINA were allegedly name Co-Personal Representatives and Co-Trustees for Simon's estates and trusts.
70. That TESCHER and SPALLINA then stated that in Shirley's estates and trusts, TED was going to be the Successor Personal Representative and Trustee and this was due to the fact that they claimed TED was the oldest child and that was the law.
71. That Eliot checked with friends who are in the estate planning business and they recommended seeing the dispositive documents to check what they said regarding successorship and to get the documents for Simon's estate and trusts to check the validity of those documents.
72. That after Eliot confronted TESCHER and SPALLINA with the fact that TED was not automatically the successor due to his being the oldest and demanding to see the documents, they then claimed that they had discovered that TED was named in the Shirley Trusts as the Successor Trustee to Simon.
73. That after Eliot was forced to get counsel, Christine C. Yates, Esq. of Tripp Scott law firm, TESCHER and SPALLINA then sent Yates a partial copy of an alleged Shirley Trust that had TED's name next to Simon's as successor.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

74. That the same trust document however considered TED predeceased for all purposes of the disposition of Shirley's Trusts, which contradicted his claim that he was to be a successor and would make the construction of the document faulty or stand as further evidence of fraudulent alteration of a Shirley trust document, which SPALLINA and TESCHER have already admitted to Palm Beach County Sheriff Investigators that their firm fraudulently altered a Shirley Trust document.
75. That on the day Simon died Eliot requested the dispositive documents for both Simon and Shirley, as either a beneficiary or guardian for his children who were being alleged to be beneficiaries in both the Simon and Shirley's estates and trusts.
76. That Eliot was denied access to the dispositive documents by TESCHER, SPALLINA and TED and was forced several months after Simon's death, after exhaustive attempts to get the documents, to retain legal counsel in efforts to get the documents.
77. That Eliot's counsel, Christine C. Yates, Esq. of Tripp Scott law firm was retained at first for both Eliot and his children to secure the documents.
78. That Yates, after repeated requests for documents was finally sent an incomplete set of dispositive documents with no prior dispositive documents to see what was alleged changed when the document was allegedly amended and with no attachments, codicils, addendums, schedules, etc.
79. The documents sent to Yates appeared to have multiple problems in construction and executions making them appear fraudulent.
80. Further investigation by criminal authorities proved that certain of the documents turned over to Yates and given to the Palm Beach County Sheriff Financial Crimes Investigation Unit

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

and the Governor Rick Scott's Notary Public Division were in fact fraudulently altered, fraudulently notarized and forged, including Post Mortem forgeries in the estates and trusts of Simon and Shirley.

81. That Yates then explained that due to the beneficiaries allegedly being changed, perhaps illegally through the alleged 2012 Simon Trusts, there was now a conflict created that put Eliot and his children's interests in conflict.
82. That due to the inherent conflict created through the fraud, Yates states that all the children would need to get separate counsel for their children in matters relating to the beneficiary issues created.
83. Yates then retained the children as clients and Eliot attempted to secure personal counsel to represent his interests where conflict arose and Eliot represented himself Pro Se.
84. That once Dominion and Control of the estates and trusts of Simon and Shirley was established through combinations of fraudulent documents and improperly and illegally constructed documents, Eliot and his family were cut off of all financial information and all documentation of the estates and trusts until the Court removed TESCHER and SPALLINA and demanded they turn documents over to the new Curator.
85. That TED and PAMELA were now running the estates and trusts with TESCHER and SPALLINA and the beneficiaries were left in the dark as to what was transpiring and denied documents and accountings in violation of probate and trust rules and regulations.
86. That Eliot requested that until everything could be sorted out and Eliot could see all the documents requested that no transactions with trust assets take place.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

87. That instead transactions began taking place despite the problems with the documents being exposed and notification to the beneficiaries of the transactions only came after the self-dealing transactions were done and with no details of the transactions.
88. That TESCHER, SPALLINA and TED, upon learning that Yates was involved and demanding documents and financials began a campaign of terror against Eliot and his family, threatening that if he continued to raise questions or cause problems they would not deal with him kindly.
89. With Eliot's persistence they grew hostile to Eliot and his family and began a pattern and practice of extortion on Eliot in effort to get Eliot and his children's attorneys to drop their demands for documents and financial information and to get an accounting for Simon and Shirley's estates and trusts.
90. That in May of 2013 Eliot served a Petition to the Personal Representatives and the fiduciaries for gross fiduciary violations, evidence of forged and fraudulently notarized documents and more.
91. That in September of 2013, Eliot's initial Petition was finally heard in part and in Court it was admitted that there was fraudulent notarizations and Fraud Upon the Court was discovered by Judge Martin Colin when he discovered misuse of Simon's identity after he was dead, acting as PR while dead, which was part of the elaborate fraud to seize Dominion and Control of the estates and trusts and then alter beneficiaries to favor TED and PAMELA.
92. That despite knowing of document fraud and forgery, including done in their own names, TED, PAMELA, JILL and LISA, acting as alleged Trustees for their children did nothing but try and sneak off assets of the estates and trusts, rob and loot the estate and all to get

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

themselves unjustly enriched at the expense of their own children, who they allege are the beneficiaries.

93. That beneficiaries of insurance policies and IRA accounts are now missing, assets are missing (including Jewelry, Art, etc.) and now reported stolen, real estate is being sold at fire sale prices and distributions are being made to knowingly improper parties and documents are being secreted regarding trusts to convert assets and the children of Simon and Shirley, excluding Eliot, went on a free for all to enrich themselves and defeat the plans of Simon and Shirley.
94. That bank accounts were discovered being used POST MORTEM at Legacy Bank and others.
95. That bank accounts and investment accounts were unaccounted for and remain so today.
96. That as Eliot filed more and more complaints and arrests were made and investigations began, TED, TESCHER, SPALLINA, MANCERI, ROSE and others who were involved in various frauds being committed began a pattern and practice of legal process abuse that began with lying to the Court the minute they were caught by the Court in their crimes, causing the Court to state it had enough at that time to issue Miranda's and whereby SPALLINA claimed he knew of nothing else but six forged documents.
97. That at every turn it appeared that TESCHER, SPALLINA, MANCERI, ROSE and others were working to benefit TED and his sister PAMELA to the detriment of their own children and Eliot and his children.
98. That this is why Simon, when considering making changes to the beneficiaries did not include his children and in fact considered skipping all of them, TED and PAMELA still

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

wholly excluded this way, despite their extortive efforts to force him to make changes that included them, as their children are adults who would have received the money directly and if put in trust, TED and PAMELA would only have control over the monies as fiduciaries for their children for a short time as Trustees.

99. That Eliot, Jill and Lisa having minor children would receive their families monies for their children and be able to manage the monies and use the monies for years to come for the enrichment of their families and minor children.
100. That with TESCHER and SPALLINA in pocket, aiding and abetting the looting and profiting directly from it, the estates and trusts and properties have been robbed and TED now claims there is only a few million dollars left, again with no accountings provided for the trusts and estate assets he is alleged fiduciary for.
101. That with TED and his legal team in control of the assets of the estates and trusts of Simon and Shirley and beneficiaries neutralized from disinformation and utter lack of information, items worth millions began instantly disappearing with NO ACCOUNTING and NO TRANSACTIONAL DETAILS.
102. That in regard to Eliot and his family, Simon and Shirley created elaborate estate planning vehicles to fund Eliot and his family entirely for many years to come and through their children's educational years and many of these vehicles were already funded and these plans are also similarly being destroyed through fraud.
103. That companies that Eliot's family owned were hijacked by TESCHER, SPALLINA, TED, MANCERI, ROSE, OPPENHEIMER and others, to further harm Eliot and his family.

104. That beneficiaries, including minor children, are being harmed until this Court removes all players involved in, and elements related to the past and ongoing frauds by now removing TED from ALL fiduciary capacities, along with ALL the attorneys at law retained by TED and TESCHER and SPALLINA that have aided and abetted the various frauds and other alleged crimes committed.
105. That with TED in control, certain of the estate and trust and beneficiaries of Simon and Shirley continue to be violated through further fraud, waste and legal process abuse and the administration has ground to a halt with TED as fiduciary and he is conflicted with the matters and therefore will not sue or investigate himself or his former counsel, friends and business associates, TESCHER and SPALLINA and this is cause for removal alone.
106. That the Attorneys at Law recruited by TED, TESCHER and SPALLINA that acted as TED'S counsel in these matters should ALL be removed, reported to the proper authorities by this Court and sanctioned for their direct involvement in the advancement of fraudulent schemes in the estates and trusts of Simon and Shirley.
107. That the Attorneys at Law alleged to be involved, include but are not limited to,
- i. TESCHER – removed as fiduciary and resigned as Ted Counsel,
 - ii. SPALLINA – removed as fiduciary and resigned as Ted Counsel,
 - iii. Rutherford Mulhall – firm was shut down, represented TED individually and NOT Simon in the Stansbury Creditor Lawsuit, Simon was never represented by counsel in the action it appears.
 - iv. Greenberg Traurig – replaced Rutherford Mulhall and resigned for conflicts in creditor Stansbury Litigation,

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

- v. Mark R. Manceri, Esq. – replaced Greenberg Traurig and resigned after being threatened by Judge Colin in a September 13, 2013 hearing with having his Miranda Rights read to him,
- vi. John Pankauski, Esq., – resigned as Ted’s counsel in a variety of capacities,
- vii. Alan B. Rose, Esq. – last lawyer standing,
- viii. John Morrissey, Esq. – allegedly representing TED and PAMELA’s children,
- ix. Adam Simon, Esq. (IL Insurance Litigation) – representing TED personally and as the alleged successor trustee of a legally nonexistent trust defined further herein, and,
- x. David B. Simon, Esq. (IL Insurance Litigation) - representing TED personally and as the alleged successor trustee of a legally nonexistent trust defined further herein.

108. A trustee who, after being requested to do so, refuses to provide a beneficiary with relevant information about the assets of the trust, how the trust is being administered or other material information being considered by the trustee in the discharge of his duties or who refuses to provide an accounting when required, has breached his fiduciary duty owing to the beneficiary.

THAT TED SHOULD FURTHER BE REMOVED AS ALLEGED TRUSTEE OF THE ALLEGED 2012 SIMON TRUST BY THE VERY TERMS OF THE ALLEGED 2012 SIMON TRUST.

109. That TED is NOT eligible to serve as a Successor Trustee under the very terms of the alleged Simon Trusts, which means he is "unfit" under §736.0706(2)(c).

110. That TED is a "related party" and therefore not eligible to serve under the language regarding successors in the alleged 2012 Simon trust.

111. That the previous Co-Trustees of the alleged 2012 Simon trust were TESCHER and SPALLINA by virtue of the Successor Trustee provision set forth in Article IV, Section C of the alleged 2012 Simon trust. A copy of the alleged 2012 Simon trust⁵ is attached hereto as **Exhibit "A."**
112. That by a letter dated January 14, 2014 addressed to the five children of Simon Bernstein, TESCHER and SPALLINA, resigned as,
- i. Co-Trustees of Simon's 2102 trust,
 - ii. Co-Personal Representatives/Executors to the estate of Simon,
 - iii. Counsel to themselves as Co-Trustees and Co-Personal Representatives,
 - iv. as Counsel to TED as alleged Trustee of the Shirley trust (for irreconcilable differences),
 - v. as counsel to TED as Personal Representative of the Shirley Estate, and,
 - vi. in all other fiducial and legal capacities they were acting in for any Bernstein family related matters.
113. That upon resignation amidst admissions by SPALLINA that their law firm fraudulently altered and disseminated fraudulent trust documents TESCHER stated, "If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity."
114. That TESCHER made the appointment of TED after claiming he learned that **his law firm**, Tescher & Spallina, PA, had fraudulently altered and disseminated a Shirley trust document to change beneficiaries illegally, made illegal distributions under the fraudulent scheme to improper beneficiaries and commit fraud upon Eliot's children by submitting this document to their

⁵ This alleged 2012 Simon trust has been found to have improper notarization affixed by the Governor Rick Scott's Notary Public Division. The two witnesses to the document have already confessed to fraudulent alteration of other documents in the Shirley Bernstein and Simon Bernstein Estates and Trusts, including admitted forgery and fraudulent notarizations.

attorney at law, Christine C. Yates of Tripp Scott law firm and others as part of a Fraud on beneficiaries.

115. That SPALLINA stated to Palm Beach County Sheriff Investigators that they told TED not to take the illegal distributions and yet failed to report TED to the proper authorities and this Court and in fact instead aided and abetted the scheme further and attempted to cover up.

116. That the alleged successorship from TESCHER and SPALLINA to their client and partner in crime TED was done without sending notice to beneficiaries that they had done this alleged transfer of successorship and the document transferring trusteeship was allegedly notarized by the already convicted Felon for fraudulent notarizations in these matters, MORAN, again not a credible witness any longer.

117. That TED accepted the alleged successor trusteeship without sending notice to beneficiaries and neither TESCHER, SPALLINA nor TED provided an accounting of the trust upon the transfer in the legally proscribed time limit, in violation of probate and trust rules and statutes. A copy of the resignation letter is attached hereto as **Exhibit "B."**

118. That if TED has become successor trustee of Simon's 2012 trust, he should be removed instantly. He is ineligible under the very terms of the 2012 Simon trust to serve as successor trustee. Article IV, Section C.(3) (Page 16) of the Simon trust states:

C. Appointment of Successor Trustee
3. . . . A successor Trustee appointed under this subparagraph shall **not** be a Related or Subordinate Party of the trust. (**emphasis added**)

Under Article III, Subsection E(7), A "Related or Subordinate Party" is defined in the 2012 alleged Simon trust as follows:

ARTICLE III. GENERAL

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

E. Definitions. In this Agreement,

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

119. That the "Code" is defined as "the Internal Revenue Code of 1986 ... "

A "Related or subordinate party" under the Code means any nonadverse party who is " ... (2) any one of the following: The Grantor's father, mother, issue, brother or sister ... "

120. That TED is the son, or an "issue" of the Grantor, SIMON BERNSTEIN, and a related party (father) to alleged beneficiaries, TED's sons and daughter, SIMON's grandchildren. Therefore, TED is ineligible as a Related or Subordinate Party and is therefore again unfit to serve as a successor trustee under §736.0706(2)(c).

121. That TED has hijacked the position of Successor Trustee despite the fact that TESCHER and SPALLINA who drafted the alleged 2012 Simon trust knew of the prohibitive language precluding TED and knew that transferring the trusteeship to their former client (who their crimes directly benefited) was not proper, especially where they were resigning and removed from these proceedings in the wake of massive frauds being uncovered that they were central parties to effectuating and promulgating and benefiting from.

122. That TED was specifically disqualified to be a Successor Trustee by the terms of the 2012 Simon trust in another provision of the Trust that also disqualifies TED, Article III E (1) states:

Notwithstanding the foregoing, **for all purposes of this Trust and the dispositions made hereunder**, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me ... " (**emphasis added**)

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

123. That the prior 2008 Simon trust done that was alleged to be amended by Simon 48 days prior to his sudden and unexpected death, reads from Article III E (1),

E. **Definitions**. In this Agreement,

1. **Children. Lineal Descendants**.

...Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me...(emphasis added)

124. Therefore, by the very language of the both of the Simon Trusts, including the 2008 trust done with Shirley⁶, TED, in any beneficiary trust scenario is wholly disinherited, predeceased and disqualified by these provisions to serve as a Successor Trustee, as TED is considered DEAD for all purposes of the disposition and distributions of the Trusts.

125. That TED was not a named Successor Trustee in the Simon Trusts.

126. That this is Prima Facie evidence of an ILLEGAL SEIZURE OF DOMINION AND CONTROL of the fiducial capacities in the alleged 2012 Simon trust, that should force this Court to act on its this motion or its own motion to instantly remove TED to protect the trust assets and interests of the beneficiaries and others from an unqualified and possibly fraudulent alleged successorship of TED acting as an imposter trustee.

127. To make matters worse, SPALLINA and TESCHER allegedly appointed TED as they were removed from the proceedings in all their FIDUCIAL roles and had resigned as Counsel to parties in disgrace for their criminal misconduct and despite the dispositive document's

⁶ The original Simon Trust done in 2008 with Shirley was not turned over to beneficiaries until TESCHER and SPALLINA were ordered by the Court to turn over their records upon their removal in 2014 to the Curator Benjamin Brown, Esq.

prohibitive language that disqualifies and expressly prohibits TED from being a successor trustee, **LANGUAGE THAT TESCHER AND SPALLINA WROTE.**

128. That this fraudulent transfer of fiduciary power and trusteeship was to retain the illegally gained Dominion and Control of the Estates and Trusts that TED, TESCHER and SPALLINA gained through the alleged fraudulent 2012 documents and maintain a criminal succession of trusteeship by passing the baton to TED, their client and where TED was directly involved and benefited from their crimes and TED should have similarly been removed at the time his attorneys at law were.
129. That this improper, highly unethical and illegal transfer of trusteeship was to aid and the abet and cover up the crimes and assured TESCHER and SPALLINA a successor that would continue to aid and abet their crimes and attempt to cover them up in the Court.
130. That since alleging to be successor trustee TED has prevented beneficiaries' complete access to Estate and Trust information, exactly as his predecessors and counsel Tescher and Spallina had done in the Estates and Trusts of Simon while they were acting as fiduciaries in Simon's estate and Trusts in violation of probate and trust rules and statutes.
131. This criminal successor trusteeship has led to a continuation of alleged criminal acts, continued breaches of fiduciary duties, continued Fraud on this Court, continued Fraud on the Beneficiaries and an attempt to Cover Up the crimes by the currently unfit and unqualified alleged successor TED and his last remaining lawyer, Alan B. Rose, Esq., out of the many lawyers that have quit representing TED already.
132. That TED has a duty as a fiduciary once he became aware of the Frauds committed to report the criminal acts to the proper authorities, including regarding crimes where his name was forged,

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

yet for months he did nothing until investigators arrived at his door and for this failure of duty TED should also be removed.

FAILURE TO STATUTORILY ACCOUNT UNDER FLORIDA STATUTE 736.0813 AND 736.08135 DUTY TO INFORM AND ACCOUNT AS TRUSTEE IN SIMON AND SHIRLEY TRUSTS

A TRUSTEE HAS A DUTY TO INFORM AND TO ACCOUNT

133. The law of trusts has always imposed a duty on the trustee to keep the beneficiary informed as to the administration of the trust and to account to the beneficiary for all actions taken by the trustee. Without a proper accounting disclosing how the trustee has handled the trust affairs, there is little chance of a trustee being held accountable and therefore, the trustee's duties could be breached at will without any means of redress.

134. The burden of proof is on the fiduciary to show that he has fully performed his duties, and the means for such proof is by providing a sufficient and proper accounting.

In *Frethey v. Durant*, 48 N.Y.S. 839 (N.Y.A.D. 1 Dept. 1897), it was held that “when a fiduciary relation is shown to exist, and property or property interests have been entrusted to an agent or trustee, the burden is thrown upon such agent entrusted to render an account, and to show that all his trust duties have been fully performed, and the manner in which they have been performed. It is assumed that the agent or trustee has means of knowing, and does know, what the principal or cestui que trust, cannot know, and is bound to reveal the entire truth”. This duty to account has been codified in Florida as Florida Statute 736.0813.

736.0813 Duty to inform and account.—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.
(1) The trustee's duty to inform and account includes, but is not limited to, the following:

- (a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust and the full name and address of the trustee.
 - (b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, and the right to accountings under this section.
 - (c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.
 - (d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or on change of the trustee.
 - (e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.
- (2) A qualified beneficiary may waive the trustee's duty to account under paragraph (1) (d). A qualified beneficiary may withdraw a waiver previously given. Waivers and withdrawals of prior waivers under this subsection must be in writing. Withdrawals of prior waivers are effective only with respect to accountings for future periods.

135. Not only does a beneficiary have standing to seek an accounting, but the trustee is also under an affirmative duty to provide an accounting. As set forth in Florida Statute 736.0813(1) (d) a trustee of an irrevocable trust shall provide a trust accounting to each qualified beneficiary annually and on termination of the trust or on change of the trustee.

136. The duty to account is so fundamental to the law of trusts that this duty cannot be diminished by the trust itself. The trust instrument may provide that a trustee need not account or only account informally to a beneficiary, but according to the Florida Trust Code, any such limiting provisions are ineffectual and cannot relieve the trustee of his or her duty to account fully to a qualified beneficiary. See: Florida Statute. 736.0105(2) (s).

FAILURE TO ACCOUNT SIMON ESTATE AND TRUSTS

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

137. That Ted currently acting as successor trustee in Simon's Trusts has provided NO accountings statutorily required despite repeated requests by beneficiaries and despite changes in fiduciaries when TED's former counsel and fiduciaries for the Simon Trusts were removed. Between TED and his former counsel there has been NO accounting for over two years of the Simon Trusts in violation of probate and trust rules and statutes.
138. That it is believed that Simon while living and PR of Shirley's Estate prepared an accounting for the Shirley Estate but it is believed to be suppressed and denied by TED, TESCHER and SPALLINA. That there has been no accounting of Shirley's Estate since her passing for almost four years.
139. That in Simon's estate, an accounting was done by Court Order upon the removal of TESCHER and SPALLINA and it has been challenged on virtually every line by the former Curator Benjamin Brown, Esq. and the new PR, Brian O'Connell, Esq. No backup data for the accounting was attached in violation of probate rules and statutes and in utter disregard for generally accepted accounting principles.

FAILURE TO ACCOUNT SHIRLEY ESTATE AND TRUSTS

140. That since Ted was appointed Personal Representative in Shirley's Estate, after it was reopened due to the fraud and forgeries committed by TED's former counsel Tescher & Spallina, PA closed the estate of Shirley using Simon's identity when he was dead to do so and electing no successor due to the fraud, NO statutorily required accounting has been timely filed with beneficiaries despite repeated requests by beneficiaries and despite the change in fiduciaries when the Estate was reopened, for over a year in violation of probate and trust rules and statutes.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

141. That since becoming alleged Successor Trustee of Shirley's 2008 Irrevocable Trust on September 13, 2012 Ted has failed to provide a full copy of Shirley's Trusts with all Schedules and Addendums (as required by statute to account for the Trust Corpus/Trust Res) and has provided no statutorily required accountings.
142. Keep in mind that the function of a fiduciary accounting is two-fold. It is to ensure the beneficiary is fully informed as to what the trustee has done with the trust assets for the accounting period. And, it is to serve as a vehicle for relieving the trustee from further liability for his past actions as trustee. This is the traditional concept of discharge accounting. Both functions are premised on full disclosure by the fiduciary. In *Van Dusen v. Southeast First National Bank of Miami*, 478 So.2d 82 (Fla. 3d DCA 1985) the personal representative was under a duty to make a full and fair disclosure of all estate property and a breach of that duty constituted fraudulent concealment. Even though the personal representative had been discharged it had not disclosed all of the estate assets would not be relieved of liability. The court stated that "the price of immunity is disclosure."
143. Moreover, a trustee cannot fulfill his duty to account by merely turning over to the beneficiary the check register of the trust bank account, a list of checks, bank statements, copies of bills and receipts. It is the duty of the trustee to provide a proper and sufficient accounting.

FAILURE TO INFORM – SHIRLEY AND SIMON ESTATES AND TRUSTS

144. That the attachments to the dispositive documents in Simon and Shirley's estates and trusts, including but not limited to, Addendums, Schedules, Codicils, prior Wills and Trusts, have all been concealed from beneficiaries so as to make it impossible to determine the value of estate and trust corpuses, in violation of probate and trust rules and statutes.

145. That since becoming alleged successor trustee in the alleged 2012 Simon Amended and Restated trust TED has failed to provide a full copy of the Trusts with all Schedules, Codicils, Attachments and Addendums (as required by statute to account for the Trust Corpus/Trust Res).
146. That since TED was appointed in October 2013 as PR of Shirley's Estate he has failed to provide a full copy of the Shirley Will with all Schedules and Addendums (as required by statute to account for the Trust Corpus/Trust Res) and has provided no statutorily required accountings.
147. That Shirley Trust

CONFLICTS OF INTEREST AND ADVERSE INTERESTS OF TED

THE ILLINOIS INSURANCE LITIGATION CONFLICT OF INTEREST AND ADVERSE INTEREST

148. That TED, as Trustee of the 2012 trust of Simon, has multiple conflicts of interest with the Estate and Trusts of Simon Bernstein and the beneficiaries.
149. That at the time of SIMON'S death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 (the "Insurance Trust")⁷ as beneficiary, a trust that **no legally valid copy of an executed trust exists** for to this day.
150. That shortly after SIMON's death in 2012, SPALLINA, one of the, resigning Co-Personal Representatives of the Estate of Simon Bernstein, resigning Co-Trustees of the alleged Simon 2012 trust, resigning counsel to the Co-Personal Representatives and Co-Trustees TESCHER and

⁷ The Court should note that in TESCHER and SPALLINA's production documents Ordered by this Court to be turned over to the appointed Curator, Benjamin Brown, Esq., turned up a 2000 insurance trust done by Proskauer Rose, LLP. This Proskauer insurance trust specifically mentioned the insurance policy as part of the trust corpus. This trust was discovered with correspondences indicating that it was intentionally secreted from this Court, a US Federal Court and the true and proper beneficiaries with intent and scienter and replaced with a scheme to use a "lost" and "missing" 1995 Insurance Trust that no executed copies exist for or have been produced. See Exhibit F.

SPALLINA, resigning counsel to TED as Personal Representative of the Shirley Estate and resigning counsel to TED as alleged Trustee in the Shirley Irrevocable Trusts, submitted a claim form to Heritage Union Life on behalf of a legally nonexistent alleged Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, that SPALLINA signed as acting "Trustee" of that legally nonexistent trust to make the insurance proceeds payable to his law firm trust account.

151. That SPALLINA did this for the benefit of the grown children of Simon Bernstein, including TED and his sister PAMELA and in detriment to the Estate and Simon Trusts beneficiaries who would receive the benefits if no legally valid beneficiary exists.
152. That at the time of filing the alleged fraudulent insurance claim, Co-Personal Representatives and Co-Trustees, TESCHER and SPALLINA had in their possession at the time a 2000 insurance trust done by Proskauer Rose, LLP that they intentionally secreted to attempt to alter the beneficiaries and convert the benefit to their client TED and his sister PAMELA who were both wholly disinherited and would receive nothing if the funds went to the estate or Simon Trusts.
153. That SPALLINA submitted this death benefit claim despite having informed Heritage by letter shortly thereafter that he was "unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995." (*See Exhibit "C" attached.*)
154. That under Florida law, if it is determined that no Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 existed at the time of SIMON'S death, the insurance proceeds would be payable to the Estate and Trusts. The benefits would satisfy any Creditors claims and then flow into a pour over trust for either Eliot, Lisa and Jill or the ten grandchildren of Simon, which will be determined by this Court in the future due to the alleged frauds and improper

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

constructions of Simon's 2012 dispositive documents that have caused the beneficiaries to be in question.

155. That in no scenario would TED or PAMELA receive any proceeds if they flowed into the Estate and Trusts of Simon and to their adult children directly and thus TED and PAMELA have conflicting interests with their children that they allege to be beneficiaries of Simon's Estate and Trusts. Where TED and Pamela are acting as Trustees for their children under the Simon Trusts and both have competing personal interests with their children to get the proceeds through the missing and lost trust scheme.
156. That no legally executed insurance trust instrument was produced by SPALLINA and Heritage refused to pay the life insurance proceeds to anyone without a court order and so DENIED the claim⁸.
157. To this date, almost two years later, no legally executed trust instrument has been tendered in the Federal Illinois Insurance Litigation or to this Court.
158. That after SPALLINA'S claim was denied TED suddenly and mysteriously replaces SPALLINA as "Trustee" of the lost trust he claims not to possess and TED files a state and then federal lawsuit in the United States District Court for the Northern District of Illinois in Chicago under the tutelage of the Honorable Amy St. Eve. TED files this lawsuit acting as

⁸ The Court should note that SPALLINA filed the claim acting as the trustee of the lost trust that he claims never to have seen or possessed and attempted to have the monies converted and comingled with his law firm Tescher & Spallina P.A. account.

The Court should further note that when the Illinois Life Insurance Litigation was filed shortly after SPALLINA's claim was denied, TED filed the lawsuit as trustee to the lost trust that he too claims never to have seen or possessed an executed copy of, replacing SPALLINA.

“Trustee” of the legally nonexistent insurance trust for Breach of Contract for Heritage’s failure to pay the claim to the legally nonexistent trust.

159. That to make matters worse, TED’s counsel when he files the lawsuit is TESCHER and SPALLINA, the very attorneys at law that are simultaneously representing the Simon estate and alleged 2012 Simon trust and who are advocating against the beneficiaries interests, again in favor of his client, associate and bedfellow TED and his sister PAMELA the ones cut out of the estates and trusts.

160. That the estate of Simon filed a Motion to Intervene in the Life Insurance Litigation to assert the Estate's interest in the life insurance proceeds. The Plaintiffs of the Life Insurance Litigation, include TED acting as “Trustee”, filed a Memorandum of Law in Opposition to the Estate's Motion to Intervene (the "Opposition Memorandum") (*See*, Exhibit "D," attached).

161. That the opening paragraph of the Opposition Memorandum states as follows:

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by **TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually,** PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN. (**emphasis added**)

162. That TED stands to benefit personally if the claim by the Simon Bernstein Estate to the life insurance proceeds is defeated because TED and his siblings (**other than Eliot**) have taken the position that they are the beneficiaries of the legally nonexistent lost or missing Insurance Trust.

163. That despite the opposition of TED BERNSTEIN to the Intervention, the court has granted the Estate's Motion to Intervene.

COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE...

Thursday, October 2, 2014

164. That TED is now an opposing party of record to the Estate's interest in the Life Insurance litigation.
165. That TED, individually and as the alleged trustee of the alleged legally nonexistent 1995 Insurance Trust, has placed his personal interests above the interests of the Simon 2012 trust beneficiaries who he alleges are the grandchildren of SIMON but may be Eliot, Jill and Lisa.
166. That through TED's open, notorious and public opposition to the Estate's intervention in the Life Insurance Litigation, an inherent conflict of interest is displayed where TED is blocking the interests of his children and other beneficiaries so that he may directly convert the monies to his own pocket and that of his sister Pamela.
167. That production documents of TESCHER and SPALLINA reveal that prior trusts were purposely secreted by TESCHER, SPALLINA, PAMELA and TED from the Courts and the insurance carrier to fraudulently alter the disposition of the insurance proceeds to favor TED and PAM at the detriment of other beneficiaries.
168. That TED, as alleged Successor Trustee of the alleged 2012 Simon trust, owes a duty of loyalty under §736.0706(1), Fla. Stat. (2014) to the alleged trust beneficiaries, to administer the trust solely in their interest and his actions in the Illinois Insurance Litigation have violated that duty.
169. That the Estate and 2012 Simon trust beneficiaries are alleged to be the grandchildren of Simon Bernstein, although Eliot has challenged the validity of these documents done days before Simon's death, especially in light of already proven, admitted and alleged crimes committed in Shirley and Simon's estates and trusts and if they are not the beneficiaries only Eliot, Jill and Lisa may be beneficiaries and therefore TED is conflicted with all the potential beneficiaries and working in opposite of their interests in the Illinois Insurance Litigation.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

170. This means TED acting as a fiduciary to the Trust must support, or at the least not obstruct, the efforts of the Estate and Simon Trusts to attempt to recover an additional alleged \$1.7 million in life insurance benefits⁹, especially where TED benefits directly from his obstruction and TED has been found to have acted in efforts to obstruct the estate and the alleged 2012 Simon Trust from asserting their rights through breach of his fiduciary duties.
171. That if the insurance is recovered to the Estate, this would dramatically increase the Estate assets that Eliot and/or his children will receive when the Court determines the beneficiaries due to the residue effects of the crimes that attempted to change beneficiaries in the estates and trusts of Shirley and Simon. That this lost insurance trust scheme and missing or suppressed documents have caused intentional interferences and delays with expectancies, including the life insurance proceeds further damaging the estate and trust beneficiaries.
172. That by opposing intervention by the Estate TED's actions exposed the estate/trust assets to liability.
173. That the need to have this Court Order intervention was due to the fact that TED'S counsel and the prior Co-Personal Representatives/Executors and Co-Trustees SPALLINA and TESCHER to the estate, failed to file any intervener action on behalf of the estate and in fact aided and abetted TED'S efforts to convert the asset of the estate to TED and his sister PAMELA by TESCHER and SPALLINA'S filing the alleged Fraudulent Insurance Claim to benefit their client TED.
174. That TESCHER and SPALLINA blocked the Simon estate and the alleged 2012 Simon trust while acting as fiduciaries from retaining representation in the Illinois Insurance Litigation.

⁹ The Court should also note that NO parties in the Insurance Litigation, including the life insurance carriers involved to date have produced a bona fide copy of the executed insurance policy for the Breach of Contract lawsuit that is based upon it and thus no terms, including the beneficiaries and the face are known at this time, making this yet another "Rabbit Hole" of apparent malfeasances.

175. That SPALLINA actually acted as the “Trustee” of the lost insurance trust that he claims never to have seen or possessed and also fraudulently acted as the “Trustee” of the primary beneficiary according to letters discovered from Heritage where Spallina is addressed as Trustee of “LaSalle National Trust NA” in mail sent to his business address, **as evidenced in Exhibit C.**
176. That when the carrier DENIED SPALLINA’s fraudulent beneficiary claim, TED then filed the Insurance Litigation as the Trustee of the lost trust and not SPALLINA attempting to sue the insurance carrier for breach of contract.
177. That both TED and SPALLINA have made statements that they have never seen or possessed this missing trust and yet both claim to be “Trustee” of this legally nonexistent entity in pursuing their fraudulent attempts to collect and convert the proceeds outside the Estate to improper parties through alleged; insurance fraud, institutional trust company fraud, mail and wire fraud, fraud on a federal court, fraud on this Court and Fraud on the true and proper beneficiaries.
178. That thanks to the efforts of this Court, William Stansbury (who has financed the counsel for the Illinois Insurance Litigation on his own dime to protect the beneficiaries since the fiduciaries refused and objected), Stansbury’s counsel Peter Feaman, Esq., Benjamin Brown, Esq. and others, the Estate is now represented by counsel in the federal action.
179. That while the Estate is now represented in the Illinois Litigation, none of the grandchildren have independent counsel representing them and their interests in the policies, except Eliot and his children who are represented Pro Se by Eliot.
180. The other children, TED, PAMELA, JILL and LISA have all participated in this fraud as way to get insurance proceeds paid to them instead of their children and while they are all lawyered up, their children are unrepresented.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

181. That the other grandchildren’s interests are not being represented because it would be opposite their parents’ interests in that litigation and so Eliot is unsure if the grandchildren are even aware they have interests.
182. That TED acting as the alleged Trustee of the legally nonexistent trust has a further fiducial duty to the alleged beneficiaries of that alleged trust, who obviously are unknown since there is no legally existent trust to know who they are, as with who the Trustee is, to act in their best interests. However, despite claiming the children of Simon are the beneficiaries, TED filed the breach of contract lawsuit with no notice to Eliot who is alleged to be a beneficiary of the legally nonexistent trust too. That Ted failed to inform Eliot of the action with intent with the help of TESCHER and SPALLINA according to documents recently discovered in the TESCHER and SPALLINA Court Ordered production documents.
183. That it should be noted that TED’s children’s ALLEGED counsel, John P. Morrissey, Esq., also argued against the interests of his alleged clients, TED’s children, in efforts to block the Estate from representation and was questioned about this conflict by Judge Colin in a hearing as to why he was arguing against the interests of his alleged clients and Morrissey stated he had not talked to his clients about waiving their interests in the policy, while having already argued against their interests. This indicates that Morrissey may in fact be working for TED’s best interest and not his children.
184. That the Court realizing that Morrissey was representing against the interests of his clients catches him in the act in a hearing as the following hearing excerpt exhibits;

<p>2 THE COURT: You represent, Mr. Morrissey, 3 who? 4 MR. MORRISSEY: I represent the four grandchildren. 6 THE COURT: Who, according to Mr. Feaman,</p>	<p>4 me, the insurance company was granted interpleader. They put the funds in the 6 registry of the court. The insurance company 7 is out of the case and even though you have the 8 original style what's left is people asserting</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

<p>7 may benefit if this money comes to the estate? 8 MR. MORRISSEY: Correct. 9 THE COURT: So the way the case is being litigated now –is the only plaintiff the 11 Simon Bernstein Irrevocable Insurance Trust vs. 12 the life insurance company? 13 MR. MORRISSEY: Well – 14 THE COURT: That's the way the style of the case is. Are there more plaintiffs than 16 that? 17 MR. FEAMAN: They amended subsequently and 18 joined the adult four of the five of the 19 adult children were joined as plaintiffs. THE COURT: And who is representing them? 21 MR. FEAMAN: Somebody up in Chicago in 22 that action. 23 THE COURT: Okay. 24 MR. ROSE: I think technically the lawsuit was started by the trust against the insurance 1 company. The insurance company filed an 2 interpleaded, probably by counterclaim. My 3 understanding is, subject to someone correcting</p>	<p>9 a claim to the proceeds. Eliot is there, I think, advocating the 11 claim on behalf of the estate 12 THE COURT: Eliot is prose. I want -we 13 recognize that. From Mr. Morrissey's point of 14 view, do you take a position that your clients, the grandchildren, may have an interest in 16 these monies? 17 MR. MORRISSEY: No -well, our position 18 is the following 19 THE COURT: That question first. MR. MORRISSEY: our position -no, on 21 behalf of the four grandchildren. 22 THE COURT: You waive any -on behalf of 23 those children you waive any claim to that 24 money? 25 MR. MORRISSEY: I'm not going to waive on 1 the record. 2 THE COURT: You have to stand on one side 3 of the fence or the other on that. 4 MR. MORRISSEY: Quite honestly, I haven't asked them that question. I can't waive 6 something on behalf of my clients when I 7 haven't asked them that question point blank.</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

185. That once the disgraced TESCHER and SPALLINA were removed from these matters, the Estate was able by Order of the Court to retain counsel to intervene in the Federal action on behalf of the Estate of Simon in efforts to protect the beneficiaries.
186. That the Federal court has now allowed that intervention on behalf of the Estate of Simon and the Estate is represented for the first time in almost two years, despite the best efforts to block the Estate from entry by SPALLINA, TESCHER, TED, ROSE and MORRISSEY.
187. More importantly, TED'S efforts in the Life Insurance Litigation are designed to keep the alleged \$1.7 million out of the estate and trust and to redirect the money to him and his siblings (excluding Eliot).

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

188. That in fact, TED and his siblings attempted to convert the insurance proceeds without telling Eliot and in fact told Eliot they were seeking an order from this Court to determine the beneficiaries, while simultaneously trying to move it out the back door secretly.
189. That as a consequence of the foregoing conflict of interest in the Illinois Insurance Litigation, TED is in breach of his fiduciary duty to the beneficiaries of the 2012 Simon trust by opposing efforts to make the Estate and Simon Trusts more solvent, which in turn exposes the Estate and Simon Trusts to increased liability, and warrants his removal under §736.0706(2)(a).
190. That TED's continued interference is an attempt to redirect estate assets to him personally and would further damage the estate beneficiaries as Ted's interference with his minion of Attorneys at Law has caused un-necessary and costly legal fees to the Estate and Simon Trusts beneficiaries and this Court, the Creditor and others, as these efforts to move the insurance and block the Estate and Trusts from representation were all billed to the Estate and Simon Trusts.
191. Additionally, this inherent and irreparable conflict of interest is a breach of his duty of loyalty and warrants removal under *Aiello, supra*, 793 So. 2d at 1152. *See also Brigham v. Brigham*, 119 So. 3d 374, 386 (Fla. 3d DCA 2009); *McCormick v. Cox*, 118 So. 3d 980, 987-88 (Fla. 3d DCA 2013) (removal of trustee was warranted where trustee had a conflict of interest and breach his fiduciary duties; trial court properly exercised its authority to remove trustee).
192. That since the criminal misconduct has caused the beneficiaries to come into question, whereby TED and his family may receive nothing, TED is now absolutely conflicted with beneficiaries of the Simon Trusts and his actions cannot be seen as impartial due to this conflict of interest.

TED HAS ADVERSE INTERESTS WITH BENEFICIARIES

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

Page 43

193. That TED and his attorneys at law have adverse interests to Eliot and in fact are hostile towards Eliot and his minor children, due to the fact that Eliot is the one who has uncovered their frauds, exposed them to criminal and civil authorities and is still pursuing them in state and federal, civil and criminal legal actions.

194. That since Eliot has uncovered these crimes and alleged many others, TED and his lawyers have moved to Extort Eliot through a number of extortion type schemes to get Eliot to participate in the criminal misconduct or else shut his family off their inheritances through intentional interference with an expectancy. (PUT IN REFERENCES TO EXTORTION COMPLAINTS IN COURT)

195. That TED and his attorneys at law have conspired to use a strategy of FORCE and AGGRESSION on Eliot, which was discovered in an email TED sent to Eliot describing their tactics that the Court has ruled as Privileged and secreted from the record. However, TED has stated under oath at a hearing on July 11, 2014 his intents when he stated,

22 BY MR. ELIOT BERNSTEIN

23 Q Did you use the words force and aggression
24 to -- to invoke a strategy of force and aggression
25 against Eliot Bernstein? [Emphasis Added]

1 A I don't know. Can I see the e-mail, please?

2 THE COURT: That's fair.

3 MR. ELIOT BERNSTEIN: Sure.

4 THE COURT: He's showing him a document.

5 MR. ROSE: I was just cautioning him not to

6 publish the --

7 THE COURT: It's still ID only. Go ahead.

8 So you've shown him, Eliot, the document. What's

9 your question?

10 BY MR. ELIOT BERNSTEIN

11 Q Did you say you were -- that you suggested

12 using force and aggression with Eliot?

13 MR. ROSE: Object to the form.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

14 THE COURT: Overruled.
15 THE WITNESS: No.
16 BY MR. ELIOT BERNSTEIN
17 Q Can you read that section into --
18 MR. ROSE: Objection to him reading it.
19 THE COURT: Well --
20 MR. ROSE: He can read it to himself.
21 THE COURT: Yeah, you can read it to yourself
22 and then ask a question. But you also need to
23 tell me what part you're reading.
24 MR. ELIOT BERNSTEIN: Him being aggressive
25 and forceful.
1 THE COURT: Where -- what paragraph should I
2 read?
3 MR. ELIOT BERNSTEIN: Like the fifth line --
4 the first one, two, three, four --
5 THE COURT: Okay. Let me read it.
6 MR. ELIOT BERNSTEIN: -- sixth line where it
7 starts --
8 THE COURT: Give me a chance. Ted and I will
9 read at the same time.
10 Okay. I read it. Go ahead.
11 THE WITNESS: I've read it too.
12 BY MR. ELIOT BERNSTEIN
13 Q Does that refresh your memory? Did you use --
14 if you used the words --
15 A My answer is still no.
16 Q -- to be forceful and aggressive with Eliot?
17 A You asked if I used the words force and
18 aggression.
19 Q Okay. I'll ask it again. Did you use the
20 words being aggressive and forceful?
21 **A Yes, I did. [Emphasis added]**

196. That this transcript admission by TED to him and Alan Rose conspiring to use force and aggression upon Eliot, a beneficiary who is trying to expose their full crimes, exposes the adverse interests and conflicts they have representing further in these matters and where if Eliot is successful they could land in prison and be charged for damages in the millions of dollars. Keep in mind that TED has alleged Murder in these matters regarding the death of his father, so the

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

death penalty may apply if it is discovered that Simon was actually murdered and aiding and abetting a murder also appears to carry stiff penalties for those involved.

TED IS INVOLVED IN CRIMINAL MISCONDUCT IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY AND CONSTRUCTIVE FRAUD¹⁰

197. That there has been Misconduct in the Shirley and Simon Bernstein Estate and Trusts committed by TED and his criminal friends, his former and current Attorneys at Law and each proven and alleged crime benefits TED.
198. There are serious proven and admitted felony crimes and further allegations of fraud, forgery and fraudulently altered trust documents in the Shirley Bernstein Estate and Shirley Bernstein trust, where Ted Bernstein is the Personal Representative of the Estate of Shirley, the alleged Successor Trustee of Shirley's trusts and the alleged Successor Trustee of Simon's Trusts.
199. That documents were submitted to the Court bearing notarized signatures of Simon Bernstein on a date after he had passed away used to illegally close Shirley's Estate that TED at the time claimed he was Personal Representative of Shirley's estate.
200. That signatures were admitted to be FORGED for six parties, including one for Simon done Post Mortem, one for Eliot, TED, PAMELA, JILL and LISA.
201. That in addition to the forged and fraudulently notarized waivers, the following documents were posited for Simon as PR while dead constituting further Fraud on the Court and Fraud on the Beneficiaries, from the Shirley Bernstein docket:

¹⁰ "Contrary to the trial court's conclusion, we believe that a breach of fiduciary duty is "constructive fraud" and thus may form the basis to apply the exception to the homestead protection. As this court explained in First Union National Bank of Florida v. Whitener, 715 So.2d 979, 982 (Fla. 5th DCA 1998):
Constructive fraud is the term typically applied where a duty under a confidential or fiduciary relationship has been abused, or where an unconscionable advantage has been taken. Constructive fraud may be based on misrepresentation or concealment, or the fraud may consist of taking an improper advantage of the fiduciary relationship at the expense of the confiding party."

Note Simon is Deceased on September 13, 2012 so how is he filing this while Dead = Fraud on the Court and Beneficiaries

14 ASNA - AFFIDAVIT/STMNT RE: CREDITORS

Filing Date: 24-OCT-2012

Filing Party: **BERNSTEIN, SIMON L**

Disposition Amount:

Docket Text: none.

NOTES: Allegedly Signed April 09. 2012 and Filed by Simon as PR while Dead October 24, 2012. Attorneys Robert Spallina and Donald Tescher fail to Notify Court of Simon Death and Simon is attesting in present in October when he affirms to Court.

15 PDCH - PETITION FOR DISCHARGE

Filing Date: 24-OCT-2012

Filing Party: **BERNSTEIN, SIMON L**

Disposition Amount:

Docket Text: none.

22 NTCT - NON-TAX CERT/RCPT/AFFIDAVIT

Filing Date: 24-OCT-2012

Filing Party: **BERNSTEIN, SIMON L**

Disposition Amount:

Docket Text: none.

23 PBCK - PROBATE CHECKLIST

Filing Date: 24-OCT-2012

Filing Party: **BERNSTEIN, SIMON L**

Disposition Amount:

Docket Text: none.

24 EXPM - EXPARTE CLERKS MEMO

Filing Date: 06-NOV-2012

Filing Party: COLIN, JUDGE MARTIN H

Disposition Amount:

Docket Text: none.

25 WAIV - WAIVER

Filing Date: 19-NOV-2012

Filing Party: **BERNSTEIN, SIMON L**

Disposition Amount:

Docket Text: OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

Admitted Created Whole Cloth and Forged and Fraudulently Notarized by Kimberly Moran, Legal Asst & Notary Public for Tescher & Spallina, P.A. who has been ARRESTED BY PALM BEACH COUNTY SHERIFF and GOVERNOR RICK SCOTT NOTARY DIVISION SUSPENSION OF LICENSE. FORGED AND CREATED POST MORTEM FOR SIMON. THEN TESCHER & SPALLINA POSITED WITH COURT WITH SIMON AS PERSONAL REP AS IF ALIVE!!!!!!!!!!!!!!!!!!!!

202. That upon learning of the forged and fraudulent documents TED acting as the alleged fiduciary did nothing to protect the beneficiaries of the Estate of Shirley and failed intentionally to report the criminal misconduct to this Court or the authorities until months after learning of the crimes when the Sheriff's office contacted him.

203. That TESCHER and SPALLINA's Legal Assistant and Notary Public, Kimberly Francis Moran, confessed to Palm Beach County Sheriff Investigators that she fraudulently notarized and forged documents and since has been arrested and convicted of Felony misconduct.

204. That these six documents and OTHER documents were then posited with the Court by TESCHER and SPALLINA through their law firm Tescher & Spallina P.A. on behalf of Simon acting as the PR/Executor while DEAD in a bizarre FRAUD ON THIS COURT to close the estate of Shirley using Simon while dead.

205. That yes, Simon was DEAD and yet acted as PR/Executor for months and where TESCHER and SPALLINA failed to notify the Court of his death and elect a successor to properly and legally close Shirley's Estate, instead using Simon to close the Estate for four months after he had passed away.

206. That during the time Simon acted as PR while dead to close Shirley's estate, TED was also acting as PR of her closed estate to effectuate other transactions necessary to commit fraud and convert assets, despite the fact that Simon closed the Estate while dead and TED was never elected Successor due to the fraud.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

207. That this Fraud on the Court was done as part of a larger fraud in efforts to change beneficiaries of Shirley's irrevocable trust's beneficiary class, committed through a series of Frauds on the Court that used Simon when he was dead, to appear living at the closing of Shirley's Estate so that they could make it appear that Simon then made changes to Shirley's estate and trusts when he was alive.
208. That it appears that Shirley's Estate and Trust assets would not have passed to Simon until her estate was officially closed and thus he would not have been able to exercise his alleged Power of Appointment if he were dead and so it appears they used him to close the Estate and then claim that after he closed the Estate he exercised his POA while alive.
209. That the most important part of the fraudulent and improper documents was not about changing the beneficiaries but about seizing Dominion and Control of the Estate and Trusts by TESCHER, SPALLINA and TED inserting themselves into the documents as Fiduciaries and gaining control of the assets and allowing them to begin looting and robbing the Estates and Trusts of both Simon and Shirley with virtually unchecked powers over the them.
210. That it is not very important who the beneficiaries ultimately are if the assets have been stolen off with by the alleged fiduciaries and attorneys at law involved and there is nothing left for the beneficiaries whoever they are.
211. That this Fraud of using a dead PR to close an estate was uncovered in a September 13, 2013 hearing whereby Honorable Judge Martin Colin discovered the Fraud on the Court and issued a second warning that he had enough evidence at that time to read TED, SPALLINA and MANCERI their Miranda's. (See Transcript of Proceedings, pages 15 and 16, attached as Exhibit "E.")

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

212. That once Dominion and Control was illegally gained, the fiduciaries created a black hole of accountability and transparency and denied certain beneficiaries access to the dispositive documents and any accounting of the assets and trusts that were created that continues to this day.
213. Allegations being investigated into criminal misconduct are for Fraud, Fraudulent Notarizations, Forgery and other crimes, instigated by Eliot and Candice in relation to criminal acts¹¹ taking place in the Estates and Trusts of Simon and Shirley with both state and federal civil and criminal authorities.
214. That no successor was appointed until this Court reopened the Estate of Shirley due to the fact that Simon closed the Estate as Personal Representative/Executor while dead, yet TED acted as

¹¹ PBSO AND CORONER REPORTS @ <http://www.iviewit.tv/Sheriff Reports.pdf>

1. Palm Beach County Sheriff Report – Case No. 12121312 – Alleged Murder of Simon Bernstein filed by Theodore Bernstein on the day Simon died.
2. Florida Medical Examiner – Autopsy Case No. 12-0913 – Filed by Theodore Bernstein Palm Beach County alleging Murder of Simon Bernstein ordered on the day Simon died.
3. Sheriff Report – Case No. 13097087 - Forgery and Fraudulent Notarizations
4. Palm Beach County Sheriff Report – Case No. 13159967 - Theft of Assets of Estates
5. Palm Beach County Sheriff Report – Case No. 14029489 - Continuation of Fraud, Extortion and more.
6. State Attorney FL – - Case No. 13CF010745 - Forgery and Fraudulent Notarizations
7. Jacksonville, IL. Police Department – Case No. #2014000865 – Insurance Fraud - Directed to Federal Authorities.
8. Case No. 13-cv-03643 United States District Court – Northern District II.
9. Florida Probate Simon – Case No. 502012CP004391XXXXSB
10. Florida Probate Shirley – Case No. 502011CP000653XXXXSB
11. Heritage Union Fraud Investigation – Case No. TBD
12. Governor Rick Scott Notary Public Division – Moran – Case No. Eliot and Simon Bernstein v. Moran
 - a. <http://www.iviewit.tv/Simon and Shirley Estate/20131014%20Office%20of%20the%20Governor%20Moran%20Suspension%20of%20Notary.pdf>
13. Governor Rick Scott Notary Public Division – Baxley – Case No. Eliot and Simon Bernstein v. Baxley
 - a. <http://www.iviewit.tv/Simon and Shirley Estate/20140421 Office Of Governor Lindsay Baxley Complaint Misconduct.pdf>

PR in multiple transactions during that time in order to begin selling assets of the estate and trusts of Shirley.

215. Evidence and admissions of further felony misconduct have since been obtained regarding new acts recently uncovered and there are many new crimes being alleged after receiving new and damning evidence from the former disgraced fiduciaries and attorneys at law, TESCHER and SPALLINA, when they resigned and turned over their records and properties to the successor curator, Benjamin Brown, Esq. Brown then turned the information over finally to beneficiaries as part of their records and there appears to be a plethora of new crimes uncovered and new criminal complaints are being prepared and new civil torts will be added to the existing cases.

216. The crimes and torts proven and admitted to this point, include but are not limited to,

- i. six admitted instances of forgery (including Post Mortem for Simon),
- ii. a proven felony conviction rendered for an admitted six fraudulent notarizations (including Post Mortem for Simon),
- iii. an admitted fraudulent alteration of a Shirley's Trust document by SPALLINA,
- iv. Fraud on the Court through fraudulent and false instruments posited in the Court by Officers of the Court and Tescher & Spallina, PA law firm, acting on behalf of a DEAD Personal Representative to close the Estate of Shirley, and,
- v. the Governor Rick Scott's Notary Public Division's findings of improper notarizations on Simon's alleged 2012 Will and Amended and Restated Simon Bernstein Trust done 48 days before his death. The legally invalid notarizations leave it unknown if Simon was present on the day of signing the documents and the only witnesses to the alleged signing of the document have already admitted to fraud, SPALLINA and MORAN.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

217. The crimes and torts alleged and under investigation at this time, include but are not limited to, all of the following,

- i. Insurance Fraud,
- ii. Fraud on a Federal Court,
- iii. Fraud on a State Court,
- iv. Fraud on the Beneficiaries,
- v. Illegal distributions of Estate and Trust assets made knowingly to improper parties,
- vi. Bank Fraud,
- vii. Extortion of Eliot,
- viii. Theft of Property,
- ix. Conversion,
- x. Murder of Simon,
- xi. Mail and Wire Fraud.

218. Further, the attorney, SPALLINA representing TED as Personal Representative of the Estate of Shirley Bernstein has admitted to altering provisions of the Shirley Bernstein Trust to Palm Beach County Sheriff Investigators¹², which had the effect of benefitting TED'S family primarily by fraudulently and knowingly converting assets to TED's family.

219. That TED advanced the fraudulent beneficiary scheme to change Shirley's beneficiaries of her irrevocable beneficiary class with TESCHER and SPALLINA.

¹² Palm Beach County Sheriff Reports can be found at [www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/Sheriff%20Reports.pdf) , fully incorporated by reference herein.

220. That statements made by SPALLINA to Palm Beach Sheriff Investigators reveal that TED took distributions against the advice of his counsel, again making him wholly unfit to continue as a fiduciary in these matters.
221. That TED also claimed to Palm Beach Sheriff Investigators that he had not read all of Shirley's trust documents that he was acting as fiduciary under, see the attached PBSO report.
222. That Ted Bernstein's involvement with his former counsel TESCHER and SPALLINA¹³ in such activity involving the Estate and Trust of Shirley Bernstein should disqualify him from serving as Successor Trustee of the Simon Trusts or any other fiducial capacities in the Estates and Trusts of Simon and Shirley.
223. There is evidence that the alleged 2012 Amended and Restated Trust was improperly and fraudulently constructed to attempt to alter Shirley's distribution of her property that was irrevocable.
224. That the alleged Simon Trust states,

**ALLEGED ORIGINAL 2008 SIMON L. BERNSTEIN TRUST
AGREEMENT**

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

- A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this

¹³ The Court should note that TED's current counsel, Alan B. Rose, Esq. was also involved in knowingly advancing the fraudulent beneficiary scheme with TESCHER, SPALLINA and TED and continues to advance such fraudulent scheme through continued toxic pleadings with this Court in efforts to now have the Court change Shirley trust documents, four years Post Mortem, in efforts to have the Court, through Fraud on the Court, change the beneficiaries of Shirley's Irrevocable Beneficiary Class to fit the crimes already committed by TED and his siblings, other than Eliot, when they knowingly took distributions to knowingly improper parties to mainly benefit TED and his sister Pamela Simon who were both disinherited and considered predeceased by both Simon and Shirley, for good and just cause and perhaps this Court is starting to see in part why their parents did not want them involved in the Estates and Trusts in any way, shape or form, as stated, "for all purposes."

Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise. [emphasis added].

225. That the alleged 2012 Amended and Restated Simon L. Bernstein Trust Agreement states,

**ALLEGED 2012 AMENDED AND RESTATED SIMON L.
BERNSTEIN TRUST AGREEMENT**

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. **Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

[NOTE THE LANGUAGE FROM THE 2008 SIMON TRUST IS REMOVED IN THE ALLEGED 2012 SIMON AMENDED AND RESTATED TRUST, DESPITE ITS REMOVAL BEING PROHIBITED]

226. That Simon could not by the 2008 Simon Trust to revoke this 2008 Simon Trust Agreement in whole or in part and otherwise modify or amend the Simon Trust Agreement after Shirley's death with respect to property added by Shirley upon Shirley's death by "Will or otherwise."

227. That through the alleged 2012 Amended and Restated Simon Trust Agreement, attempts are made to modify and amend the 2008 Simon Trust with respect to property added by Shirley upon Shirley's death and the Shirley trusts.

228. That Eliot through trusts already established in his family's name is a beneficiary of 1/3rd of the 2008 Shirley Trust.

229. That Eliot is a 1/3rd beneficiary through a Family Trust in his name of the 2008 Simon Trust.

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

230. That if the alleged 2012 documents do not survive and the 2008 Simon Trust prevails, which there is already evidence of fraud, improper construction, proven improper notarizations and more and there is new evidence now indicating they were procured to knowingly commit fraud by the fiduciaries and officers of this Court and this would legally invalidate them.
231. That if the 2012 alleged Simon Trust and Will fail and are legally invalidated, Eliot is a 1/3rd beneficiary of the Simon Trust and the Shirley Trust both dated May 20, 2008.
232. That in addition to the instant pleading, the following already filed pleadings, in particular to the motions and petitions to remove TED, are hereby be incorporated in entirety with all Exhibits by reference herein, as additional facts and Prima Facie Evidence for the Court to consider in the removal of TED in all fiducial roles in the Estates and Trusts of Simon and Shirley Bernstein;

- i. Docket #244 – Simon Estate (see Exhibit G)

MOT - MOTION

Filing Date: 28-AUG-2014

Filing Party: BERNSTEIN, ELIOT IVAN

Docket Text: (AMENDED) FOR REMOVAL OF PERSONAL REPRESENTATIVE AND TRUSTEE OF THE ESTATES AND TRUST OF SIMON AND SHIRLEY BERNSTEIN IN ALL FIDUCIAL CAPACITIES ON THE COURT'S OWN INITIATIVE UNEXECUTED ORDER ATTACHED EFILED

- ii. Docket #215 - Simon Estate (see Exhibit H)

PET - PETITION

Filing Date: 29-JUL-2014

Filing Party: STANSBURY, WILLIAM E

Docket Text: PETITION TO REMOVE TED BERNSTEIN AS SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN REVOCABLE TRUST

- iii. Docket #188 - Simon Estate (see Exhibit I)

188

RESP - RESPONSE TO:

Filing Date: 27-JUN-2014

Filing Party: STANSBURY, WILLIAM E

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

Docket Text: RESPONSE IN OPPOSITION TO THE APPOINTMENT OF TED BERNSTEIN AS SUCCESSOR PERSONAL REPRESENTATIVE AND MOTION FOR THE APPOINTMENT OF AN INDEPENDENT THIRD PARTY AS BOTH SUCCESSOR PERSONAL REPRESENTATIVE AND TRUSTEE OF THE SIMON BERNSTEIN TRUST AGREEMENT F/B

iv. Docket #126 - Simon Estate (see Exhibit J)

126 NOF - NOTICE OF FILING

Filing Date: 22-MAY-2014

Filing Party: William Stansbury

Docket Text: JOINDER IN PETITION FILED BY ELIOT IVAN BERNSTEIN FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING F/B WILLIAM E. STANSBURY, CREDITOR OF THE E/O SIMON BERNSTEIN E-FILED

v. Docket # - Simon Estate (see Exhibit K)

97 PET – PETITION

Filing Date: 07-APR-2014

Filing Party: Eliot Bernstein

Docket Text: PETITION FOR CONSTRUCTION OF TESTAMENTARY TRUST, FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING BY ELIOT IVAN BERNSTEIN

THAT THE COURT HAS ALREADY REJECTED TED FROM BECOMING A FIDUCIARY IN THE ESTATE OF SIMON FOR GOOD AND JUST CAUSE

233. Theodore’s first Petition denied was to become Curator of Simon’s Estate as Successor to his removed counsel, TESCHER and SPALLINA, upon their termination and this was rejected on February 19th, 2014 by the Court and where Your Honor stated in the Order, “DENIED, for the reasons stated on the record.”

234. Ted **Withdrew** his second Petition to become Personal Representative of the Estate of Simon and replace the Curator Benjamin Brown, Esq. TED and his Counselors, Alan B. Rose, Esq. and John J. Pankauski, Esq., withdrew TED’S pleading at the time of the Hearing on July 11, 2014 when they were about to present their case and at the Court’s URGING THEM TWICE to reconsider having their pleading heard and face possible sanctions if they lost, as TED did

COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE...

Thursday, October 2, 2014

not appear to be fit to be a Successor PR and the pleading appeared frivolous and vexatious and a waste of everyone's time and money, including Eliot, the Court, the Creditor, the Curator Benjamin Brown, Esq., who all showed up to watch them drop their own pleading.

235. The costs for this filing alone to be withdrawn at the final moment, including the time spent on Eliot writing and filing responses, the time reading Eliot's lengthy Pro Se responses for everyone involved, the time for the Creditor Stansbury personally to appear and pay for his counsel Peter Feaman, Esq. and his assistant Nancy to appear, the costs of the Curator, Benjamin Brown, Esq. to appear, the cost's billed by Brown's staff, the Court's costs, the Bailiff's costs, TED'S attorneys at law Rose and Pankauski, TED'S alleged children's counsel Morrissey costs, Lisa and Jill's Attorneys at Law and more.

236. That Waste, Fraud and Abuse of the Estates and Trusts assets and everyone else's assets to abandon this pleading for it could not succeed with all the evidence that TED is unfit at this time to have any fiduciary capacities for his breaches of fiduciary duties, grossly negligent, willful, wanton, reckless and alleged felonious conduct and direct involvement in egregious acts of bad faith done with unclean hands. This Court has stated it had enough evidence of fraud to read him Miranda's twice for his involvement in advancing fraudulent schemes and more.

237. That TED is being sued for breaches of fiduciary duties and more in the estates and trusts cases before this Court.

WHEREFORE, Eliot Ivan Bernstein requests that;

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

- i. THEODORE “TED” STUART BERNSTEIN, the alleged successor trustee of the Simon Trusts be removed,
- ii. the Court appoint a Successor Trustee with no conflicts of interests or affiliation with any of the former fiduciaries or attorneys at law involved in the prior frauds in any way,
- iii. the Court require the filing of a Trust Accounting.
- iv. **REMEDIES FOR FAILURE TO ACCOUNT OR FOR IMPROPER ACCOUNTING**

The failure to account is a breach of fiduciary duty. The failure to keep a true and correct account of all receipts and disbursements made in connection with the administration of the trust is a breach of fiduciary duty. F.S. 736.1001 of the Florida Trust Code has a specific section on remedies for breach of trust.

Remedies include the removal of the trustee, reducing or denying compensation to the trustee, requiring the trustee to repay money to the trust or by restoring property to the trust by other means, or any other relief the court deems appropriate.

- v. 736.1001 Remedies for breach of trust.
 - (1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.
 - (2) To remedy a breach of trust that has occurred or may occur, the court may:
 - (a) Compel the trustee to perform the trustee’s duties;
 - (b) Enjoin the trustee from committing a breach of trust;

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

- (c) Compel the trustee to redress a breach of trust by paying money or restoring property or by other means;
 - (d) Order a trustee to account;
 - (e) Appoint a special fiduciary to take possession of the trust property and administer the trust;
 - (f) Suspend the trustee;
 - (g) Remove the trustee as provided in s.736.0706;
 - (h) Reduce or deny compensation to the trustee;
 - (i) Subject to s. 736.1016, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
 - (j) Order any other appropriate relief.
- (3) As an illustration of the remedies available to the court and without limiting the court's discretion as provided in subsection (2), if a breach of trust results in the favoring of any beneficiary to the detriment of any other beneficiary or consists of an abuse of the trustee's discretion:
- (a) To the extent the breach of trust has resulted in no distribution to a beneficiary or a distribution that is too small, the court may require the trustee to pay from the trust to the beneficiary an amount the court determines will restore the beneficiary, in whole or in part, to his or her appropriate position.
 - (b) To the extent the breach of trust has resulted in a distribution to a beneficiary that is too large, the court may restore the beneficiaries, the trust, or both, in

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

whole or in part, to their appropriate positions by requiring the trustee to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or by requiring that beneficiary to return some or all of the distribution to the trust.

If the trustee cannot establish that disbursements, sale of assets or other payment of expenses from the trust were proper, the trustee could be held personally liable for those transactions. A trustee could also be held liable for the value of all property improperly conveyed.

In *Detroit Bank and Trust Company v. Trust Company of Virgin Islands, Ltd.*, 644 F. Supp 444 (D.P.R. 1985), the trustee was sued for breach of fiduciary duty.

The trustee refused to account for any of the trust assets. The court found the trustee liable for \$2,974,380.00, the full present value of the assets originally placed in the trust plus interest, for failing to keep proper records, to render statements of receipts and disbursements upon request and for failing to allow the successor trustee to have access to the trust books and records.

When a trustee does not maintain any records, the courts have disallowed the expenditures of the trustee and charged those against the trustee as well as the value of property improperly conveyed by the trustee.

Dated, Thursday, October 2, 2014.

Eliot Bernstein, Pro Se, Individually and as
legal guardian on behalf of his minor three

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

children.

X_____

CERTIFICATE OF SERVICE

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, **Thursday, October 2, 2014.**

Eliot Bernstein, Pro Se, individually and as legal guardian on behalf of his minor three children

X_____

SERVICE LIST

<p>RESPONDENT PERSONALLY, PROFESSIONALLY, AS A GUARDIAN AND TRUSTEE FOR MINOR/ADULT CHILDREN, AS AN ALLEGED TRUSTEE AND ALLEGED PERSONAL REPRESENTATIVE</p> <p>Theodore Stuart Bernstein Life Insurance Concepts 950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487 tbernstein@lifeinsuranceconcepts.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 arose@pm-law.com and arose@mrachek-law.com mchandler@mrachek-law.com cklein@mrachek-law.com lmrachek@mrachek-law.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 courtfilings@pankauskilawfirm.com john@pankauskilawfirm.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM AND AS FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Robert L. Spallina, Esq., Tescher & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 rspallina@tescherspallina.com kmoran@tescherspallina.com ddustin@tescherspallina.com</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE...

Thursday, October 2, 2014

	rfitzgerald@mrachek-law.com skonopka@mrachek-law.com dthomas@mrachek-law.com gweiss@mrachek-law.com jbaker@mrachek-law.com mchandler@mrachek-law.com lchristian@mrachek-law.com tclarke@mrachek-law.com gdavies@mrachek-law.com pgillman@mrachek-law.com dkelly@mrachek-law.com cklein@mrachek-law.com lwilliamson@mrachek-law.com		
<p>RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD</p> <p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>COUNSEL FOR LIMITED APPEARANCE representing Mr. Tescher in connection with his Petition for Designation and Discharge as Co-Personal Representative of the Estate of Simon L. Bernstein, deceased.</p> <p>Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 ijb@ijblegal.com martin@kolawyers.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and FORMER WITHDRAWN COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES, NO NOTICES OF APPEARANCES</p> <p>Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net mrmlaw1@gmail.com</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM AND AS FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Donald Tescher, Esq., Tescher & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 dtescher@tescherspallina.com dtescher@tescherspallina.com ddustin@tescherspallina.com kmoran@tescherspallina.com</p>

COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE...

Thursday, October 2, 2014

<p>RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD</p> <p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	<p>COUNSEL TO CREDITOR WILLIAM STANSBURY</p> <p>Peter Feaman, Esquire Peter M. Feaman, P.A. 3615 Boynton Beach Blvd. Boynton Beach, FL 33436 pfeaman@feamanlaw.com service@feamanlaw.com mkoskey@feamanlaw.com</p>	<p>COURT APPROVED CURATOR TO REPLACE THE REMOVED FORMER PERSONAL REPRESENTATIVES/CO-TRUSTEES/COUNSEL TO THEMSELVES AS FIDUCIARIES TESCHER AND SPALLINA</p> <p>Benjamin Brown, Esq., Thornton B Henry, Esq., and Peter Matwiczuk Matwiczuk & Brown, LLP 625 No. Flagler Drive Suite 401 West Palm Beach, FL 33401 bbrown@matbrolaw.com attorneys@matbrolaw.com bhenry@matbrolaw.com pmatwiczuk@matbrolaw.com</p>	<p>COUNSEL FOR JILL IANTONI and LISA FRIEDSTEIN</p> <p>William M. Pearson, Esq. P.O. Box 1076 Miami, FL 33149 wpearsonlaw@bellsouth.net</p>
<p>RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD</p> <p>Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com lisa.friedstein@gmail.com lisa@friedsteins.com</p>	<p>COUNSEL FOR JILL IANTONI and LISA FRIEDSTEIN</p> <p>William H. Glasko, Esq. Golden Cowan, P.A. 1734 South Dixie Highway Palmetto Bay, FL 33157 bill@palmettobaylaw.com eservice@palmettobaylaw.com mtimealy@gcprobatelaw.com</p>	<p>RESPONDENT – ADULT CHILD</p> <p>Alexandra Bernstein 3000 Washington Blvd, Apt 424 Arlington, VA, 22201 alb07c@gmail.com</p>	<p>RESPONDENT/ARRESTED AND CONVICTED OF FRAUD AND ADMITTED TO FORGERY OF SIX SIGNATURES, INCLUDING POST MORTEM FOR SIMON/HAS HAD NOTARY PUBLIC LICENSE REVOKED BY FLORIDA GOVERNOR RICK SCOTT NOTARY PUBLIC DIVISION. *See notes</p> <p>Kimberly Moran kmoran@tescherspallina.com</p>
<p>RESPONDENT – ADULT CHILD</p> <p>Eric Bernstein 2231 Bloods Grove Circle Delray Beach, FL 33445 eberstein@lifeinsuranceconcepts.com edb07@fsu.edu edb07fsu@gmail.com</p>	<p>RESPONDENT – INITIALLY MINOR CHILD AND NOW ADULT CHILD</p> <p>Michael Bernstein 2231 Bloods Grove Circle Delray Beach, FL 33445 mchl_bernstein@yahoo.com</p>		<p>COUNSEL TO ALEXANDRA, ERIC AND MICHAEL BERNSTEIN AND MOLLY SIMON</p> <p>John P Morrissey, Esq. John P. Morrissey, P.A. 330 Clematis Street Suite 213 West Palm Beach, FL 33401 john@jmorrisseylaw.com</p>

COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE...

Thursday, October 2, 2014

<p>RESPONDENT – ADULT STEPSON TO THEODORE</p> <p>Matt Logan 2231 Bloods Grove Circle Delray Beach, FL 33445 matl89@aol.com</p>	<p>RESPONDENTS – MINOR CHILDREN OF PETITIONER Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 iviewit@iviewit.tv</p>	<p>RESPONDENT – MINOR CHILD</p> <p>Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 210 I Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	
<p>RESPONDENT/REPRIMANDED BY FLORIDA GOVERNOR RICK SCOTT NOTARY PUBLIC DIVISION FOR FAILING TO NOTARIZE AN ALLEGED 2012 WILL AND TRUST OF SIMON AND SIGNING NOTARY UNDER FALSE NAME</p> <p>Lindsay Baxley aka Lindsay Giles lindsay@lifeinsuranceconcepts.com</p>	<p>RESPONDENT MINOR CHILDREN</p> <p>Carley & Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com lisa.friedstein@gmail.com</p>	<p>RESPONDENT – MINOR CHILD INITIALLY NOW ADULT CHILD</p> <p>Molly Simon 1731 N. Old Pueblo Drive Tucson, AZ 85745 molly.simon1203@gmail.com</p>	

**COMPLAINT TO REMOVE THEODORE STUART BERNSTEIN AS
ALLEGED SUCCESSOR TRUSTEE...**

Thursday, October 2, 2014

EXHIBIT A

ALLEGED TRUST OF SIMON L. BERNSTEIN

EXHIBIT
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE
Thursday, October 2, 2014

EXHIBIT B

DONALD R. TESCHER, ESQ. LETTER DATED JANUARY 14, 2014

EXHIBIT C

**ALLEGED FRAUDULENT INSURANCE CLAIM SUBMITTED BY
ATTORNEY AT LAW ROBERT L. SPALLINA, ESQ. AND RELATED
CORRESPONDENCES**

EXHIBIT D

**MEMORANDUM OF LAW IN OPPOSITION TO THE ESTATE'S
MOTION TO INTERVENE (THE "OPPOSITION MEMORANDUM")**

EXHIBIT E

**SEPTEMBER 13, 2013 TRANSCRIPT OF PROCEEDINGS, PAGES 15 AND
16 RE MIRANDA WARNING TO THEODORE AND ROBERT L.
SPALLINA, ESQ.**

EXHIBIT F

**2000 INSURANCE TRUST OF SIMON BERNSTEIN DONE BY
PROSKAUER ROSE, LLP AND CORRESPONDENCES REGARDING
THE SECRETING THE TRUST IN FAVOR OF A PRIOR LOST OR
MISSING TRUST THAT NO EXECUTED COPIES EXIST FOR.**

EXHIBIT G

I.DOCKET #244 – SIMON ESTATE

MOT - MOTION

FILING DATE: 28-AUG-2014

FILING PARTY: BERNSTEIN, ELIOT IVAN

**DOCKET TEXT:(AMENDED) FOR REMOVAL OF PERSONAL
REPRESENTATIVE AND TRUSTEE OF THE ESTATES AND TRUST OF
SIMON AND SHIRLEY BERNSTEIN IN ALL FIDUCIAL CAPACITIES
ON THE COURT'S OWN INITIATIVE UNEXECUTED ORDER
ATTACHED EFILED**

EXHIBIT H

DOCKET #215 - SIMON ESTATE (SEE EXHIBIT H)

PET - PETITION

FILING DATE: 29-JUL-2014

FILING PARTY: STANSBURY, WILLIAM E

**DOCKET TEXT: PETITION TO REMOVE TED BERNSTEIN AS
SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN REVOCABLE
TRUST**

EXHIBIT I

DOCKET #188 - SIMON ESTATE (SEE EXHIBIT I)

RESP - RESPONSE TO:

FILING DATE: 27-JUN-2014

FILING PARTY: STANSBURY, WILLIAM E

**DOCKET TEXT: RESPONSE IN OPPOSITION TO THE APPOINTMENT
OF TED BERNSTEIN AS SUCCESSOR PERSONAL REPRESENTATIVE
AND MOTION FOR THE APPOINTMENT OF AN INDEPENDENT
THIRD PARTY AS BOTH SUCCESSOR PERSONAL REPRESENTATIVE
AND TRUSTEE OF THE SIMON BERNSTEIN TRUST AGREEMENT F/B**

EXHIBIT J

DOCKET #126 - SIMON ESTATE (SEE EXHIBIT J)

NOF - NOTICE OF FILING

FILING DATE: 22-MAY-2014

FILING PARTY: WILLIAM STANSBURY

**DOCKET TEXT: JOINDER IN PETITION FILED BY ELIOT IVAN
BERNSTEIN FOR REMOVAL OF TRUSTEE AND FOR TRUST
ACCOUNTING F/B WILLIAM E. STANSBURY, CREDITOR OF THE E/O
SIMON BERNSTEIN E-FILED**

EXHIBIT K

DOCKET # - SIMON ESTATE (SEE EXHIBIT K)

PET – PETITION

FILING DATE: 07-APR-2014

FILING PARTY: ELIOT IVAN BERNSTEIN

**DOCKET TEXT: PETITION FOR CONSTRUCTION OF
TESTAMENTARY TRUST, FOR REMOVAL OF TRUSTEE AND FOR
TRUST ACCOUNTING BY ELIOT IVAN BERNSTEIN**