

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

IN RE:

Case No.: 50 2012 CP 004391 SB
JUDGE MARTIN COLIN

ESTATE OF SIMON
BERNSTEIN,

Deceased.

Division: IY

_____ /

**MEMORANDUM OF WILLIAM E. STANSBURY IN SUPPORT
OF PERSONAL REPRESENTATIVE'S MOTION FOR AUTHORIZATION TO ENTER
INTO AND APPROVAL OF SETTLEMENT AGREEMENT**

COMES NOW, William E. Stansbury ("Stansbury"), Claimant and Interested Person of the Estate of Simon Bernstein (the "Estate"), by and through his undersigned counsel, and submits this Memorandum in Support of the his Settlement with the Estate, and states as follows:

I. The Beneficiaries of the Simon Bernstein Trust Have No Standing to Object to the Settlement.

The Successor Personal Representative of the Estate of Simon Bernstein (the "Estate") is seeking the approval of this court of a Settlement Agreement between WILLIAM STANSBURY and the Estate arising out of a separate action pending before Judge Blanc, Palm Beach County Circuit Court, Case No.: 2012 CA 013933, Stansbury v. Bernstein, etc., et al.

The Trust is the residuary beneficiary of Simon Bernstein's Will. Therefore, the Trust is a beneficiary of the Estate. As such, the Trustee of the Trust is recognized as the "interested party" under Florida law, but not the beneficiaries of the Trust. *See*, Fla. Stat. § 731.201(23). *Cf. Maceda v. Duhig*, 474 So. 2d 292 (Fla. 3d DCA 1985) (guardian of minor children did not have

standing to challenge settlement agreement between personal representative of the estate and guardian of the property of the minor children). Here, by analogy, the Trustee is the guardian of the property of the Trust. The beneficiaries of the Trust have an “interest” in the Trust, but not in the Estate or the settlement of the litigation between the Personal Representative of the Estate and a creditor of the Estate.

II. There Are Sufficient Assets in the Estate to Pay All the Creditors, including STANSBURY.

The May 1, 2014 Final Accounting of Personal Representative shows the total assets of the Estate equal **\$1,107,664.39**, before the addition of the Life Insurance Trust money being held in U.S. District Court for the Northern District of Illinois in the amount of \$1,700,000. The claims of creditors of the Estate total \$899,119.94, if the claim of Stansbury is reduced to the settlement amount. (The Statements of Claim filed against the Estate, other than Stansbury’s, are attached as Exhibits “1,” “2” and “3.”)

Therefore, the assets of the Estate are more than sufficient to pay all creditors of the Estate if the settlement is approved. The assets of the Simon Bernstein Trust are unknown, as an accounting has never been provided.

III. The Settlement Between the Estate and William Stansbury is in The Best Interests of the Estate.

A. Summary of the Case

In 2006, SIMON and TED (collectively, the "BERNSTEINS") formed as sole shareholders two companies known as LIC Holdings, LLC (“LIC”) and Arbitrage International Management, LLC (“ARBITRAGE”) for the purpose of marketing and selling life insurance products to high net worth individuals. STANSBURY agreed to become an employee of LIC

and/or ARBITRAGE and agreed to an annual salary of 15% of net retained commissions received on all products sold, including renewals.

By 2008 SIMON and STANSBURY had developed a close and trusting relationship, which led STANSBURY to trust in what SIMON represented to him. SIMON so trusted STANSBURY that he named STANSBURY as a Personal Representative in his 2008 Will, as Trust Protector in his 2008 Irrevocable Trust, and as Successor Co-Trustee of the Simon Bernstein 2008 Revocable Trust.

In February of 2008, SIMON proposed to STANSBURY that rather than them receiving compensation on a monthly basis, the BERNSTEINS and STANSBURY all would agree to forego monthly payouts and defer compensation until the end of 2008, when year-end computations would be made and compensation would then be paid. SIMON specifically represented to STANSBURY, among other things, that neither SIMON, TED nor STANSBURY would take any compensation for fiscal year 2008 until the year-end accounting was performed in December of 2008 or January, 2009 to determine compensation.

B. Failure to Pay Stansbury

Despite representing to STANSBURY that none of them would receive compensation, SIMON and TED, as officers and majority shareholders of LIC and ARBITRAGE, paid to themselves \$3,756,229.00 and \$5,225,825.00, respectively, in 2008. STANSBURY, on the other hand, was paid \$420,018 for commissions earned on some 2007 sales. STANSBURY was not, and has never been paid the commissions due him on new sales in 2008. Further, he was not and has never been paid the renewal commissions due him on sales made in previous years that were paid from 2009 through 2012. A nominal payment of \$30,000 was made in 2010.

C. Individual Liability of Simon Bernstein, n/k/a The Estate of Simon Bernstein

Disregard of corporate structure and intentional tortious acts incur individual liability to corporate officers and directors. As such, SIMON BERNSTEIN (now his Estate), cannot avail itself of the defense that he was acting within the scope of his employment, thereby avoiding personal liability for his conduct.

Beginning in late 2007 or early in 2008, and continuing through at least 2011, LIC and/or ARBITRAGE became the alter ego of SIMON, as an officer and majority shareholder. He, along with TED, disregarded corporate structure and wrongfully diverted, converted and depleted corporate assets of LIC and ARBITRAGE for his own personal benefit and the benefit of the Bernstein family trusts and other entities. The wrongful actions of SIMON in diverting and converting corporate assets rendered LIC Holdings, and possibly ARBITRAGE insolvent and unable to pay employees and creditors such as STANSBURY.

D. Stansbury's Damages.

Based upon reports prepared for the period of 2007 through 2011, the Bernstein Companies received **\$35,384,246.00** in net retained commissions during that time period. Mr. Stansbury is entitled to 15% of those net retained commissions, which amounts to **\$5,307,636.90**. During this time period, STANSBURY'S salary compensation was **\$2,844,910.00**. Therefore, the shortfall in salary owed to Mr. Stansbury is **\$2,462,726.90**.

Additionally there is salary compensation owed to Mr. Stansbury as a result of a \$2,000,000.00 settlement in 2010 resulting from the resolution of a lawsuit involving Global Secured Capital. STANSBURY is entitled to 15% of those funds, which is **\$300,000.00**.

LIC also received \$507,891.00 in commissions in connection with a matter known as Biviano. STANSBURY is entitled to 15% of those funds, which is **\$76,183.65**. Finally, in April

of 2012, LIC received three commissions totaling approximately \$200,000.00 in the Levine, Wiss and Berley matters. STANSBURY is due salary compensation for these items in the amount of approximately **\$30,000.00**.

As a result of the foregoing, STANSBURY'S total claim for salary arising out of net retained commissions on new sales alone is **\$2,868,910.55**.

E. Reasonableness of Settlement.

STANSBURY can easily demonstrate damages of at least **\$2,868,910.55**. The total assets of the Estate as reported in the May 1, 2014 Final Accounting of Personal Representative are \$1,107,664.39, less than half the amount of STANSBURY's demonstrable damages. (This does not take into account the life insurance proceeds at issue in the Chicago litigation, which is still ongoing.) Therefore, the settlement amount to be paid to STANSBURY of \$340,000, which amount equals just 12 percent of STANSBURY's provable damages, is more than reasonable. Additionally, legal expenses and other costs will not continue to be expended in defense of the lawsuit. As a result, for the reasons stated, the settlement is in the best interests of the Estate as it avoids the risk that its assets could be completely depleted should STANSBURY prevail on the merits in both liability and damages.

Further, Section 733.708, Fla. Stat. (2013) provides:

...Compromise

When a proposal is made to compromise any claim, whether in suit or not, by or against the estate of a decedent ... , the court may enter an order authorizing the compromise if satisfied that the compromise will be for the best interest of the interested persons. The order shall relieve the personal representative of liability or responsibility for the compromise...

In fact, the Personal Representative has a duty to "proceed expeditiously with the settlement and distribution of the decedent's estate..." See, Fla. Stat. § 733.603.

IV. The Personal Representative Has Authority to Settle the Lawsuit Brought by William Stansbury Even Without Court Approval.

A. The Will of Simon Bernstein authorizes the Personal Representative to settle claims without court approval

Article IV(2) and IV(2)(h) of the Will of Simon Bernstein admitted to probate in the

Estate expressly provides as follows:

ARTICLE IV. PERSONAL REPRESENTATIVES

* * * * *

2. Powers of Personal Representative. My fiduciary may exercise its powers *without court approval*. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

* * * * *

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay claims or demands by or against the estate. (Emphasis added.)

Under the plain terms of the Will, the Personal Representative (“PR”) has authority to settle the claim without approval from this court. The Personal Representative now seeks court approval of the settlement, and if the PR supports settlement, this Honorable Court should approve the settlement as requested.

B. Florida statutes empower the Personal Representative to settle claims against the Estate without Court approval.

Section 733.612, Fla. Stat. (2013), provides as follows:

733.612. Transactions authorized for the personal representative; exceptions

Except as otherwise provided by the will or court order, and subject to the priorities stated in s. 733.805, *without a court order*, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

* * * * *

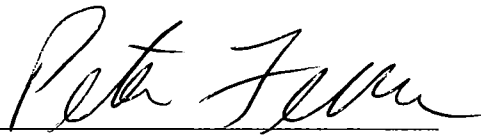
(24) Satisfy and settle claims and distribute the estate as provided in this code.

* * * * *

(emphasis added)

Under the plain language of the statute, the PR has authority to settle the claim without approval from this court. The Personal Representative now seeks court approval of the settlement, and if the PR supports settlement, this Honorable Court should approve the settlement as requested.

Respectfully submitted,



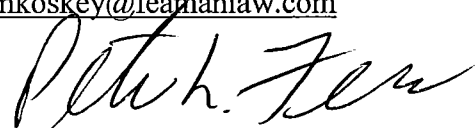
Peter M. Feaman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service to: Alan Rose, Esq., MRACHEK, FITZGERALD ROSE, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; William H. Glasko, Esq., Golden Cowan, P.A., PALMETTO BAY LAW CENTER, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com; Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20th Floor, West Palm Beach, FL 33401, boconnell@ciklinlubitz.com; John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, john@jmorrisseylaw.com; Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, ijb@ijblegal.com; and Gary R. Shendell, Esq., Shendell & Pollock, P.A., 2700 N. Military Trail, Suite 150, Boca Raton, FL 33431, gary@shendellpollock.com, on this 26 day of January, 2015.

PETER M. FEAMAN, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
Service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: _____



Peter M. Feaman
Florida Bar No. 0260347

STATE OF FL

COUNTY OF PALM BEACH

Court File No. 502012CP004391XXXXSB

In Re: Estate of
SIMON L BERNSTEIN

WRITTEN STATEMENT OF CLAIM

TO THE PERSONAL REPRESENTATIVE OF THE ABOVE NAMED ESTATE:

Claimant Wells Fargo Bank, N.A. states;

1. Claimant's Address: Attn: Specialty 1 HOME CAMPUS, MAC# X2303-023, Des Moines, IA 50328;
2. Claimant claims that the estate is indebted or will become indebted in the amount of \$523,019.85 plus any interest accrued after the date of this claim and any fees and/or costs accrued after the date of this claim that are required to secure the recovery of the original claim amount);;
3. That the nature of the claim is Home Equity Line of Credit Account Number ending in 190001;
4. That the claim arose prior to the death of the decedent on or about 6/8/2004, or the claim arose at or after the death of the decedent, on or about 9/13/2012;
5. That claim is secured by 7020 LIONS HEAD LANE, BOCA RATON, FL 33496;
6. That claim was or will be due and payable as per terms of contract.
7. That if the claim is contingent or un-liquidated, the nature if the uncertain as follows:

2012 NOV -9 PM 2:51
 FILED
 SHAWN R. BOCK, CLERK
 PALM BEACH COUNTY, FL
 CIRCUIT PROBATE 2

Dated Thursday, October 25, 2012

Wells Fargo Bank, N.A.

Debra Borrall

Debra Borrall, Vice President Loan Documentation

Wells Fargo Servicing Center
 1 Home Campus
 Des Moines, IA 50328-0001
 MAC # X2303-023
 866-401-7737

Note: Claim may be presented to Personal Representative or filed with Court Administrator.

Copy Mailed to Attorney
 on **NOV 16 2012**
 Clerk of Circuit Civil
 By: *Elizabeth Sartore*

EXHIBIT
 1

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF
SIMON BERNSTEIN

PROBATE DIVISION
File Number 502012CP004391XXXXSB

Deceased.

Division PROBATE

STATEMENT OF CLAIM BY WEST ASSET MANAGEMENT, INC. for AMERICAN EXPRESS

The undersigned hereby presents for filing against the above estate this statement of claim and alleges:

1. The basis for the claim is Account # [REDACTED]

2. The social security or tax identification number of the claimant is [REDACTED]
the name and address of the claimant are WEST ASSET MANAGEMENT, INC. for AMERICAN EXPRESS, 7171 MERCY RD, PO BOX 6183, OMAHA, NE 68106-0183 and the name and address of the claimant's attorney, if any, are as set forth below.

3. The amount of the claim is \$ 34,215.15 which amount is now due, or, if not due, will become due on _____

4. The claim (is) (is not) contingent or unliquidated. If contingent or unliquidated, the nature of the uncertainty is The claim is not contingent or unliquidated.

5. The claim (is) (is not) secured. If secured, the security consists of _____
The claim is () secured (X) not secured.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on January 07, 2013

Kenn D DeMue

Claimant

Attorney for Claimant

Copy mailed to attorney for the Personal Representative on 01-07-2013

7171 MERCY RD.
PO BOX 6183
OMAHA, NE 68106-0183
(address)

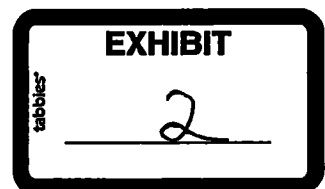
CLERK OF THE CIRCUIT COURT

Telephone: 1-800-878-3317

By: *Jan 14, 2013*
Sharon Hoyle

MUST BE FILED IN DUPLICATE

[Print or Type Names Under All Signature Lines]



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF

SIMON L. BERNSTEIN

Deceased.

PROBATE DIVISION

File No.
502012CP004391IZXXXXSB

2013 JAN 16 PM 1:38

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CTY BRANCH-FILED

STATEMENT OF CLAIM BY CBIZ GOLDSTEIN LEWIN

The undersigned hereby presents for filing against the above estate this statement of claim and alleges:

1. The basis for the claim is Professional Fees for services rendered.
2. The name and address of the claimant are CBIZ Goldstein Lewin, 1675 N. Military Trail, 5th Floor, Boca Raton, FL 33486 and the name and address of the claimant's attorney, if any, are as set forth below.
3. The amount of the claim is \$1,886.94 which amount is now due.
4. The claim is not contingent or unliquidated.
5. The claim is not secured.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on January 15, 2013.

Cinley
Claimant

Copy mailed to attorney for Personal Representative on 1/19, 2013.

CLERK OF THE CIRCUIT COURT

BY: Susan Robell

MUST BE FILED IN DUPLICATE

