

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE NO: 502012CP4391XXXXNB

IN RE: ESTATE OF SIMON L. BERNSTEIN

Deceased.

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PROCEEDINGS BEFORE  
HONORABLE JOHN PHILLIPS

DATE: September 15, 2015

TIME: 9:27 a.m. to 10:32 a.m.

1 APPEARANCES:

2

3 APPEARING ON BEHALF OF THE PERSONAL REPRESENTATIVE:

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5 JOIELLE A. FOGLIETTA, ESQ.  
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7 West Palm Beach, FL 333401

8 APPEARING OF BEHALF OF WILLIAM STANSBURY:

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13 APPEARING ON BEHALF OF MOLLY SIMON, et al:

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18 APPEARING ON BEHALF OF TED S. BERNSTEIN:

19 ALAN B. ROSE, ESQ.  
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23 APPEARING ON BEHALF OF TESCHER & SPALLINA:

24 KENNETH S. POLLOCK, ESQ.  
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Boca Raton, FL 33431

ALSO PRESENT: Eliot Bernstein

25

1           BE IT REMEMBERED, that the following  
2       proceedings were taken in the above-styled cause  
3       before Honorable JOHN PHILLIPS, at the Palm Beach  
4       County Courthouse, 3188 PGA Blvd., Palm Beach  
5       Gardens, County of Palm Beach, State of Florida, on  
6       Tuesday, the 15th day of September, 2015, to wit:

7

8           THE COURT: We're here on the Simon  
9       Bernstein case; is that right?

10          MS. FOGLIETTA: Yes, Judge.

11          THE COURT: This ended up in this division  
12       of the Court because of a recusal from somebody  
13       else in another division of the Court, right?

14          MR. FEAMAN: That raises an interesting  
15       point. Peter Feaman on behalf of William  
16       Stansbury, a creditor of the estate. I was  
17       late coming in. Mr. O'Connell is late. All  
18       the attorneys and the litigants are either in  
19       West Palm or south. I respectfully don't  
20       understand how we ended up here in the north  
21       branch. Should we set it back to the main  
22       branch?

23          THE COURT: No. That would be judge  
24       shopping. When somebody recuses themselves  
25       then it's randomly reassigned. I was verifying

1           this isn't a case that started out with me.  
2           It's a case that started out with somebody  
3           else.

4           MR. FEAMAN: Judge Colin, actually,  
5           specifically said in his recusal order north  
6           branch, which I didn't understand.

7           THE COURT: That's what the 4th DCA is  
8           for. I'm not here to question some other  
9           judge's order. You won't have me saying he was  
10          wrong. I'm not the appellate judge. If  
11          somebody made a mistake and you all think  
12          there's relief that should be granted to  
13          correct his mistake that's what the 4th is for.  
14          Please have a seat.

15          We're here because somebody else is not  
16          the judge in the case anymore and I am, right?

17          MR. FEAMAN: Right.

18          THE COURT: We'll go to the next step.  
19          This is a case management conference. What is  
20          it that I need to do to manage the case? I  
21          received the trustees' status report which is  
22          lengthy and comprehensive. I've read that.

23          Other than being brought up to speed by  
24          having read that report what else needs to be  
25          resolved to get this case done?

1           MR. ROSE: Good morning. I'm Alan Rose.  
2           Can I speak from here?

3           THE COURT: You can.

4           MR. ROSE: I'm not planning on doing the  
5           whole hearing, but briefly there are,  
6           technically, four other cases that all were  
7           assigned. I think we've noticed a status  
8           conference in all four cases.

9           There are two estates. The Simon  
10          Bernstein that Your Honor mentioned, he died in  
11          2012.

12          THE COURT: Then there's the wife who  
13          pre-deceased him, has a case, and I've been  
14          asked to consider -- one of the things that  
15          needs to be done is the closing of that estate.

16          MR. ROSE: Correct. She died in 2010.  
17          Each of those estates builds into a trust, so  
18          there's technically four pieces of pending  
19          litigation; an estate of Shirley, a Shirley  
20          trust construction, and an estate of Simon and  
21          claim in the Simon trusts for the removal of my  
22          client. Those are the four separate matters.  
23          And then we came before you -- when Judge Colin  
24          recused himself there were pending motions  
25          counsel thought best to come and get some sort

1 of order.

2 The one thing that we believe, at least  
3 which was in the status report which should be  
4 addressed fairly early on, is whether we're  
5 going to have a guardian ad litem for the three  
6 minor children that are represented by Eliot  
7 Bernstein, and try to bring some order to this  
8 case which I think was a little bit out of  
9 control in Judge Colin's courtroom.

10 THE COURT: Is there a motion for  
11 appointment of a GAL? Has a motion been filed  
12 by someone?

13 MR. ROSE: I think the -- my understanding  
14 is the beneficiaries were about to file one. I  
15 don't think they filed yet. There is a pending  
16 motion to appoint an attorney for the children.  
17 It's sort of a similar issue. Maybe  
18 Mr. O'Connell can -- it's on one of his lists  
19 of motions.

20 And then there's -- I think the main thing  
21 we need to discuss is what order we're going to  
22 do the hearings in because along with the  
23 guardian ad litem it's our position the first  
24 thing we should decide, since almost every  
25 motion you're going to hear on Mr. O'Connell's

1 list is filed by Eliot Bernstein, is he's not a  
2 beneficiary. We have a one-count complaint to  
3 determine the validity of the documents. And  
4 under the documents, as drafted, he's  
5 disinherited. He's not a beneficiary under any  
6 way and if you remove his standing then I  
7 believe we can go to mediation and resolve  
8 almost all of these motions without taking up,  
9 probably, two or three weeks of the Court's  
10 time.

11 THE COURT: Well, I noticed in the  
12 trustee's status report that there was  
13 mentioned several times that he's not a  
14 beneficiary. So has there been an order that  
15 establishes that or is that just the position  
16 that's being argued by the --

17 MR. ROSE: Well, the documents themselves,  
18 the operative document, for example, Simon  
19 Bernstein's will -- the sole beneficiary is the  
20 trust. Simon Bernstein's trust the soul  
21 beneficiaries are his ten grandchildren.  
22 Shirley Bernstein's will, the sole beneficiary  
23 is her trust. Shirley Bernstein's trust gave  
24 Simon Bernstein the power of appointment to  
25 appoint and he appointed to his grandchildren.

1           So what we filed was a one-count complaint to  
2           determine those documents. We actually filed a  
3           trust construction action. Judge Colin advised  
4           us to file -- to add a count. We added one  
5           count to determine the validity of those  
6           documents. It's been answered by everybody,  
7           and what Judge Colin did was he severed that  
8           one count from everything else and he stayed  
9           everything else until we resolved that one  
10          count. That's the issue that we believe, if  
11          you resolve that issue first, a lot of the  
12          stuff would go away and that was part of the  
13          purpose of the status conference. The parties  
14          can't, among themselves, agree what issues  
15          should be heard first. If you did that issue,  
16          either if he has standing or he doesn't, if he  
17          doesn't have standing we'll good through  
18          hundreds of thousands of dollars of legal fees  
19          resolving motions that he filed if he lacked  
20          standing.

21                 I think if you couple it with a motion for  
22          a guardian ad litem there is a motion pending  
23          in a fifth case, the Oppenheimer case, that's  
24          also before you, not today, for a guardian ad  
25          litem. Judge Colin deferred on that. I



1 believe Mr. Morrissey's clients are going to  
2 move for a guardian ad litem. I believe Mr.  
3 Eliot Bernstein, in his papers, has indicated  
4 that he has a conflict with his children and  
5 they should have a lawyer and a guardian  
6 representing them. He can speak for himself to  
7 that point.

8 Those are the two issues we think should  
9 go first. If it happens first this case would  
10 become much more manageable and can even be  
11 resolved because, as we indicated in our  
12 report, these are relatively small estates.

13 There was a belief that's driving this  
14 that there was \$100 million left behind but  
15 they left behind modest estates. Over time  
16 we've been trying to sell property and trying  
17 to narrow things and all we've been doing is  
18 spending attorneys' fees between a curator --

19 THE COURT: I just want to figure out  
20 what's on the judicial plate that needs to be  
21 addressed.

22 MR. ROSE: That's what we think should  
23 happen first, those two issues, and everything  
24 else will fall into place.

25 THE COURT: What is the name or where is

1 the document to be found that has this single  
2 count for determination of validity of estate  
3 documents or trust documents that was severed  
4 out by Judge Colin?

5 MR. ROSE: It's in case 5020143698 --

6 THE COURT: What are the two letters in  
7 between the 14 and the 36 --

8 MR. ROSE: I'm sorry, CP003698XXX and now  
9 --

10 THE COURT: I don't need that stuff.  
11 What's the docket entry number?

12 MS. FOGLIETTA: The filing number?

13 THE COURT: I want to know where to find  
14 this thing that seems to be one of the first  
15 things --

16 MS. FOGLIETTA: Are you talking about the  
17 amended complaint? I have a copy.

18 MR. ROSE: Just the docket entry, if you  
19 don't mind.

20 THE COURT: I have a computer here so  
21 don't think I'm being rude if I look away from  
22 you all.

23 MR. ROSE: It was filed October 3, 2013.

24 MS. FOGLIETTA: I have a copy.

25 MR. ELIOT BERNSTEIN: Can I make an

1 objection?

2 THE COURT: Who are you?

3 MR. ELIOT BERNSTEIN: I'm Eliot Bernstein.

4 THE COURT: You can't object yet.

5 MR. ELIOT BERNSTEIN: Can I make a  
6 statement?

7 THE COURT: Not yet. I'm looking at this  
8 computer screen trying to find the docket.  
9 Everybody, please be seated. You're making me  
10 nervous.

11 I'm just scrolling through the attorneys.  
12 I haven't even gotten to the pleadings yet.  
13 I'm looking for a pleading or an order entered  
14 October 3rd.

15 MR. ROSE: An amended complaint.

16 THE COURT: I have an amended complaint by  
17 Ted Bernstein.

18 MR. ROSE: Yes.

19 THE COURT: And in that amended complaint  
20 is the count that was referred to. It's Count  
21 II?

22 MR. ROSE: I believe it is, Sir.

23 THE COURT: All right.

24 MR. ROSE: Page 13 is the actual -- the  
25 count itself incorporates the allegations and

1 the documents.

2 THE COURT: All right. Count II starts at  
3 Paragraph 79 of the document?

4 MR. ROSE: Yes, sir.

5 THE COURT: All right. And then at some  
6 point in time you say Judge Colin severed out  
7 this count and said it should be heard  
8 separately. Is that --

9 MR. ROSE: He severed it and stayed --

10 THE COURT: Do you know when the order was  
11 entered on that?

12 MR. ROSE: 10-6 according to the chart  
13 from --

14 THE COURT: 10-6-14?

15 MR. ROSE: Yes. It says order on  
16 amendments to pleadings. There might be an  
17 order that predates that.

18 MS. FOGLIETTA: I do have a copy of it.

19 THE COURT: The other is almost the very  
20 next docket entry. The amended petition is  
21 Docket Entry 26. The order is Docket Entry 27.

22 MR. ROSE: Specifically Paragraph 3 on  
23 Page 2.

24 THE COURT: There was a response filed by  
25 Mr. Bernstein and the other defendants. Are

1           those things that happened?

2           MR. ELIOT BERNSTEIN:  What case?  Is this  
3           Shirley Bernstein --

4           THE COURT:  Case Number 14CP3698.

5           MR. ROSE:  Everyone has either answered or  
6           been defaulted and I noticed the case for  
7           trial.

8           MR. ELIOT BERNSTEIN:  Are we here for  
9           Simon Bernstein?  I'm confused.  I'm not  
10          prepared for Shirley Bernstein's case today.  
11          Can I raise another point, Your Honor?

12          THE COURT:  I only do one thing at a time.  
13          You must stop.

14          MR. ELIOT BERNSTEIN:  What?

15          THE COURT:  You must stop.  I do one thing  
16          at a time.  You're not that thing yet.

17          MR. ELIOT BERNSTEIN:  Okay.

18          THE COURT:  This is a case management  
19          conference.  I'm not deciding anything.  I do  
20          decide that I'm the one that runs this  
21          courtroom so I don't have people jumping up and  
22          blurting things out.  That doesn't help me  
23          orderly go through figuring out what the  
24          problem is and how to attack and resolve the  
25          problem.  My specialty is wrestling stuff to

1 the ground and resolving it. That's what I'm  
2 going to do in this case and that's what I do  
3 in every case. This is a bigger one to wrestle  
4 to the ground than some other ones but there's  
5 no octopus case that I've ever met that I  
6 haven't been able to figure out sooner or  
7 later. The only way I can do that is talk to  
8 one person at a time. We'll figure out one  
9 thing at a time. I'm not a smart guy but I'm  
10 persistent. All these guys know me. I'm  
11 looking you in the eye because you haven't met  
12 me before, right? Sir, yes, you haven't met  
13 me?

14 MR. ELIOT BERNSTEIN: Yes, sir.

15 THE COURT: Okay. So you don't know me.  
16 These other attorneys do because they're in  
17 court in front of me on other cases where I've  
18 done the same thing. I'm too stupid to --  
19 well, I'm stupid. I take one thing at a time  
20 and I make sure I know what I'm doing and I go  
21 to the next thing. I try to be courteous to  
22 everybody. I try to make sure everybody is  
23 heard. I demand that people be courteous to me  
24 in return. I don't take any crap. In that  
25 method of proceeding we get through whatever is

1           uncomfortable, whatever is messed up, whatever  
2           is complex. We simplify it down enough for me  
3           to understand it and then we resolve it.

4           That's what is going to happen in this case.

5           MR. ELIOT BERNSTEIN: So my question is --

6           THE COURT: I told you I'm not talking to  
7           you yet. I was talking to you to tell you what  
8           I'm doing so you're not mystified, but now you  
9           sit silently until it's my time to talk to you.  
10          Right now I'm talking to some other people.

11          Okay, so --

12          MR. ROSE: May I approach --

13          THE COURT: -- the trustees believe the  
14          first thing that needs to be done is the  
15          resolution of this order that was entered by  
16          Judge Colin severing out the count and the  
17          amended complaint that deals with the validity  
18          of the testamentary documents, correct?

19          MR. ROSE: Yes, sir.

20          THE COURT: All right. Does anybody  
21          object to that issue being resolved first in  
22          the order of events in this sequence of cases?

23          MR. O'CONNELL: Are you ready for me?

24          THE COURT: Yeah, I just want to know if  
25          there's any objection to having that issue

1 heard and resolved first. That's the issue  
2 that I'm chewing on right now.

3 MR. O'CONNELL: Okay. I wouldn't call it  
4 an objection, but I'd like to be able to  
5 explain my role in it and these other motions.

6 THE COURT: Well, first I want to know if  
7 there's any reason I should attack this as the  
8 first order of business in setting a trial or  
9 hearing to have it resolved. Do you have any  
10 objection?

11 MR. O'CONNELL: I wouldn't object to that.

12 THE COURT: All right. Does anybody else  
13 seated at the tables have any objection?

14 MR. FEAMAN: May it please the Court.  
15 Peter Feaman on behalf of William Stansbury.  
16 He's a \$2.5 million creditor of the estate of  
17 Simon Bernstein.

18 We're here in the estate of Simon  
19 Bernstein and it's the position of  
20 Mr. Stansbury that a removal of Ted Bernstein  
21 as successor trustee should be heard first.

22 THE COURT: Okay. Why?

23 MR. FEAMAN: The reason for that is if  
24 that issue is determined one way or the other  
25 we believe that is the linchpin to then



1 resolving probably all the other issues in this  
2 case.

3 THE COURT: The trustee believes the issue  
4 to resolving many of the issues is to determine  
5 whether Eliot -- I'm using first names, I'm  
6 sorry. Is it Mr. Bernstein, Eliot Bernstein?

7 MR. ELIOT BERNSTEIN: You can call me  
8 Eliot.

9 THE COURT: Okay. I don't mean to be  
10 disrespectful. I don't want to do that.

11 The trustee's thought is that resolving  
12 whether Eliot has any standing to be involved  
13 in the litigation is key. You're saying that's  
14 not key, it's something else that's key? What  
15 else is it that you're suggesting is the key  
16 issue to be resolved?

17 MR. FEAMAN: Because that's the Shirley  
18 Bernstein trust. The matter that is before  
19 Your Honor today is the estate of Simon  
20 Bernstein, and Simon Bernstein had a separate  
21 trust which was different from the Shirley  
22 Bernstein trust and the -- most of the assets  
23 are in the Simon Bernstein trust which then had  
24 the pour-over will into -- most of the assets  
25 are in the Simon Bernstein estate and then had

1           the pour-over will into the trust and that's --  
2           that's the matter that is the most significant,  
3           in my humble opinion, that is before Your Honor  
4           is the Simon Bernstein estate and the Simon  
5           Bernstein trust. It's the opinion of  
6           Mr. Stansbury that Mr. Ted Bernstein, as a  
7           successor trustee to the Simon Bernstein trust,  
8           should be heard first.

9           THE COURT: Let me ask this: How is it  
10          that there is an order by Judge Colin severing  
11          out this count about the validity of some  
12          estate documents in the Simon Bernstein case if  
13          the documents in question were filed in a  
14          different estate? Maybe the trustee can  
15          address that.

16          MR. ROSE: Sure.

17          THE COURT: What's up with that?

18          MR. ROSE: We have a trust construction  
19          count that was to determine the validity and  
20          then the construction of the Shirley Bernstein  
21          trust. Within that claim, because there's an  
22          overlap of issues there, the standing issue is  
23          the same in both. What Judge Colin ordered me  
24          to do was to file an additional count into that  
25          complaint. Everyone was properly noticed. We

1           already had the jurisdiction over all the  
2           beneficiaries, those that answered, those that  
3           did not. Nobody moved to dismiss upon the  
4           ground that it's not properly in one case, and  
5           so because there's a direct overlap between  
6           documents that were executed and the validity  
7           of those documents, and the validity of the  
8           will of Simon directly relates to the validity  
9           of the exercise of power of appointment because  
10          he exercised his power through his will. So  
11          what Judge Colin did was he ordered me to file  
12          a simple one-count complaint, as simple as it  
13          could be, list the four documents and allege  
14          that they're all valid and enforceable. In the  
15          context of trying that issue you will decide  
16          whether, for example, Simon Bernstein was  
17          unduly influenced, if that's an allegation, to  
18          execute the power of appointment. The power of  
19          appointment is what deprives Mr. Eliot  
20          Bernstein of standing. Judge Colin ordered us  
21          all put it all in this count. He then stayed  
22          everything else and severed that and we're  
23          supposed to try that and we get bogged down  
24          constantly in --

25                   THE COURT: Don't get sidetracked or I'll

1 get confused and disaster happens.

2 Mr. Bernstein, Eliot Bernstein, you've got  
3 an objection to the trial of the issue about  
4 the validity of the estate documents that's  
5 just been discussed?

6 MR. ELIOT BERNSTEIN: Yes, sir.

7 THE COURT: What's your objection?

8 MR. ELIOT BERNSTEIN: Several, with that  
9 being the first thing. The first part is that  
10 Mr. O'Connell has filed with the court in the  
11 Simon Bernstein estate nothing to be done with  
12 Ted Bernstein as trustee because Mr. O'Connell  
13 and Mr. Feaman, two prominent lawyers that you  
14 know, have claimed that the document itself  
15 that they're operating under precludes Ted  
16 Bernstein from being a trustee. The language  
17 says he can't be a related party --

18 THE COURT: You got to get back to my  
19 question.

20 MR. ELIOT BERNSTEIN: Here's the problem  
21 --

22 THE COURT: No. I'm the one that's  
23 telling you the question I'd like you to  
24 answer. Remember I told you I chew on one tiny  
25 thing at a time. I don't want to get confused.

1 I might make a mistake if I get confused.

2 This is the thing I'm trying to establish  
3 in my mind now: What is your objection to  
4 trying the issue about the validity of the  
5 estate documents that are found in Count II of  
6 the amended petition, Docket Entry Number 26?

7 MR. ELIOT BERNSTEIN: My problem is is  
8 that if Ted is not a trustee properly serving,  
9 and a fraudulent trustee as they're claiming  
10 and he's acting improperly, to have a hearing  
11 where Ted's arguing validity where he's  
12 conflicted, I mean if he doesn't argue  
13 successfully, his entire family and children  
14 are cut out of everything. So he's got a  
15 conflict in arguing a construction --

16 THE COURT: You're not even addressing my  
17 question. Thank you. Please be seated.

18 MR. ELIOT BERNSTEIN: I did answer your  
19 question because how can we have -- how can we  
20 hear his --

21 THE COURT: You're asking me a question.  
22 Your question started with how do we do  
23 something. I don't know.

24 MR. ELIOT BERNSTEIN: I'm saying we can't  
25 hear --

1           THE COURT: Stop. Please be seated. You  
2 failed to answer my question. You got  
3 something else on your mind that doesn't  
4 address what I'm trying to figure out.

5           Is it true that Judge Colin issued a stay  
6 order on the other parts of the litigation and  
7 it intended -- somehow he manifested an  
8 intention to resolve the validity of the estate  
9 documents? Is there an order that says that  
10 somewhere?

11           MR. ROSE: I think that goes too far.  
12 There are multiple proceedings. He severed  
13 this count --

14           THE COURT: I got that.

15           MR. ROSE: It's our view that that should  
16 be what is decided --

17           THE COURT: I know. But you said a minute  
18 ago that he stayed other proceedings. Is there  
19 an order that says that? Where do I find that  
20 order?

21           MR. ROSE: It's the one that you looked  
22 at, October 6th. It stays the rest of the  
23 proceedings inside the Shirley Bernstein trust  
24 construction case. It doesn't stay everything  
25 in the Simon Bernstein side.

1 THE COURT: Okay.

2 MR. ROSE: That's what I was clarifying.

3 THE COURT: Okay. You've been living with  
4 these cases for several years.

5 MR. ROSE: Yes.

6 THE COURT: I've been living with them for  
7 30 minutes so I'm not as intimately familiar  
8 with the ins and outs of what's going on here.  
9 I'm not even familiar with everybody's names,  
10 so I apologize to you for that.

11 Well, then there's no reason for me not to  
12 set a trial on that Count II of the amended  
13 complaint, right? I'll do that whether  
14 everybody wants me to do or not that way I'll  
15 get something done and that way we'll move down  
16 the road. That will be done. Court to order  
17 set. How much time you think we need to try  
18 that?

19 MR. ROSE: Normally I would think we can  
20 try the case within a day.

21 THE COURT: Okay. Anybody think we need a  
22 different amount of time?

23 MR. ELIOT BERNSTEIN: Yeah. I think it  
24 will take several days.

25 THE COURT: Why?

1           MR. ELIOT BERNSTEIN: Well, you're going  
2           to have to first start with is Ted Bernstein a  
3           valid trustee to argue the case. So that's --

4           THE COURT: No, I won't have to decide  
5           that.

6           MR. ELIOT BERNSTEIN: You want somebody to  
7           argue who's not valid --

8           THE COURT: What else? Any other issue?  
9           Is there any other issue that's going to take  
10          more than a day?

11          MR. ELIOT BERNSTEIN: Well, it's very  
12          complicated.

13          THE COURT: No, this isn't going to be  
14          complicated.

15          MR. ELIOT BERNSTEIN: Okay.

16          THE COURT: It's not. There's documents,  
17          pieces of paper that somebody claims were  
18          executed or not executed.

19          MR. ELIOT BERNSTEIN: There's been fraud  
20          in the document.

21          THE COURT: I was explaining to you  
22          something. If you interrupt me you can be held  
23          in contempt. If I interrupt you I'm keeping  
24          order in my courtroom. You see the difference  
25          there? This is not a conversation. Okay. No



1           need for me to explain anything further. I  
2           intend to set this for trial. I intend to set  
3           it for a day. I intend that issue of the  
4           validity of the estate documents will be  
5           resolved in that trial. Is there any reason to  
6           not think I can do that in a day other than  
7           what Mr. Eliot Bernstein has mentioned?

8           MR. FEAMAN: On behalf of Mr. Stansbury we  
9           have no involvement in the Shirley Bernstein  
10          estate.

11          THE COURT: So you don't care what I do.

12          MR. ROSE: Mr. O'Connell is a party, he's  
13          intervening because of the overlap of the power  
14          of appointment. I can't speak for him but I  
15          want to make sure he agrees that a day is  
16          enough. We are all bad estimators.

17          THE COURT: I asked this question to the  
18          entire courtroom. If anybody thinks  
19          differently then what I'm getting ready to do  
20          you're supposed to say something. He hasn't  
21          said anything.

22          MR. MORRISSEY: Judge, John Morrissey. I  
23          represent four of the adult grandchildren who  
24          will ultimately be beneficiaries under the  
25          trust document.

1 THE COURT: Okay.

2 MR. MORRISSEY: So certainly my clients  
3 have an interest here in what's going on. I  
4 just want to let Your Honor know, because I  
5 don't think -- I hope Mr. Feaman is not  
6 misleading the Court. On two occasions so far  
7 he said that he represents a creditor of the  
8 estate, that's incorrect.

9 THE COURT: William Stansbury.

10 MR. MORRISSEY: Correct. William  
11 Stansbury is not a creditor of the estate.  
12 He's someone who filed a claim in the estate.  
13 An objection was filed by the personal  
14 representative, or counsel for the personal  
15 representative, which means that Mr. Stansbury  
16 had 30 days to run off and file his lawsuit  
17 which he's done. He's not done anything with  
18 that separate civil litigation. It's not been  
19 reduced to a judgment. He is not a creditor,  
20 therefore, Judge, he does not have standing not  
21 only with respect to the validity of the  
22 documents but with respect to anything else in  
23 these various litigations.

24 THE COURT: That's not helping me figure  
25 out how much time I need to set aside for this

1 trial.

2 MR. MORRISSEY: I'm sorry.

3 THE COURT: When I'm telling you I'm a  
4 simple guy I'm not being modest. I'm just  
5 being truthful. That's where I'm at. I'm  
6 going to write down what I do next when I leave  
7 this room. What I do next when I leave this  
8 room is tell my judicial assistant to reserve a  
9 day, set this trial date, send you notices.  
10 Bang. That thing is done. So that's why I  
11 want to stick with this. Do you have any  
12 objection to that?

13 MR. MORRISSEY: No.

14 THE COURT: Okay. Great. This is the way  
15 I intend to proceed -- I love Marty Colin.  
16 This guy is a judge that's been around a long  
17 time. I know him. He's an entirely different  
18 guy than me. I expect that your experience  
19 with Judge Colin has been different than  
20 sitting here with me. Am I right? I never  
21 appeared in front of him as a judge -- I never  
22 appeared in front of him while he's a judge and  
23 while I was a lawyer. He appeared in front of  
24 me while he was a lawyer and I was a judge. I  
25 don't know how he is as a judge but I am pretty

1           sure he's a different guy than me. Nice guy.  
2           I like him. But we're different judges. Your  
3           experiences with Judge Colin, put them aside.  
4           You're having an experience with me now. We  
5           have to do it the way I do it or else I'll mess  
6           up.

7                     The second thing I have on my list of  
8           things to ask you about that I've been jotting  
9           down here is this request for guardian ad  
10          litem. I think I remember asking and being  
11          told that no one has filed a formal request for  
12          appointment of a guardian ad litem; is that  
13          correct?

14                    MR. O'CONNELL: Correct.

15                    MR. ROSE: In these four cases no one has  
16          done that yet.

17                    THE COURT: Okay. Am I going to?

18                    MR. ELIOT BERNSTEIN: I believe they have,  
19          actually.

20                    THE COURT: When was it filed? What  
21          docket entry?

22                    MR. ELIOT BERNSTEIN: I don't know. It  
23          was denied a long time ago by Tescher and  
24          Spallina, the guys that were removed for fraud  
25          in the court. They tried to put guardians on

1           --

2           THE COURT:  No, no, no.  You see I don't  
3           want all the other baggage.  I just want the  
4           answer to that question.  When was it filed?

5           MR. ELIOT BERNSTEIN:  I don't know.  At  
6           the beginning.

7           THE COURT:  At the beginning.  That takes  
8           me to the bottom.  That slows down progress on  
9           our case management conference.  I will go  
10          through it.  What was the title of the  
11          pleading?

12          MR. ELIOT BERNSTEIN:  I don't know.  I  
13          don't think Joy's records went back that far.

14          MS. FOGLIETTA:  We pulled things that were  
15          pending, Judge.  I don't have that.

16          MR. MORRISSEY:  On behalf of the four  
17          adult grandchildren it's our intention to file  
18          one.  We were hoping to file one before today's  
19          hearing.

20          THE COURT:  Okay.  Since that hasn't been  
21          filed then I'm not taking action on it.  That's  
22          my practice.  If there's something filed I'll  
23          move towards getting it resolved.  If it's not  
24          been filed and it's just in somebody's mind I  
25          find that it's difficult to take any action.

1 I'm crossing that off my list.

2 There's a pending motion to appoint  
3 attorneys -- an attorney for the children. Is  
4 that an attorney ad litem?

5 MR. ELIOT BERNSTEIN: An attorney for my  
6 children.

7 THE COURT: Who filed that motion?

8 MR. ELIOT BERNSTEIN: Me.

9 THE COURT: When did you file?

10 MR. ELIOT BERNSTEIN: Just to pay the fees  
11 for counsel for my children.

12 THE COURT: When did you file it is what  
13 I'm trying to figure it out.

14 MR. ELIOT BERNSTEIN: A while ago.

15 THE COURT: Any closer estimate than that?

16 MR. ELIOT BERNSTEIN: I've been filing  
17 that since the first petition in this case in  
18 May of 2013 which still isn't heard.

19 THE COURT: May of 2013 is when you filed  
20 it?

21 MR. ELIOT BERNSTEIN: Yeah.

22 MR. O'CONNELL: We think we found one  
23 August 28, 2014 in the Simon Bernstein estate.

24 THE COURT: The Simon Bernstein estate is  
25 the only one I got up on the computer. The

1           only thing that happened on August 20th is an  
2           order by Judge Colin maybe.

3           MR. O'CONNELL: 28th, sorry, Your Honor,  
4           2-8.

5           THE COURT: Okay. I just got my trifocals  
6           reissued. These are the old ones so an 8 and a  
7           0 look alike. I'm moving my head and trying to  
8           focus. Bear with me a second.

9           I don't see anything anywhere near the  
10          28th of August of '14. Is that the year, '14?

11          MR. O'CONNELL: Yes. It says, "Motion to  
12          compel estates of Simon and Shirley to pay  
13          counsel for Eliot and his minor children."

14          MS. FOGLIETTA: That's in case number --

15          THE COURT: Well, I don't see any motion  
16          with that description. Perhaps the Court  
17          doesn't have it scanned in or something. Who  
18          knows. Anybody have a paper copy of it that I  
19          can look at?

20          MS. FOGLIETTA: I do.

21          THE COURT: I wouldn't mind looking at a  
22          paper copy if you got one handy.

23          MR. O'CONNELL: Sure.

24          THE COURT: And was there a ruling on this  
25          motion for having the estate pay for attorneys

1           for Eliot and his minor children? Has there  
2           been an order on this?

3           MR. O'CONNELL: Not that I'm aware of,  
4           Your Honor.

5           THE COURT: Was there ever a hearing?

6           MR. ROSE: I don't believe it was set for  
7           hearing. That was alluded to that  
8           Mr. Bernstein had requested an attorney for his  
9           children and I would suggest that -- subject  
10          to -- I don't think there was an objection from  
11          anyone -- it's not appropriate to appoint an  
12          attorney for his children. If you appoint a  
13          guardian ad litem to represent his children  
14          then the guardian ad litem has the power to go  
15          out and retain counsel and to accomplish the  
16          relief that's sought. We don't believe it's  
17          appropriate though for Mr. Bernstein himself,  
18          but certainly his children who are  
19          beneficiaries should have --

20          THE COURT: All right. It looks like this  
21          motion just asks for money. It's not asking  
22          for the appointment of counsel. Mr. Eliot is  
23          seeking the issuance of money from the trust  
24          for the estate. He alludes to the children  
25          needing an attorney but he doesn't ask for one



1 to be appointed. He asks if he can be given  
2 money.

3 There's an order I see, Docket Entry 24,  
4 where Judge Colin prohibits any new filings.  
5 I've not read the order yet but I see the title  
6 of the order takes up 20 lines of docket entry  
7 here in our computer program. I hope the order  
8 is shorter than the title.

9 MR. O'CONNELL: We got it for Your Honor.

10 (Handing)

11 THE COURT: Now are these copies ones I  
12 should return to you all or can I keep these?

13 MS. FOGLIETTA: You can keep them.

14 THE COURT: Thanks. Judge Colin had a  
15 case management conference. It's a case  
16 management order. How about that. It's a  
17 great order. He must have been having problems  
18 with the progress of this case to issue an  
19 order like that. That was at Docket Entry  
20 Number 24 which leads me to ask this question,  
21 perhaps foolishly, and that's the question if  
22 this order was entered by Judge Colin in  
23 September of 2014 at Docket Entry Number 24 how  
24 come we're up to 82 docket entries and other  
25 petitions and things and stuff being filed?

1 Did he disregard the order, because I think  
2 it's a great order, or did something else  
3 happen that I don't know about that changed the  
4 order, or did he retract the order?

5 MR. O'CONNELL: Let me try to help there.  
6 Just so you can get my position in all this, I  
7 want to explain. I am a successor personal  
8 representative in the Simon Bernstein estate,  
9 so that's my universe in terms of this matter.  
10 I got over a year at this point that I've been  
11 involved in that capacity. With regard to that  
12 particular order the way everyone has  
13 interpreted it is it has to do with anyone to  
14 institute new litigation, a new adversary  
15 matter they would have to go before Judge  
16 Colin, because we certainly have filed, on an  
17 administrative level, a number of motions of  
18 things that needed to happen.

19 THE COURT: Administrative stuff is  
20 allowed to happen.

21 MR. O'CONNELL: To go to your good  
22 question, well, why are there so many items,  
23 not that we filed a ton of motions and  
24 petitions but certainly, on my behalf, there  
25 are definitely some that we have filed.

1           THE COURT: Docket Entry Number 41 there  
2           is a petition to remove Theodore Stuart  
3           Bernstein as alleged successor trustee filed by  
4           Eliot Bernstein. How did that get filed? Did  
5           Judge Colin approved that?

6           MR. ELIOT BERNSTEIN: He directed that.

7           THE COURT: Say that again?

8           MR. ELIOT BERNSTEIN: He directed that.

9           THE COURT: So there was a hearing that he  
10          authorized this petition to be filed?

11          MR. ELIOT BERNSTEIN: Yes. And then a new  
12          case was started. He ordered a new case to  
13          remove Ted and we're in the middle of that.  
14          That's one of the cases.

15          Just to clarify something, I'm still  
16          confused, the first part about the hearing  
17          you're ordering, that's not --

18          THE COURT: We're not on that subject.

19          MR. ELIOT BERNSTEIN: Are we on Simon's  
20          case or Shirley's case? I'm confused by that.

21          THE COURT: I'm confused too. Welcome to  
22          my world.

23          MR. ELIOT BERNSTEIN: Welcome to mine.

24          THE COURT: We're going to eliminate some  
25          of the confusion by trying some of these things

1           pled in this case and one of them that's been  
2           pled is Count II of the amended petition of  
3           Docket Entry 26 that Judge Colin severed out  
4           and said is going to be tried separately.

5           MR. ELIOT BERNSTEIN: That's in Shirley.

6           THE COURT: I'm telling you what I'm  
7           doing. You asked me what I'm doing, to clarify  
8           what I'm doing. I just told you.

9           MR. ELIOT BERNSTEIN: Okay.

10          MR. ROSE: If I can, just briefly with  
11          that, what Judge Colin was doing is you can fax  
12          him the motion or bring it to his attention --

13          THE COURT: He uses fax? Okay. He is a  
14          dinosaur.

15          MR. ROSE: He would give permission that  
16          something could be filed or not filed. We had  
17          to go through the extra step of sending him in  
18          advance, or asking permission if I wanted to  
19          file a motion to approve a sale or whatever we  
20          had to get his permission in advance.

21          THE COURT: Okay. Thank you. I find  
22          there's no pending motion for appointment of  
23          attorneys for the children so I'm striking that  
24          off my list.

25          Now back to the William Stansbury claim

1           regarding the estate of Simon Bernstein. What  
2           is the pleading that sets up any claim that  
3           needs to be adjudicated in that case that was  
4           not already set? It's the one thing that  
5           you're not involved in. What about the claim  
6           you said that William Stansbury has?

7           MR. FEAMAN: That's a separate action that  
8           was filed and is pending before Judge Blanc in  
9           the general jurisdiction division.

10          THE COURT: Okay. So Blanc will figure  
11          that one out, right?

12          MR. FEAMAN: And the estate is a  
13          defendant.

14          THE COURT: I'm trying to figure out what  
15          I have to set. Blanc has that one, right?

16          MR. FEAMAN: Yes, yes, Your Honor.

17          The only thing, with regard to  
18          Mr. Stansbury, I believe, is Mr. Stansbury has  
19          filed a motion to discharge him from  
20          responsibility for funding the estate's  
21          participation in some Chicago litigation, and  
22          that should be borne by the estate, but that's  
23          already set before Your Honor on October 20th  
24          in the special set hearing.

25          THE COURT: When was that set? When did

1           the document hit the court records when --  
2           setting that hearing?

3           MR. FEAMAN: I'd say ten days ago. It was  
4           set for the day after tomorrow and it had to be  
5           reset at my request due to a conflict, and then  
6           it was set October 20, 2015 pursuant to a  
7           notice of hearing I believe our office sent  
8           out, I believe, ten days ago, approximately.

9           THE COURT: That would be in case number  
10          what?

11          MR. FEAMAN: That would be case Number  
12          124391CP -- 12 -- 2012CP4391.

13          THE COURT: Okay. So that's a different  
14          case than I have on the computer screen. Let  
15          me get that one up.

16          MR. FEAMAN: That's the case number that  
17          actually brings us here today pursuant to  
18          notice of hearing filed by Mr. O'Connell, the  
19          personal representative of the estate.

20          THE COURT: Just a second. I've been  
21          looking at, apparently, the trust case,  
22          14CP3698.

23          MS. FOGLIETTA: Judge, that's the Shirley  
24          trust.

25          THE COURT: Did you ever see Colin use a

1 computer in court?

2 MR. O'CONNELL: Not really.

3 THE COURT: That's why I call him a  
4 dinosaur. I'd say it to his face trying to get  
5 him to be more tech savvy.

6 I'm scrolling, okay. You see me scrolling  
7 with my finger. I've scrolled through all the  
8 attorneys. This is more like it. We're up to  
9 386, and roughly ten days ago there was some  
10 sort of hearing set. A re-notice of hearing.

11 MR. ELIOT BERNSTEIN: That was an  
12 objection to an accounting that I filed timely.

13 THE COURT: The notice of hearing,  
14 Mr. Feaman, that you scheduled, or you sent out  
15 that I'm referring to is called the fifth  
16 re-notice of hearing and it sets hearing on the  
17 motion of creditor William Stansbury for a  
18 hearing on October 20.

19 MR. FEAMAN: Yes, Your Honor.

20 THE COURT: You set aside a 15-minute  
21 period of time for that. Judge Blanc has got  
22 the litigation that you referred to in his  
23 court and he'll figure that out.

24 MR. FEAMAN: Correct.

25 THE COURT: All right.

1           MR. FEAMAN:  But there's also, with  
2           regard, if I may, Your Honor, to  
3           Mr. Stansbury's claim, Mr. O'Connell has also  
4           filed a motion to enter and approve a  
5           settlement agreement between the estate and  
6           Mr. Stansbury which is still out there.  But  
7           related to that is a motion by Mr. O'Connell  
8           filed on 7-20-2015 to have Simon Bernstein  
9           declared the beneficiary of the JP Morgan IRA  
10          account, and the reason it relates to  
11          Mr. Stansbury is because the settlement money  
12          contemplated to be paid to Mr. Stansbury would  
13          come out of that account and there's a question  
14          whether that is actually money that should be  
15          part of the estate or not so before we actually  
16          wanted to fund the settlement we wanted to -- I  
17          don't mean to speak for Mr. O'Connell -- we  
18          wanted to make sure that that would be  
19          appropriate source of funds to fund the  
20          settlement so there would be no clawback claims  
21          either against Mr. Stansbury or the estate  
22          subsequent to the consummation of the  
23          settlement.

24                 THE COURT:  Is that petition at issue?

25                 MR. FEAMAN:  It -- Mr. O'Connell?



1           MR. O'CONNELL: I don't think it was filed  
2           as an adversary matter. It's a free-standing  
3           petition.

4           THE COURT: Okay.

5           MR. O'CONNELL: Everybody has been served  
6           with it.

7           MR. ROSE: For the record we have no  
8           objection to that motion being granted. I  
9           don't know if anybody objects to the motion.  
10          That's certainly something that should be heard  
11          if it's objected to very early.

12          THE COURT: Unless somebody notices it up  
13          for hearing, get ready for that.

14          We've used up all the time I set aside for  
15          the Bernstein case. It would sure be nice to  
16          spend the rest of my career talking to you  
17          about this but I have other people scheduled at  
18          10:30 and I must see them now. Thanks a lot.  
19          I'll do my work on setting the trial on the one  
20          thing we got and we'll see what happens next.

21          MR. O'CONNELL: Thank you.

22          THE COURT: It was fun and look forward to  
23          a long list of hearings as well.

24          (Whereupon, the hearing is concluded at 10:32 a.m.)

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CERTIFICATE OF COURT REPORTER

I, JULIE ANDOLPHO, do hereby certify that the foregoing transcript of the proceedings, consisting of pages numbered 1 through 42, inclusive, is a true and correct transcript of the proceedings taken by me before the Honorable JOHN PHILLIPS, on September 15, 2015.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested, directly or indirectly, in this action.

The certification does not apply to any reproduction of the same by any means unless under direct control and/or direction of the reporter.

Dated this 12th day of October, 2015.

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Julie Andolpho, FPR

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| <u>          </u><br><u>          </u> | <u>          </u><br><u>          </u> | <u>          </u><br><u>          </u>               | <u>          </u><br><u>          </u>                            |
| \$                                     | 28th 31:3,10                           | above-styled 3:2                                     | allowed 34:20   |
| \$100 9:14                             |  | accomplish 32:15                                     | alluded 32:7  |
| \$2.5 16:16                            | <u>          </u><br><u>          </u> | according 12:12                                      | alludes 32:24   |
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