

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE No. 502014CP003698XXXXNB

TED BERNSTEIN,

Plaintiff,

-vs-

DONALD R. TESCHER, ELIOT IVAN BERNSTEIN,  
LISA SUE FRIEDSTEIN, JILL MARLA IANTONI, et al.,

Defendants.

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TRIAL BEFORE THE HONORABLE  
JOHN L. PHILLIPS  
VOLUME 1 PAGES 1 - 114

Tuesday, December 15, 2015  
North County Courthouse  
Palm Beach Gardens, Florida 33410  
9:43 a.m. - 4:48 p.m.

Reported By:  
Shirley D. King, RPR, FPR  
Notary Public, State of Florida  
West Palm Beach Office Job #1358198 - VOL 1

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1 P R O C E E D I N G S

2 - - -

3 THE COURT: We're here on the Bernstein case.  
4 Everybody ready to go?

5 MR. ROSE: Good morning, Your Honor. Yes.  
6 Alan Rose on behalf of the plaintiff, Ted S.  
7 Bernstein, as successor trustee.

8 THE COURT: Okay.

9 MR. ROSE: And with me is my partner, Greg  
10 Weiss. May not be for the whole trial, but he is  
11 with us for the beginning.

12 THE COURT: Okay. Well, great. Thanks for  
13 coming.

14 And who's on the other side?

15 MR. BERNSTEIN: Eliot Bernstein, pro se, sir.

16 THE COURT: Okay. You're not going to have  
17 any counsel? Who's with you at the table?

18 MR. BERNSTEIN: That's my lovely wife,  
19 Candice.

20 THE COURT: All right. And why are you at the  
21 table?

22 MR. BERNSTEIN: That's one of the questions I  
23 would like to address. I'm here individually.

24 THE COURT: Right.

25 MR. BERNSTEIN: And I was sued individually.

1 But I'm also here on behalf, supposedly, of my  
2 minor children, who aren't represented by counsel.  
3 And I'm sued as a trustee of a trust that I've  
4 never possessed.

5 THE COURT: Are you asking me a question?

6 MR. BERNSTEIN: Yes.

7 THE COURT: What's the question?

8 MR. BERNSTEIN: Well, my children are being  
9 sued.

10 THE COURT: What's the question?

11 MR. BERNSTEIN: And I was sued as their  
12 trustee, but I'm --

13 THE COURT: Stop, please.

14 MR. BERNSTEIN: Yes, sir.

15 THE COURT: I would love to talk with you all  
16 day --

17 MR. BERNSTEIN: Okay.

18 THE COURT: -- but we're not going to have  
19 that happen.

20 MR. BERNSTEIN: Okay.

21 THE COURT: This is not a conversation. This  
22 is a trial. So my question is, What is your  
23 question? You said you had a question.

24 MR. BERNSTEIN: I tried to get counsel for my  
25 children who was willing to make a pro hoc vice --

1 THE COURT: When will you ask me the question?  
2 Because this is all --  
3 MR. BERNSTEIN: Well, I'd like to stay the  
4 proceeding.  
5 THE COURT: Okay. The request for a  
6 continuance is denied. Thank you.  
7 MR. BERNSTEIN: Have you read the filing I  
8 filed? Because my children are minor --  
9 THE COURT: Was that your question?  
10 MR. BERNSTEIN: Well, my children are  
11 minors --  
12 THE COURT: Please stop.  
13 MR. BERNSTEIN: -- and they're not represented  
14 here.  
15 THE COURT: What is your name again, sir?  
16 MR. BERNSTEIN: Eliot Bernstein.  
17 THE COURT: Okay. Mr. Bernstein, I'll be  
18 courteous, unless it doesn't work; then I'll be  
19 more direct and more aggressive in enforcing the  
20 rules that I follow when I conduct trials.  
21 I've asked you several times if you had  
22 questions. You finally asked me one, and it was,  
23 Did you read my filing? No, I did not. You asked  
24 for a continuance. I have denied that because it's  
25 untimely.

1           Now I'm turning back to the plaintiff, and  
2 we're going forward with this trial. That is one  
3 day set on my docket. We're going to have this  
4 trial done by the end of the day. You'll have half  
5 the time to use as you see fit; so will the other  
6 side. I'll not care if you waste it, but I'll not  
7 participate in that. Thank you.

8           Now, from the plaintiff's side, what is it  
9 that the Court is being asked to decide today?

10          MR. ROSE: Before I answer, could  
11 Mr. Morrissey make an appearance, sir?

12          THE COURT: All right.

13          MR. MORRISSEY: Yes, I'm here on behalf of  
14 four of the defendants, Judge, four adult  
15 grandchildren, Alexandra Bernstein, Eric Bernstein  
16 Michael Bernstein and Molly Simon, all of whom have  
17 joined in the plaintiff's complaint today.

18          THE COURT: Okay. Last time I'll ask this  
19 question of the plaintiff. What is it that I'm  
20 asked to decide today?

21          MR. ROSE: We are asking you to decide whether  
22 five testamentary documents are valid, authentic  
23 and enforceable. And that is set forth in count  
24 two of the amended complaint in this action. The  
25 five documents are a 2008 will of Shirley



1 Bernstein, a 2008 trust of Shirley Bernstein, and  
2 an amendment by Shirley Bernstein to her 2008  
3 trust.

4 THE COURT: When was the amendment?

5 MR. ROSE: Amendment was in November of 2008.

6 THE COURT: All right. So there's also a 2008  
7 amendment?

8 MR. ROSE: Yes, sir. In fact, I have a -- I  
9 don't know if you can read it, but I did put up  
10 here on the -- there are seven testamentary  
11 documents. We believe five of them to be valid and  
12 operative, and two of them to have been with --  
13 revoked by later documents.

14 So for Shirley, there are three documents that  
15 count two seeks you to determine are valid,  
16 authentic and enforceable according to their terms.

17 And for Simon Bernstein, he has a 2012 will,  
18 and a 2012 amended and restated trust agreement.  
19 And we're asking that these five documents be  
20 validated today.

21 There also is a 2008 will and trust that  
22 you'll hear testimony were prepared, but have been  
23 revoked and superseded by later documents.

24 THE COURT: Does everybody agree that Simon's  
25 2008 will and trust are invalid or is there some

1 claim that they're valid?

2 MR. ROSE: I can't answer.

3 THE COURT: All right. I'll ask.

4 Are you claiming that the Simon Bernstein 2008  
5 will or 2008 trust are valid, or do you agree that  
6 they are invalid?

7 MR. BERNSTEIN: Well, I individually disagree.

8 THE COURT: Okay. Thank you.

9 MR. BERNSTEIN: And my children --

10 THE COURT: I just wanted to know --

11 MR. BERNSTEIN: -- aren't represented by  
12 counsel, so they can't have an opinion --

13 THE COURT: Okay.

14 MR. BERNSTEIN: -- even though they're parties  
15 to the case.

16 THE COURT: Okay. Like I say, you can waste  
17 all your time you want. I won't object to it, but  
18 I won't participate in it.

19 You can put on your first witness.

20 MR. ROSE: Thank you. Plaintiff will call  
21 Robert Spallina.

22 Thereupon,

23 (ROBERT SPALLINA)

24 having been first duly sworn or affirmed, was examined  
25 and testified as follows:

1 THE WITNESS: I do.

2 MR. ROSE: May I approach, Your Honor?

3 THE COURT: Sure. All approaches are okay.

4 MR. ROSE: Okay. I brought for Your Honor --  
5 would you like a book instead of the exhibits?

6 THE COURT: Nothing better than a huge book.

7 MR. ROSE: We may not use all of them, but  
8 we'll adjust it later.

9 THE COURT: All right.

10 MR. ROSE: And then I was going to hand the  
11 witness the original for the admission into the  
12 court file as we go.

13 THE COURT: All right.

14 MR. ROSE: I have a book for Mr. Eliot  
15 Bernstein.

16 DIRECT EXAMINATION

17 BY MR. ROSE:

18 Q. Would you state your name for the record?

19 A. Robert Spallina.

20 Q. Did you know Simon and Shirley Bernstein,  
21 Mr. Spallina?

22 A. Yes, I did.

23 Q. And when did you first meet Simon and Shirley  
24 Bernstein?

25 A. In 2007.

1 Q. What was your occupation at the time?

2 A. I was working as an estate planning attorney.

3 Q. With a law firm?

4 A. Yes.

5 Q. And what was the name of the law firm?

6 A. Tescher, Gutter, Chaves, Rubin, Ruffin and  
7 Forman and Fleisher.

8 Q. And did Simon and Shirley Bernstein retain  
9 your law firm?

10 A. Yes, they did.

11 Q. I'm going to approach with Exhibit No. 9 --  
12 Plaintiff's Exhibit 9. Ask if you'd identify that  
13 document?

14 A. This was an intake sheet to open up the file,  
15 dated November 16th of 2007.

16 Q. And the clients are Simon and Shirley  
17 Bernstein?

18 A. The clients were Simon and Shirley Bernstein,  
19 yes.

20 MR. ROSE: I would move Exhibit 9 into  
21 evidence, Your Honor.

22 THE COURT: Any objection?

23 [No verbal response]

24 THE COURT: No objection being stated, I'll  
25 receive that as Plaintiff's 19.

1 (Plaintiff's Exhibit No. 9 was received into  
2 evidence.)

3 BY MR. ROSE:

4 Q. Now, what was the purpose of Simon and Shirley  
5 Bernstein retaining your law firm?

6 A. They wanted to review and go over their  
7 existing estate planning and make changes to their  
8 documents.

9 Q. I'm going to hand you Exhibit No. 10, and ask  
10 you if you can identify for the record Exhibit 10.

11 A. These are meeting notes, my meeting notes,  
12 and -- and then partner Don Tescher's meeting notes from  
13 several different meetings that we had with Si and  
14 Shirley during the time following them retaining us as  
15 clients.

16 Q. And is it your standard practice to take notes  
17 when you're meeting with clients?

18 A. Yes.

19 Q. And were these notes kept in your company's  
20 files and were they produced with Bates stamp numbers?

21 A. Yes, they were.

22 MR. ROSE: I would move Exhibit 10 into  
23 evidence, Your Honor.

24 THE COURT: Is there any objection to the  
25 exhibit?

1 [No verbal response].

2 THE COURT: No objection being stated, they'll  
3 be received as Plaintiff's 10.

4 (Plaintiff's Exhibit No. 10 was received into  
5 evidence.)

6 BY MR. ROSE:

7 Q. Now, for today's purposes, are those notes in  
8 chronological or reverse chronological order?

9 A. This is reverse chronological order.

10 Q. Okay. Can you go to the bottom of the stack  
11 and start with the earliest notes. Do they reflect a  
12 date?

13 A. Yes. 11/14/07.

14 Q. And if you'd turn to the last page, is that  
15 your partner's notes that are in evidence?

16 A. Yes. We both would always take notes at the  
17 meetings.

18 Q. And so the first -- was that the first meeting  
19 with Mr. Simon or Shirley Bernstein?

20 A. I believe so, yes.

21 Q. Now, before you met with Simon and Shirley  
22 Bernstein, did you have any prior relationship with  
23 them?

24 A. No, we did not.

25 Q. Did you personally know either of them before

1 that date?

2 A. No, I did not.

3 Q. 11/14/2007. Okay. And if you'd just flip  
4 back to the client intake. I think that was dated  
5 November the 26th?

6 A. It was two days later, 11/16. The file was  
7 opened two days later.

8 Q. So file open.

9 Now, did you know in advance of the meeting  
10 what they were coming in to talk about?

11 A. Yeah. They were coming in to talk about their  
12 estate planning.

13 Q. And did they provide you in advance of the  
14 meeting with any of their prior estate planning  
15 documents?

16 A. I believe we had copies of documents. I don't  
17 know if they provided them at that meeting or if they  
18 provided them before for us to look at, or after, but I  
19 know that there were existing documents that were in our  
20 file.

21 Q. Okay. Let me approach and hand you  
22 Exhibit 40A, which is -- bears Tescher Spallina  
23 Number 1.

24 Does that appear to be an envelope from  
25 Stephen Greenwald --

1 A. Yes.

2 Q. -- directed to Simon Bernstein?

3 A. Yes, it is.

4 Q. And copy of this was in your files when they  
5 were produced?

6 A. Yes.

7 Q. And was Stephen Greenwald the prior lawyer  
8 that represented Simon and Shirley Bernstein, as far as  
9 you know?

10 A. Yes. Yes, he was.

11 Q. I'm going to hand you Exhibit 40B, which is a  
12 letter from Mr. Greenwald to Simon and Shirley  
13 Bernstein.

14 Is that also -- is that also provided in your  
15 files?

16 A. Yes, sir.

17 Q. Does it bear a Bates stamp of your law firm?

18 A. Yes, it does.

19 Q. Okay. And does Mr. Greenwald, in that letter,  
20 disclose what he is sending to Simon --  
21 Mr. and Mrs. Simon L. Bernstein?

22 A. Yes, he did. Their estate planning documents,  
23 including their ancillary documents, their wills, their  
24 trusts, health care powers, durable powers and living  
25 wills.



1 Q. And if -- I'll show you 40C, D, E and F, and  
2 ask if you can identify these as some of the documents  
3 that were included with the letter from Mr. Greenwald?

4 A. We have each of the first codicils to  
5 Mr. and Mrs. Bernstein's wills, and we have each of  
6 their wills.

7 MR. ROSE: I would move Exhibit 40A through F  
8 into evidence, Your Honor.

9 THE COURT: Any objection?

10 [No response.]

11 THE COURT: No objection being stated, I'm  
12 going to receive this as Plaintiff's 40A through F.

13 (Plaintiff's Exhibit Nos. 40A-F were received  
14 into evidence.)

15 BY MR. ROSE:

16 Q. Within Exhibit 40, is there a will and a --  
17 for Simon and a will for Shirley?

18 A. Yes, there is.

19 Q. And could you tell the Court the date of those  
20 documents?

21 A. August 15, 2000.

22 THE COURT: Are both documents the same date?

23 THE WITNESS: Yes, they are, Your Honor.

24 THE COURT: All right. Thanks. I just wanted  
25 to make sure I don't get confused.

1 BY MR. ROSE:

2 Q. Can you generally describe what the estate  
3 plan reflected in Exhibit 40 would be, who are the  
4 beneficiaries and what percentages?

5 A. Okay. Just give me a minute. I haven't seen  
6 these in...

7 The plan under the documents -- and let me  
8 just make sure it's the same under both documents. The  
9 plan under the documents was to provide all the assets  
10 to the survivor of Shirley and Si, and that at the death  
11 of the survivor of the two of them, assets would pass  
12 to -- it appears to be Ted, Pam, Eliot, Jill and Sue and  
13 Lisa -- and Lisa. So it looks to be a typical estate  
14 plan; everything would pass to the survivor at the first  
15 death, and then at the second death everything to the  
16 children.

17 Q. How many of the children under the 2000  
18 documents?

19 A. This shows all five. The will shows all five.

20 Q. What page are you looking at?

21 A. The first page of the will. Is this -- oh,  
22 no. That's just as to tangible personal property. I'm  
23 sorry.

24 Q. That's okay. Are you on -- are you in Simon's  
25 or Shirley's?

1           A.    I'm in -- on both documents, to make sure the  
2 disposition was the same.

3           Q.    Okay.  So on the page -- the first page, it  
4 talks under --

5           A.    It speaks to tangible personal property.

6           Q.    Split equally among the five children?

7           A.    Among the five children.

8           Q.    Let me just stop you one second right there.  
9 If you would, turn --

10           MR. ROSE:  This might help, Your Honor, if  
11 you'd turn to Tab 7.  It may be out of order.  
12 Might be a good time just to go over the family  
13 tree and let -- get everyone on the same page of...

14           We prepared a chart, and I'm going to put  
15 the -- it lists Simon and Shirley and the names of  
16 their children on the second line, and then under  
17 each child with arrows, the names of the  
18 grandchildren and which parents they belong to.

19           THE WITNESS:  This looks accurate.

20           MR. ROSE:  I would move Exhibit 7 into  
21 evidence, Your Honor.

22           THE COURT:  Any objection?

23           [No response.]

24           THE COURT:  No objection being stated, that's  
25 in evidence as Plaintiff's 7.

1                   (Plaintiff's Exhibit No. 7 was received into  
2 evidence.)

3 BY MR. ROSE:

4           Q.     So under the 2000 documents, for personal  
5 property, it's split among the five children.

6                   And when you get to the residuary estate or  
7 the amount that was put into trusts, who are the  
8 beneficiaries?

9           A.     Again, at the death of the survivor of the two  
10 of them, tangible personal property would go to the five  
11 children, and the residuary of the estate would go to  
12 four of the five children. It appears that Pam is cut  
13 out of these documents. And I recall that now, yes.

14          Q.     Okay. So under the 2000 documents, Eliot  
15 Bernstein would get 25 percent of the residuary?

16          A.     Correct.

17          Q.     Now, if you look at page 5, it talks  
18 about -- page 5, near the top, it says "upon the death  
19 of my husband," then "the principal of his trust shall  
20 pass," and then the next sentence says "to the extent  
21 that said power of appointment -- oh, "and such shares  
22 equal or unequal and subject to such lawful trust terms  
23 and conditions as my husband shall by will appoint."

24                   Do you see what I'm talking about?

25          A.     Yes, I do.

1 Q. That's a power of appointment?

2 A. Correct.

3 Q. And then it says, the next sentence, To the  
4 extent the power of appointment is not effectively  
5 exercised, then it goes to the four of the five  
6 children?

7 A. Correct.

8 Q. So under the 2000 documents, the survivor  
9 would have the power to give it all to one?

10 A. Correct.

11 Q. And theoretically change it and give some to  
12 Pam?

13 A. That's true, by the language of this document.

14 Q. Okay. So I'm just going to write. We have a  
15 power of appointment, which we don't need to belabor, in  
16 favor of the survivor; and then if it's not exercised,  
17 Eliot gets 25 percent, and three other siblings get the  
18 balance?

19 A. 25 percent each.

20 Q. Okay.

21 A. Equal shares.

22 Q. Now, when Simon and Shirley came to you, did  
23 they give you an indication whether they wanted to keep  
24 in place the 2000 structure?

25 A. No. They wanted to change the dispositions

1 under their documents.

2 Q. Okay. So if we work through your notes now,  
3 which are in evidence as Exhibit No. 10, the first  
4 meeting was November the 14th, 2007. You had a  
5 discussion about Simon's net worth -- Simon and  
6 Shirley's net worth, how much money they had at that  
7 time?

8 A. Yes.

9 Q. Okay. I'm going to show you Exhibit No. 12  
10 before we --

11 Do you recognize the handwriting on  
12 Exhibit 12?

13 A. No.

14 Q. Okay. I believe it's Simon Bernstein's  
15 statement of his net worth.

16 But you have seen this document before?

17 A. I don't recall.

18 Q. Okay. And you're not familiar with his  
19 handwriting to --

20 A. No. Other than his signature.

21 Q. That's fine.

22 But during the discussion, did you discuss  
23 Simon's net worth?

24 A. Yes. Both my partner and I.

25 Q. And if I look at Mr. Tescher's notes, which

1 are a little easier to read, he lists the joint  
2 brokerage account, some money for Simon, Simon, a  
3 house -- the house appears to have a million dollar  
4 mortgage -- a condo, some miscellaneous and some life  
5 insurance. And he totals -- that totals to 13 million,  
6 and then he lists 5 million for 33 shares of the  
7 company.

8 Do you see that?

9 A. Yes, I do.

10 Q. Okay. So if I add up what Mr. Tescher wrote  
11 in his notes, I get to about \$18 million.

12 And this is on November the 14th of '07,  
13 around 18 million, but that includes life insurance?

14 A. Yes, it does.

15 Q. Okay. Now, did you meet with them -- how long  
16 were these meetings with Simon and Shirley Bernstein?

17 A. They could be an hour; sometimes more.

18 Q. Now, if we flip through your notes, does it  
19 reflect a second meeting?

20 A. Yes, it does.

21 Q. And what's the date of the second meeting?

22 A. 12/19/07.

23 Q. And do you have any -- I'm sorry. 12/19?

24 A. 12/19/07.

25 Q. Okay. And what's the -- let's just put all

1 the dates up here. That was the second meeting.

2 Are there notes from a third meeting?

3 A. The next meeting was January 31, '08.

4 Q. Okay. Is there a fourth meeting?

5 A. March 12 of '08.

6 Q. Now, just to put this in perspective, the  
7 document that we are going to -- well, the document  
8 that's been admitted into probate in this case is a will  
9 of Shirley Bernstein that bears a date of May 20, 2008.

10 Does that sound consistent with your memory?

11 A. Yeah, it was clearly 2008.

12 MRS. CANDICE BERNSTEIN: Excuse me. Can you  
13 turn that so we can see it?

14 THE WITNESS: Sure. Sorry.

15 THE COURT: Ma'am, you are not a party. You  
16 are not an attorney. And you are not really  
17 supposed to be sitting there. I'm letting you sit  
18 there as a courtesy. If you ask for and inject  
19 yourself any further in the proceeding than that,  
20 I'll have to ask you to be seated in the gallery.  
21 Do you understand?

22 MRS. CANDICE BERNSTEIN: Yes, sir.

23 THE COURT: Thank you.

24 BY MR. ROSE:

25 Q. So you have four meetings with Simon and



1 Shirley Bernstein.

2 And did it take that long to go over what they  
3 wished to do with their estate planning documents?

4 A. It was more of us, you know, trying to get a  
5 handle on everything that they had, the business, prior  
6 planning. From the first meeting to the March meeting,  
7 it was only a couple of months. The holidays were in  
8 there. So it wasn't uncommon for us to meet with a  
9 client more than once or twice when they had a  
10 sophisticated plan and asset schedule.

11 Q. At this time --

12 A. By the last meeting, we knew what we needed to  
13 do.

14 Q. And around this -- based on your notes, did  
15 Simon Bernstein believe he had a net worth all in of  
16 about 18 million when he met with you?

17 A. Yeah, it appears that way, 18, 19 million  
18 dollars.

19 Q. And did he discuss at all with you that he was  
20 involved in a business at that time, an insurance  
21 business?

22 A. Yes.

23 Q. And did he give you an indication of how well  
24 the business was doing at around the times of these  
25 meetings between November 2007 and March or May of 2008?

1           A.    Yeah, the business was doing well at that  
2 time.  He was -- he was very optimistic about the future  
3 of the business.

4           Q.    Now, did you do any -- did you prepare any  
5 documents before the will was signed in May?  Did you  
6 prepare drafts of the documents?

7           A.    Yes, we did.  We always prepare drafts of  
8 documents.

9           Q.    And did you share the drafts with Simon and  
10 Shirley?

11          A.    Yes, we did.

12          Q.    Okay.  I'm going to hand you Exhibit 11, and  
13 ask if you can identify that for the record?

14          A.    This is a letter from our firm dated April 19  
15 of 2008.  It's transmitting the documents to the client,  
16 with an explanation that they could follow, better than  
17 reading their documents -- a summary of the documents.

18          Q.    Is that a true and authentic copy of a  
19 document that you created?

20          A.    Yes, it appears to be.

21                MR. ROSE:  I would move Exhibit 11 into  
22 evidence, Your Honor.

23                THE COURT:  All right.  Any objection?

24                [No response.]

25                THE COURT:  All right.  Then that's in

1 evidence as Plaintiff's 11.

2 (Plaintiff's Exhibit No. 11 was received into  
3 evidence.)

4 BY MR. ROSE:

5 Q. And if I read Exhibit 11, the first three  
6 words say, "Enclosed are drafts of each of your wills  
7 and revocable trusts, the children's family trust, each  
8 of your durable powers of attorney, designations of  
9 health care surrogate and living wills," correct?

10 A. Yes.

11 Q. So about a month and 11 days before anything  
12 was signed, documents were sent by Federal Express to  
13 Simon and Shirley Bernstein?

14 A. Correct.

15 Q. And it appears to have gone to Simon's  
16 business?

17 A. Yes.

18 Q. Now, if you look at -- does your -- does your  
19 letter, sort of in laymen's terms, rather than reading  
20 through the legalese of a will, explain what the estate  
21 planning was under the documents that have yet to be  
22 signed but that you were preparing?

23 A. Yes, it does, as much as possible in laymen's  
24 terms.

25 Q. Can you just give us a short -- well, the will

1 itself for both Simon and Shirley was a relatively  
2 simple will that poured over into a revocable trust, one  
3 for each?

4 A. Yes, poured over wills for both.

5 Q. And whoever died first would inherent the  
6 personal property?

7 A. All tangible personal property under the will  
8 would pass to the survivor.

9 Q. So assuming Simon survived Shirley, he would  
10 be the sole beneficiary of her estate?

11 A. Correct.

12 Q. And then any of her residuary would go into a  
13 trust?

14 A. That's correct.

15 Q. And he, in fact, outlived Shirley?

16 A. He did.

17 Q. Okay. Now, if you go to the second page, at  
18 the top, you describe the will of Shirley Bernstein.

19 It's essentially identical to Si -- it says "Si."

20 Just for the record, that's Simon shorthand?

21 A. Yes.

22 Q. Si is the personal representative of Shirley's  
23 estate, and Ted is designated as successor if Simon is  
24 unable to serve.

25 That was what was in the document you sent in

1 April?

2 A. Yes. I believe so, yes.

3 Q. And that provision remained in the final  
4 documents you signed?

5 A. Yes.

6 Q. Now, did Ted eventually become a successor  
7 personal representative upon Simon's death?

8 A. Yes, he did.

9 Q. Then you next start to talk about the Simon L.  
10 Bernstein trust agreement.

11 And theoretically, that was going to be the  
12 primary testamentary document?

13 A. Correct, it was.

14 Q. And that's fairly standard?

15 A. Yes. When a client wants to avoid probate, we  
16 use a revocable trust to title assets in prior to death.  
17 Those assets remain confidential; they're not part of  
18 the court record. And the trust is also used to avoid  
19 the need for the appointment of a guardian in the event  
20 of incapacity, because there's a successor trustee  
21 mechanism.

22 Q. Okay. Now, under Simon's trust agreement,  
23 moving down to the third paragraph, under that heading,  
24 it says that both trusts provide for mandatory income  
25 distributions. And then the next sentence starts, "Upon

1 Shirley's death, she has been given a special power to  
2 appoint the remaining assets of both the marital trust  
3 and the family trust to any of your lineal descendants  
4 and their spouses, a power to redirect and reallocate."

5 Do you see that?

6 A. Yes.

7 Q. Now, is that consistent with the way the  
8 documents were intended to be drafted?

9 A. Yes, it is.

10 Q. And I guess it's sort of similar to what  
11 existed in the 2000 wills?

12 A. Yes. Typically, you give the survivor of the  
13 spouse a power to appoint in the event that they want to  
14 change any of the estate planning of the first to die.  
15 Found in most first marriage documents with only  
16 children from that marriage.

17 Q. And this is a first marriage with all five  
18 children being the product of the same marriage --

19 A. Yes.

20 Q. -- as far as you know?

21 A. As far as I know.

22 Q. And as far as you know, Simon and Shirley  
23 Bernstein, they each married only once in their  
24 lifetime, to each other?

25 A. That's all I know.

1 Q. If you flip to the next page, there's a  
2 shorter paragraph for Shirley.

3 It basically says -- it's virtually identical,  
4 except that Simon is the initial successor, and after  
5 that, Ted would be Simon's replacement if he passed  
6 away?

7 A. Correct.

8 Q. And is that the mechanism by which Ted  
9 Bernstein became the successor trustee in this lawsuit?

10 A. Yes, it is.

11 Q. Now, if Shirley died first, then did the  
12 documents give Simon the same power of appointment over  
13 the assets in her trust that was provided for in the  
14 Simon document if he died?

15 A. Same power of appointment was in both  
16 documents. They were identical documents, with one  
17 exception.

18 Q. And what was the exception; the name of the  
19 successor trustee?

20 A. The name of the successor trustee.

21 Q. And then Simon wanted his then business  
22 partner, Bill Stansbury, to be his successor trustee in  
23 both his will and his trust, and Shirley wanted her  
24 oldest son, Ted, to be her successor in both documents?

25 A. Correct. The signer, non-survivor.

1 Q. Okay. And Shirley, I guess it says here, also  
2 made a specific gift of \$200,000 to someone named  
3 Matthew Logan?

4 A. Correct.

5 Q. If you look at our family tree chart, I think  
6 Matthew Logan is under Ted.

7 He is the son of Ted's second wife, Deborah?

8 A. Correct.

9 Q. Okay. So there was a \$200,000 special gift to  
10 Matthew that was in the documents that you sent on  
11 April 9th?

12 A. Correct.

13 Q. Then you prepared family trusts for the  
14 children.

15 Were those trusts created at the time?

16 A. Yes, they were.

17 Q. Now, after you sent your letter on April 9th,  
18 did you have a further discussion with Simon and Shirley  
19 before the documents were signed?

20 A. I can't recall, but we probably -- we probably  
21 did, to set up a meeting and talk -- you know, either,  
22 A, talk about the documents, the draft documents, any  
23 changes that they wanted to make on the draft documents.  
24 It would be typical of us to do that, although I don't  
25 have any meeting notes that showed that, so...



1 Q. Now, under -- we'll talk -- let's talk about  
2 the ones that matter.

3 Because Shirley died first, her 2008 trust  
4 became the beneficiary of her estate?

5 A. Correct.

6 Q. And then Simon had a power of appointment,  
7 correct?

8 A. Um-hum.

9 Q. And if -- you have to say yes or no.

10 A. Yes.

11 Q. And if he didn't exercise the power of  
12 appointment, was there a default set of beneficiaries  
13 that were designated in the documents you drafted in  
14 2008?

15 A. Yes.

16 Q. And what was the default set of beneficiaries?

17 A. Simon had and Shirley had in their documents  
18 excluded Pam and Ted at the death of the survivor of the  
19 two of them.

20 Q. Okay. So if the power of appointment was not  
21 properly exercised, it would just go to three, and Eliot  
22 would end up with 33 and a third percent and two of the  
23 other sisters would get the balance?

24 A. That's correct.

25 Q. Did Simon and Shirley eventually execute

1 documents in 2008?

2 A. Yes, they did.

3 Q. I'm going to hand you Exhibit No. 1, which  
4 is --

5 A. A copy of Si's will from --

6 Q. Do you have Exhibit 1?

7 A. Excuse me. Sorry. Shirley's will.

8 Q. Is that a conformed copy of the document?

9 A. Yes, it is.

10 MR. ROSE: I would move Exhibit 1 into  
11 evidence.

12 THE COURT: Any objection?

13 [No response.]

14 THE COURT: That's in evidence as  
15 Plaintiff's 1.

16 (Plaintiff's Exhibit No. 1 was received into  
17 evidence.)

18 BY MR. ROSE:

19 Q. Now, that says "conformed copy." If I turn to  
20 the last page, there's no handwritten signatures.

21 A. Correct.

22 Q. Do you know where the original of that  
23 document sits today?

24 A. It was filed with the court.

25 Q. Okay. So somewhere in the courthouse, the

1 original goes.

2 And that's something that the client would  
3 keep?

4 A. Correct. This is what we would send to the  
5 client to include with their files.

6 Q. When you filed the original with the court,  
7 did anyone object while Simon was alive?

8 A. No.

9 Q. Okay. I'm going to hand you Exhibit No. 2.  
10 Do you recognize that document?

11 A. Yes. This is Shirley's trust agreement that  
12 she executed in 2008.

13 Q. Now, does that document have copies of her  
14 signature?

15 A. Yes. These are actual copies of the signing  
16 parties and their signatures.

17 Q. And how many originals would have been created  
18 of this document?

19 A. We always created three originals of the trust  
20 agreements.

21 Q. Okay. Now, if you turn to the next -- if you  
22 turn to the last page, it says that Shirley put a dollar  
23 into her trust when it was created.

24 A. Yes.

25 Q. And that's to make it a valid trust?

1           A.    Yeah, I mean, it's not required today, but  
2   it's pretty much just form to show a dollar.  She had  
3   certainly funded it more than that.

4           Q.    And eventually Shirley put some assets into  
5   the trust?

6           A.    Yes.

7           Q.    Okay.  And if you go to the page before that,  
8   page 27, it appears to be a signature page, correct?

9           A.    Yes.

10          Q.    Now, were you one of the witnesses to the  
11   signature of Shirley Bernstein on Exhibit 2?

12          A.    Yes, I was.

13          Q.    And were you present with Shirley Bernstein  
14   and the other witness, Traci Kratish, at the time of the  
15   execution of the documents?

16          A.    Yes, I was.

17          Q.    And they're notarized by someone named  
18   Kimberly Moran.

19                Does she work for your office?

20          A.    Yes, she did.

21          Q.    And through her involvement with your firm  
22   and -- did she personally know Shirley and Traci  
23   Kratish, as well as yourself?

24          A.    Yes, she did.

25          Q.    Now, at the same time that Shirley signed her

1 documents, did Simon sign a similar set of 2008 will and  
2 trust, similar to the drafts that were sent in April?

3 A. Yes, he did. We were all sitting in the main  
4 conference area in their offices together.

5 Q. In Simon's office or your office?

6 A. In Simon's offices.

7 Q. Okay. So why would someone from your office  
8 come to Simon's office rather than rely on the notary  
9 that they have there?

10 A. Because we wanted to accommodate Shirley and  
11 Si in their offices and not have them travel.

12 Q. You personally went there. Did you personally  
13 go through to make sure that the documents were signed  
14 with all the formalities required under Florida law to  
15 make them valid and enforceable?

16 A. Yes, we did. That's why we were there.

17 Q. And if Simon did not have a 2008 will  
18 and -- sorry.

19 If Simon did not have a 2002 will and trust,  
20 would it be your belief that the 2008 will and trust  
21 would be valid?

22 A. Yes.

23 Q. Were they properly signed with all the same  
24 testamentary formalities required by Florida law?

25 A. Yes, they were.

1 Q. Okay. Did Shirley at some point amend her  
2 trust agreement?

3 A. Yes, she did.

4 Q. And do you recall why she amended it?

5 A. She amended it to remove Matt Logan from the  
6 document that she had included previously as a specific  
7 device.

8 Q. Do you know why Matt was removed?

9 A. It's attorney-client privilege.

10 Does it matter?

11 Q. I'll withdraw the question.

12 Was Matthew removed at the direction of  
13 Shirley?

14 A. Yes.

15 Q. I'll withdraw --

16 A. Yes. Yes. Yes.

17 Q. Did Shirley sign a document that effectively  
18 removed Matthew?

19 A. Yes, she did.

20 Q. Let me hand you Exhibit No. 3, and ask you if  
21 you recognize that document?

22 A. Yes, I do.

23 Q. Now, was this document signed with the same  
24 testamentary formalities as the 2008 trust?

25 A. Yes, it was.

1 MR. ROSE: We would move Exhibit 3 into  
2 evidence, Your Honor.

3 THE COURT: Any objection?

4 [No response.]

5 THE COURT: All right. That's in evidence as  
6 Plaintiff's 3.

7 (Plaintiff's Exhibit No. 3 was received into  
8 evidence.)

9 BY MR. ROSE:

10 Q. Now, if you look -- there's a paragraph 1 and  
11 a paragraph 3, but no paragraph 2.

12 Do you know why that is?

13 A. It's just a mistake in drafting.

14 Q. And did you specifically discuss with Shirley,  
15 whose privilege I technically would control -- my client  
16 would control --

17 Did you specifically discuss with Shirley the  
18 fact that the effect of the first amendment would be to  
19 remove the specific gift that she had made for Matthew  
20 Logan?

21 A. Yes. Even prior to the signing of the  
22 document.

23 Q. And is this the last relevant testamentary  
24 document that Shirley ever signed that you're aware of?

25 A. Yes, it is.

1 Q. Did you meet with Simon and Shirley in person  
2 to talk about this amendment?

3 A. Si had called me and said that Shirley had a  
4 change to her documents, and asked me to give her a call  
5 and have lunch with her. I called her. We arranged for  
6 a meeting in her house to execute the document.

7 Q. Now, you brought your -- you brought Kimberly  
8 with you to get -- for convenience and to make sure the  
9 documents were properly executed?

10 A. Correct. She had -- she had her personal  
11 assistant that was there, Rachel Walker, to serve as  
12 another witness.

13 Q. Just so I don't have to go back, what's the  
14 date of the amendment?

15 A. November 18th, 2008.

16 Q. So now we five documents that exist; 2008,  
17 will, trust, will, trust, and an amendment to Shirley's  
18 trust.

19 Did you share any of those documents with any  
20 of Simon and Shirley's children at that time?

21 A. No, we did not.

22 Q. Did any of the -- did any of the children play  
23 any role in bringing Simon or Shirley to your offices?

24 A. Not that I'm aware, no.

25 Q. Did any of the children accompany them



1 to -- any time they came to visit you, did any of the  
2 children come with them, drag them along?

3 A. No.

4 Q. So you prepared -- did you do some other  
5 estate planning in addition to the 2008 testamentary  
6 documents?

7 A. Yes, we did.

8 Q. Can you briefly describe some of the things  
9 you did?

10 A. We had set up a Florida limited partnership.  
11 We created a general partner entity for that  
12 partnership, a limited liability company.

13 Q. What's the name of the Florida limited  
14 partnership?

15 A. Bernstein Family Investments, LLLP.

16 Q. Was that an entity that was in existence or  
17 was it created under your direction?

18 THE COURT: Can I stop you a second? Is this  
19 going to help me figure out the validity of the  
20 testamentary documents?

21 MR. ROSE: Only in the very narrowest sense.  
22 I'm just trying to establish that they had a very  
23 lengthy and extensive relationship, and they did a  
24 lot of estate planning for Simon and Shirley. But  
25 I'll be very brief.

1 THE COURT: Well, if that becomes relevant  
2 later, perhaps you could come back to it. But I  
3 don't see the relevance at this point, so I'll ask  
4 you to move on.

5 MR. ROSE: Yes, sir.

6 BY MR. ROSE:

7 Q. Now, was Simon concerned at all about asset  
8 protection as part of some of the things you discussed?

9 A. Yes, he was.

10 Q. Now, we have -- did you have any discussion  
11 with him about who was expected to live longer or if  
12 either of them had health problems that you had any  
13 knowledge of?

14 A. Si was not -- he was in good health, but he  
15 had had some heart issues. And Shirley had had other  
16 issues as well. And I think it -- early on, he didn't  
17 know, but as the relationship went on, we kind of knew  
18 that Shirley was sicker than him and would probably pass  
19 first.

20 Q. So Shirley died -- it's in the public  
21 record -- but December --

22 A. 2010, yeah.

23 Q. -- 8th. So Simon was her -- he survived her;  
24 he becomes the sole beneficiary as far as tangible  
25 personal property under her will?

1 A. Yes, he does.

2 Q. The residuary goes into the Shirley Bernstein  
3 Trust?

4 A. That's correct.

5 Q. He's the sole successor trustee and the sole  
6 beneficiary --

7 A. Yes, he is.

8 Q. -- during the term of his life?

9 A. Correct.

10 Q. Now, was there a great deal of effort put into  
11 inventorying the assets, things like that?

12 A. No, there wasn't. For purposes of opening up  
13 Shirley's probate, we had asked Si to estimate the value  
14 of, you know, her tangible personal property. And  
15 that's what we included on the inventory that was filed  
16 in the probate.

17 Q. Now, if I'm correct, 2010 was the year there  
18 were no estate taxes at all?

19 A. No estate taxes.

20 Q. Simon's the sole beneficiary?

21 A. Sole beneficiary. Even if there were taxes,  
22 there wouldn't have been any tax on the first death,  
23 because everything went to Si, and there was a marital  
24 deduction.

25 Q. While Simon was alive, did Ted have any access

1 to the documents, as far as you know? Did you ever send  
2 the testamentary documents of Simon or Shirley to Ted?

3 A. No, we did not.

4 Q. Did Ted play any role in the administration of  
5 the estate while Simon was alive?

6 A. No, he did not.

7 Q. Did any of the other children play any role in  
8 the administration of the estate while Simon was alive?

9 A. No, they did not.

10 Q. Now, did you have to -- well, strike that.

11 Because it was only Simon, was it sort of the  
12 decision by Simon, That I don't want to spend a lot of  
13 time and money in this estate because it's just wasting  
14 my own money?

15 A. Yes.

16 Q. And that's not unusual in a situation where  
17 you have a surviving spouse that's the sole beneficiary?

18 A. Correct.

19 Q. Now, did there come a point in time when Pam,  
20 who was not a named beneficiary of the -- Shirley's  
21 documents, learned of the fact that she had been  
22 excluded?

23 A. Yes, there was.

24 Q. Okay. And did you get involved with  
25 discussions with Pam or her lawyer?

1           A.    She had hired an attorney, who had made a  
2 request to get a copy of her mother's documents.  And I  
3 called Si, spoke to Si about it, and he authorized me  
4 giving Pam those documents -- or her attorney those  
5 documents.

6           Q.    Were they provided to any of the other  
7 children; that would be Ted or his brother, Eliot, or  
8 his two sisters, Lisa or Jill?

9           A.    No, they were not.

10          Q.    And did Simon Bernstein at some point decide  
11 to change his testamentary documents?

12          A.    Yes, he did.

13          Q.    Do you recall approximately when that  
14 happened?

15          A.    Early 2012, he called and requested that we  
16 meet to go over his documents.

17          Q.    I'm going to hand you an exhibit marked  
18 Exhibit 13, and ask you if you recognize those as your  
19 own notes?

20          A.    Yes.  These are my notes from that meeting in  
21 2012.

22                   MR. ROSE:  I would move Exhibit 13 into  
23 evidence, Your Honor.

24                   THE COURT:  Any objection?

25                   [No response.]

1 THE COURT: All right. That's in evidence as  
2 Plaintiff's 13 then.

3 (Plaintiff's Exhibit No. 13 was received into  
4 evidence.)

5 BY MR. ROSE:

6 Q. Now, during this meeting, did Simon discuss  
7 the possibility of altering his estate plan?

8 A. Yes, he did.

9 Q. Did you also go over his current finances?

10 A. Yes, we did.

11 Q. Now, we've seen from 2007 that he had  
12 disclosed about \$18 million.

13 As part of the meeting in February of 2012, he  
14 gave you sort of a summary of where he stood at that  
15 time?

16 A. Yes, he did.

17 Q. And what was the status of the Shirley  
18 Bernstein probate administration in early 2012, about  
19 13 months after she passed away?

20 A. It was still not closed.

21 Q. Do you know why it was not closed?

22 A. I think that we were still waiting -- I'm not  
23 sure that -- we were still waiting on waivers and  
24 releases from the children to close the estate, to  
25 qualify beneficiaries under the estate if Si were to

1 die. We had to get waivers and releases from them.

2 Q. Standard operating procedure?

3 A. Standard operating procedure.

4 Q. Okay. So Simon here, it says -- it says at  
5 the top "SIPC receivable."

6 Do you know what that is?

7 A. Yes, I do. That was -- Si had made an  
8 investment in a Stanford product that was purported to  
9 be a CD; it was an offshore CD. And when the Stanford  
10 debacle hit, I guess he filed a claim with SIPC to get  
11 those monies back, because it was supposedly a cash  
12 investment.

13 Q. And so he invested in a Ponzi scheme and lost  
14 a bunch of money?

15 A. Correct.

16 Q. Some of the 18 million he had in 2007 he lost  
17 in the next four and a half years in investing in a  
18 Ponzi scheme?

19 A. That's correct.

20 Q. And then the maximum that the SIPC -- which is  
21 like the FDIC for investments.

22 You're familiar with that, correct?

23 A. Yes.

24 Q. The maximum is 500,000.

25 You don't actually necessarily recover

1 500,000? You have a receivable, right?

2 A. Yes.

3 Q. Do you know how much he actually realized from  
4 the SIPC?

5 A. I believe he never received anything.

6 Q. Okay. And then it said, LIC receivable,  
7 \$100,000.

8 Am I reading that correct?

9 A. Yes.

10 Q. And LIC was the company he was involved, with  
11 others?

12 A. Yes.

13 Q. Okay. So I put here 600 that he put, but the  
14 600 is really probably closer to 100 if you didn't get  
15 the SIPC money?

16 A. Correct.

17 Q. So I'm going to just put a little star here  
18 and put it's really 100,000, and sort that out.

19 So then he says -- he has -- Si's estate, this  
20 would be his personal assets. He's got an interest in  
21 the LLLP.

22 That is not relevant to discuss how it was  
23 formed, but there was an LLLP that was owned, some by  
24 Si's trust, some by Shirley's trust?

25 A. Correct.



1 Q. And at the time, he thought the value was  
2 1,150,000 for his share?

3 A. That's correct.

4 MR. BERNSTEIN: Can I object, Your Honor?

5 THE COURT: What's the objection?

6 MR. BERNSTEIN: Relevance.

7 THE COURT: Overruled.

8 MR. BERNSTEIN: Okay.

9 BY MR. ROSE:

10 Q. And then he had an IRA that says 750,000.

11 A. Correct.

12 Q. And those two things totaled 1,550,000?

13 A. No. They totaled one million nine. Right?

14 Q. Okay. You're right.

15 You wrote next to it "estate tax."

16 What does that mean, on the side next to it?

17 A. I think what I had done was offset the value  
18 of the assets in his estate by the loans that were  
19 outstanding at the time.

20 Q. And it shows a million seven in loans?

21 A. A million seven in loans.

22 Q. So we had loans back in 2008 -- I'm sorry.  
23 November of 2007 time period -- or 2008, which were  
24 only -- so we have loans now, you said, a million seven?

25 A. Well, he had a \$1.2 million loan with

1 JP Morgan that was collateralized with the assets of the  
2 LLLP.

3 Q. And then you list -- just to speed up, then  
4 you have -- underneath that, it says Shirley's asset was  
5 empty, right? Because whatever was in had gone to  
6 Simon?

7 A. Yeah, her estate had nothing in it.

8 Q. She had a Bentley, I think, when she died.  
9 Do you know what happened to the Bentley?

10 A. I wasn't aware that she had a Bentley.

11 Q. Did you come to learn that she had a Bentley  
12 and Simon gave it to his girlfriend, and she traded it  
13 in at the dealership and got a Range Rover?

14 A. Much, much, much later on --

15 Q. But you know --

16 A. -- after Si's death.

17 Q. But you know that to be the case?

18 A. I wasn't aware that it was traded for the  
19 Range Rover. I thought he bought her the Range Rover.  
20 I didn't realize he used a Bentley to do it.

21 Q. Okay. Somehow you know the Bentley became  
22 something for Maritza?

23 A. Yes.

24 Q. That's the name of his girlfriend?

25 A. Yes.

1 Q. Okay. Then it says, in Shirley's trust,  
2 condo, one million -- I'm sorry. I should go to the  
3 next column. It says "FMV."

4 That would be shorthand for Fair Market Value?

5 A. Yes.

6 Q. So condo, 2 million, which is here; house,  
7 3 million; half of the LLLP, which is Shirley's half  
8 after -- I assume, after the deduction of the loan, was  
9 800,000?

10 A. Um-hum.

11 Q. Then it says "LIC." That's the company Life  
12 Insurance Concepts that Mr. -- that Simon, his son Ted,  
13 and a gentleman named Bill Stansbury had formally been  
14 involved, another attorney, shares by then. Because  
15 we're in February of 2012.

16 But, in any event, that's Simon's company?

17 A. Correct.

18 Q. And he told you in 2007 it was worth --  
19 Mr. Tescher's -- notes, like -- his interest was worth  
20 5 million.

21 What did he tell you it was worth in 2012?

22 A. Zero.

23 Q. Then underneath that -- I put zero here, so  
24 zero today.

25 So his net worth -- and then there was a home

1 that he owned for -- that Eliot lives in, right? He  
2 didn't really own it, but he controlled it, Simon?

3 A. Yes.

4 Q. Okay. Did you set up the entity that owned  
5 the home?

6 A. Yes, I did.

7 Q. Just to save time, there's an entity called  
8 Bernstein Family Realty that owns the house.

9 Simon controlled that entity while he was  
10 alive?

11 A. Yes, he did.

12 Q. And his estate holds a mortgage on the house  
13 for 365,000?

14 A. Correct.

15 Q. So there's some interest there.

16 He didn't put it on his sheet when he talked  
17 to you, but that still would have existed in some form,  
18 right?

19 A. Yes.

20 Q. And it still exists to this day.

21 We don't know the value of it, but there still  
22 is a mortgage, right?

23 A. Yes.

24 Q. Okay. But either way, the point of this whole  
25 story is, his net worth went down significantly between

1 2007 and 2012?

2 A. Yes, it did.

3 Q. And in your world, that's not uncommon, with  
4 the stock market crash, the depression, things like  
5 that, that a lot of clients with high net worth would  
6 have suffered losses during that time?

7 A. Many, many of them did. And even the values  
8 that are on this sheet were not the real values.

9 Q. We know that the --

10 A. Clients have a tendency to overstate their net  
11 worth.

12 Q. All right. And we know the Ocean Drive house  
13 sold for about a million four?

14 A. Correct.

15 Q. And the Court -- there's an order that  
16 approved the sale, the gross sale price of a million one  
17 for St. Andrews?

18 A. Correct.

19 Q. Okay. So that's still -- that's less than  
20 half, even then, Simon thought he would get.

21 Now, if you look at the bottom of the  
22 Exhibit No. 13, it says a word, begins with an "I." I  
23 can't really read it.

24 Can you read that?

25 A. Insurance.

1 Q. Well, did you have some discussions with Simon  
2 about his insurance?

3 A. Yes, we did.

4 Q. In fact, I think -- Mr. Spallina, we talked  
5 about he had -- I'm sorry.

6 Mr. Tescher's notes had a \$2 million life  
7 insurance?

8 A. Correct.

9 Q. Okay. Is this the same life insurance?

10 A. Yes, it is.

11 Q. And was there a discussion about -- I guess it  
12 says 1 million --

13 That's one million seven-fifty?

14 A. A million 75 -- yeah, one million seven-fifty  
15 was the value of the policy.

16 Q. And the death benefit was a million six?

17 A. Million six. There was a small loan or  
18 something against the policy.

19 Q. Okay. And then it says "Maritza."

20 What was Maritza down there for?

21 A. Si was considering changing -- the purpose of  
22 the meeting was to meet, discuss his assets. And he  
23 was, you know, having a lot of, I guess, internal -- he  
24 had received another letter from his daughter -- he  
25 asked me to read the letter from Pam -- that she still

1 was not happy about the fact that she had been  
2 disinherited under her mother's documents if the assets  
3 were to pass under the documents and he didn't exercise  
4 his power of appointment. And this meeting was to kind  
5 of figure out a way, with the assets that he had, to  
6 take care of everybody; the grandchildren, the children,  
7 and Maritza.

8           And so he thought maybe that he would change  
9 the beneficiary designation on his life insurance to  
10 include her. And we had talked about providing for her,  
11 depending on -- an amount -- an increasing scale,  
12 depending on the number of years that he was with her.

13           Q. So if you look at the bottom, it says 0 to  
14 2 years, 250.

15           Is that what you're referring to?

16           A. Yes. Two to four years, 500,000. And then  
17 anything over plus-four years would be -- I think that's  
18 600,000.

19           Q. Now, during this discussion, was Simon  
20 mentally sharp and aware of what was going on?

21           A. Oh, yeah. Yeah, he was -- he was the same  
22 Simon. He was just -- you know, he was struggling with  
23 his estate now. He was getting -- he felt -- I guess he  
24 was getting pulled. He had a girlfriend that wanted  
25 something. He had his daughter who, you know, felt like

1 she had been slighted. And he wanted to try to make  
2 good by everybody.

3 Q. And at that point in time, other than the  
4 house that he had bought that Eliot lived in, were you  
5 aware that he was supporting Eliot with a very  
6 significant amount of money each year?

7 A. I was not.

8 MR. BERNSTEIN: Object to the relevance.

9 THE COURT: Overruled.

10 BY MR. ROSE:

11 Q. Okay. So that's February.

12 A. Yes.

13 Q. What happens next in relation to Simon coming  
14 in to meet with you to talk about changing his  
15 documents?

16 A. He had called me on the phone and he -- we  
17 talked again about, you know, him changing his  
18 documents. He had been thinking about giving his estate  
19 and Shirley's estate to his grandchildren. And at the  
20 February meeting, I did not think it was a great idea  
21 for him to include his girlfriend, Maritza, as a  
22 beneficiary of the life insurance policy.

23 Q. He took your advice? He didn't change that,  
24 as far as you know?

25 A. He did not.



1 Q. Okay. I'm sorry. Continue.

2 A. He did not.

3 I had suggested that he provide for her in  
4 other ways; a joint account that would pass to her at  
5 his death, but not to mix her in with his family in  
6 their dispositive documents. And he ultimately took  
7 that advice and decided that he wanted to give his  
8 estate to his ten grandchildren, and that the policy --  
9 which I had never seen a copy of the policy, but, you  
10 know -- he had had. And I knew that he was paying for  
11 it, because -- it almost lapsed, or did lapse at one  
12 point, and it got reinstated -- that that policy was to  
13 pass to an insurance trust that named his five children  
14 as beneficiaries.

15 Q. And that's something Simon specifically  
16 discussed with you when you were going over his estate  
17 planning in 2012?

18 A. Correct -- or something that we had known  
19 about before that meeting. But he was -- at the  
20 meeting, he was starting to talk about doing a change to  
21 the beneficiary designation to include Maritza, and I  
22 wanted to talk him out of that.

23 Q. And at some point, he made a decision to  
24 actually change his documents, correct?

25 A. He did. He did.

1 Q. And did he direct you to set up any kind of a  
2 communication with his children?

3 A. Yes. He said, I want you to get -- put  
4 together a conference call with me and you and my five  
5 children so I can talk to them about what I want to do  
6 with my estate and Shirley's estate.

7 THE COURT: All right. This would be a good  
8 time for us to take a pause for a morning break.  
9 We'll be in session again in 10 minutes.

10 As far as time use goes, so far Plaintiff's  
11 side has used 60 minutes. So you have 90 remaining  
12 in your portion of the day. And that's where we  
13 stand.

14 MR. ROSE: We'll be well within our time, sir.

15 THE COURT: Great. Okay.

16 We'll be in recess for ten minutes. Is ten  
17 minutes enough time for everybody? That's what  
18 it'll be then.

19 (A break was taken.)

20 THE COURT: We're ready to proceed. Please  
21 continue.

22 MR. ROSE: Thank you.

23 BY MR. ROSE:

24 Q. I think we were when Shirley died in December  
25 of 2010, and you meet with Si, according to

1 Plaintiff's 13, on February 1st of 2012.

2 I think by May of 2012 was when this  
3 conference call that you mentioned was?

4 A. Yes, it was.

5 Q. Okay. And did the five children attend the  
6 conference call?

7 A. Yes, they all did.

8 Q. Were you present on the call?

9 A. Yes, I was.

10 Q. Was Simon present?

11 A. Yes, he was.

12 Q. Where was Simon physically during the call?

13 A. His office -- I believe his office.

14 Q. Were you in the same room as Simon?

15 A. No, I was not.

16 Q. You were in your office?

17 A. I was in my office.

18 Q. Okay. Generally, what was discussed during  
19 this conference call?

20 A. Simon wanted to talk to his children about  
21 providing for his estate and his wife's estate to go to  
22 the ten grandchildren; wanted to have a discussion with  
23 his children and see what they thought about that.

24 Q. And was he asking them for their approval or  
25 permission or...

1           A.     Well, I think he wanted to see what they all  
2     thought, you know, based on things that had happened in  
3     the past and documents that had been created in the  
4     past. And I don't know that it was going to sway his  
5     opinion, but when he told me, you know, to -- you know,  
6     to have the conference call, to contact his -- he said,  
7     This is what I'm going to do, so...

8           Q.     During the call, did Simon ask his children if  
9     anybody had an objection to him leaving his and  
10    Shirley's wealth to the ten grandchildren?

11          A.     Yes. He asked what everybody thought.

12          Q.     Did Eliot respond?

13          A.     Yes, he did.

14          Q.     What did he say?

15          A.     I'm paraphrasing, but he said something to the  
16    effect of, Dad, you know, whatever you want to do,  
17    whatever makes you happy, that's what's important.

18          Q.     Did you also discuss during that call the need  
19    to close Shirley's estate?

20          A.     Yes, we did. We had told Si that we needed to  
21    get back the waivers of accounting, the releases, and we  
22    asked -- he asked them to get those back to us as soon  
23    as possible.

24          Q.     Okay. If I hand you Exhibit 14, it appears to  
25    be an email from Eliot Bernstein to you addressing the

1 waiver that he needed to sign?

2 A. Yes, it is.

3 MR. ROSE: I move Exhibit 14 into evidence.

4 THE COURT: Any objection?

5 [No response.]

6 THE COURT: All right. That's in evidence  
7 then as Plaintiff's 14.

8 (Plaintiff's Exhibit No. 14 was received into  
9 evidence.)

10 MR. ROSE: As a matter of housekeeping, Your  
11 Honor, I think I might have failed to move in  
12 Exhibit 2, which is Shirley Bernstein's 2008 trust  
13 agreement, which I would move, to the extent it's  
14 not in evidence, 1, 2 and 3, which are the  
15 operative documents Mr. Spallina's already  
16 testified about.

17 THE COURT: Any objection?

18 MR. BERNSTEIN: What was that? I'm sorry.

19 THE COURT: Is there any objection to  
20 Plaintiff's 1, which is the will of Shirley  
21 Bernstein, Plaintiff's 2, which is the Shirley  
22 Bernstein Trust Agreement, and Plaintiff's 3, which  
23 is the First Amendment to the Shirley Bernstein  
24 Trust Agreement?

25 MR. BERNSTEIN: No.

1 THE COURT: All right. Those are all in  
2 evidence then as Plaintiff's 1, 2 and 3.

3 (Plaintiff's Exhibit No. 2 was received into  
4 evidence.)

5 BY MR. ROSE:

6 Q. Okay. This email is dated May -- May 17,  
7 2012, from Eliot, correct?

8 A. Yes, it is.

9 Q. This would have been after the conference  
10 call?

11 A. This, I believe, was after the conference  
12 call, yep.

13 Q. And he says he's attached the waiver  
14 accounting and portions of petition for discharge,  
15 waiver of service for a petition for discharge, and  
16 receipt of beneficiary and consent to discharge that he  
17 had signed.

18 Did you receive those from Eliot?

19 A. Yes, I did. We received -- that was the first  
20 waivers that we received.

21 Q. Then it says "as I mentioned in the phone  
22 call."

23 Did you have any separate phone calls with  
24 Eliot Bernstein, you and he, or is he referring to the  
25 conference call?

1 A. I think he's referring to the conference call.

2 Q. Okay. I have not yet -- "I have not seen any  
3 of the underlying estate documents or my mother's will  
4 at this point, yet I signed this document after our  
5 family call so that my father can be released of his  
6 duties as personal representative and put whatever  
7 matters that were causing him stress to rest."

8 Do you see that?

9 A. Yes, I do.

10 Q. Now, while Simon was alive, did you ever get  
11 authorization to share the testamentary documents with  
12 Eliot Bernstein?

13 A. I did not.

14 Q. Now, after the call and after the discussion  
15 with the siblings, did you prepare a draft of -- of new  
16 documents for Simon?

17 A. Yes, I did.

18 Q. I'm going to hand you Exhibit 15; ask if  
19 that's a letter that you sent to Simon Bernstein  
20 enclosing some new drafts?

21 A. Yes, it is.

22 Q. Now, what's the date of that?

23 A. May 24th, 2012.

24 Q. And what's -- what is the summary -- well,  
25 strike that.

1           You sent this letter to Simon Bernstein?

2           A.    Yes, I did.

3           Q.    By FedEx to his home?

4           A.    Yes, I did.

5           MR. ROSE:  I would move Exhibit 15 in  
6           evidence.

7           THE COURT:  Any objection?

8           [No response.]

9           THE COURT:  All right.  That's in evidence as  
10          Plaintiff's 15.

11          (Plaintiff's Exhibit No. 15 was received into  
12          evidence.)

13          BY MR. ROSE:

14          Q.    Okay.  So then first page says, "Dear Si, we  
15          have prepared drafts of a new will and an amended and  
16          restated trust agreement."

17          Are those the 2012 documents that were his  
18          final ones?

19          A.    Yes, they are.

20          Q.    Okay.  Then you sort of do the same thing you  
21          did in 2008; you give a little summary of what the  
22          estate plan is.

23          "Your amended and restated trust provides that  
24          on your death, your assets will be divided among and  
25          held in separate trusts for your then living



1 grandchildren," correct? I was reading paragraph -- the  
2 middle paragraph.

3 A. Yes, I see that. Yes.

4 Q. I actually skipped the part above, which is  
5 probably more important, which says -- in the middle of  
6 the first paragraph, it says, "In addition, you have  
7 exercised the special power of appointment granted to  
8 you under Shirley's trust agreement in favor of your  
9 grandchildren who survive you."

10 Do you see that?

11 A. Yes.

12 Q. Okay. And so that was Simon's intent as  
13 discussed on the conference call?

14 A. Yes, it was.

15 Q. Do you know if you made any changes to these  
16 draft documents from May 24th until the day they were  
17 signed?

18 A. I don't believe so. If I did, it was for  
19 grammar or something else. The dispositive plan that  
20 was laid out in this memo was ultimately the subject of  
21 the documents that he executed in July.

22 Q. I'm going to hand you Exhibit 16, which is a  
23 durable power of attorney.

24 If you flip to Exhibit 16, the last page, does  
25 it bear a signature of Simon Bernstein?

1 A. Yes, it does.

2 Q. And it indicates you were a witness to the  
3 signature?

4 A. Yes.

5 Q. Along with Kimberly Moran, who is someone from  
6 your office?

7 A. Correct.

8 Q. And someone named Lindsay Baxley notarized the  
9 documents?

10 A. Yes, she did.

11 Q. Do you know who Lindsay Baxley was?

12 A. Lindsay Baxley worked in Ted and Si's office.

13 Q. She was like a secretary?

14 A. Assistant to Ted, I believe, maybe.

15 Q. Okay. And if you look at --

16 MR. ROSE: Well, first of all, I'll move  
17 Exhibit 16 into evidence.

18 THE COURT: Any objection?

19 [No response.]

20 THE COURT: No objection made, then I'll  
21 receive this as Plaintiff's 16.

22 (Plaintiff's Exhibit No. 16 was received into  
23 evidence.)

24 BY MR. ROSE:

25 Q. If you look at the last page where the notary

1 block is there, it says "personally known" with an  
2 underline, or "produced identification" with an  
3 underline. And she's checked the box "personally  
4 known" -- or she's checked the line.

5 Do you see that?

6 A. Yes.

7 Q. So do you believe that -- did you know Lindsay  
8 Baxley by that point in time?

9 A. Yes, I did.

10 Q. And you believe -- she obviously knew Simon,  
11 she knew Kim Moran from other dealings between your  
12 offices?

13 A. Yes.

14 Q. Okay. And did you all sign this durable power  
15 of attorney with testamentary formalities?

16 A. Yes, we did.

17 Q. And what's the date of that?

18 A. July 25, 2012.

19 Q. I'm going to approach with Exhibit 4, and ask  
20 you if you recognize Exhibit 4?

21 A. Yes, I do.

22 Q. Okay. And what is Exhibit 4?

23 A. This is Si's new will that he executed in  
24 2012, on July 25th, the same day as that durable power  
25 of attorney.

1 Q. Now, were you present when Simon executed his  
2 new will, which is Exhibit 4?

3 A. Yes, I was.

4 Q. If you turn to the last page --

5 Well, actually, if you turn to the first page,  
6 does it say "copy" and bear a clerk's stamp?

7 A. It does.

8 Q. Okay.

9 MR. ROSE: I would represent to the Court that  
10 I went to the clerk's office -- unlike with  
11 Shirley's will, I went to the clerk's office and  
12 obtained a -- like, a copy made by the clerk of the  
13 document itself, rather than have the typewritten  
14 conformed copy.

15 MR. BERNSTEIN: Can I object to that?

16 THE COURT: What's the objection?

17 MR. BERNSTEIN: Is he making a statement? I'm  
18 not sure --

19 THE COURT: You're asking me a question. I  
20 don't know.

21 MR. BERNSTEIN: I'm objecting. Is that a  
22 statement?

23 THE COURT: The objection is? What are you  
24 objecting to?

25 MR. BERNSTEIN: With the statement being

1 from --

2 THE COURT: Okay. That was a statement by  
3 somebody who's not a sworn witness, so I'll sustain  
4 the objection.

5 MR. BERNSTEIN: And the chain of custody of  
6 the document, I'm just trying to clarify that.  
7 Okay.

8 THE COURT: The objection was to the  
9 statement. I've sustained the objection.

10 Next question, please.

11 BY MR. ROSE:

12 Q. Unlike the trust, how many originals of a will  
13 do you have the client sign?

14 A. There's only one.

15 Q. And then you give the client the one with the  
16 typewritten -- you call it conformed copy?

17 A. We conform the copy of the will.

18 Q. And after Simon died, was your law firm  
19 counsel for the personal representative of the Estate of  
20 Simon Bernstein?

21 A. Yes, we were.

22 Q. Did you file the original will with the court?

23 A. Yes, we did.

24 Q. Is it your belief that the original of this  
25 document is somewhere in the Palm Beach County Court

1 system with the clerk's office?

2 A. Yes, I do.

3 MR. ROSE: I'd move Exhibit 4 in evidence,  
4 Your Honor.

5 THE COURT: All right. Any objection?

6 [No response.]

7 MR. BERNSTEIN: No objection stated, I'll  
8 receive this as Plaintiff's 4.

9 (Plaintiff's Exhibit No. 4 was received into  
10 evidence.)

11 BY MR. ROSE:

12 Q. Now, if you turn to the next to the last page  
13 of Exhibit --

14 A. Yes.

15 Q. -- Exhibit 4, you'll see it bears a signature  
16 of Simon Bernstein and two witnesses, yourself and  
17 Kimberly Moran, who all assert that you signed in the  
18 presence of each other?

19 A. Yes.

20 Q. And then in the next page, it has what would  
21 be a self-proving affidavit?

22 A. Correct.

23 Q. Now, if you look at the signature block where  
24 the notary signed, where it says "who is personally  
25 known to me," it doesn't seem to have a check box there.

1 It just says "who is personally known to me or who has  
2 produced [blank] as identification," right?

3 A. Correct.

4 Q. Is this the same person who notarized the  
5 exhibit we just put in evidence, Exhibit 15, the durable  
6 power of attorney -- 16, the durable power of attorney?

7 A. Yes.

8 Q. Okay. And again, with regard to  
9 Exhibit 4 -- strike that.

10 Do you recall where you signed Exhibit 4?

11 A. Yes.

12 Q. In whose office?

13 A. This was also done in Si's office.

14 Q. Okay. So you took -- you went personally  
15 again, along with Kim Moran, as your practice, to make  
16 sure that the documents were signed properly; true?

17 A. Correct.

18 Q. And that's important because, if the documents  
19 aren't properly signed, they might not be valid and  
20 enforceable?

21 A. That's correct.

22 Q. And I'm going to hand you Exhibit 5. This is  
23 the Simon L. Bernstein Amended and Restated Trust  
24 Agreement.

25 Was that signed the same day, at the same

1 time, with the same procedures?

2 A. Yes, it was.

3 Q. And would this have been signed with three  
4 originals?

5 A. Yes, it would be.

6 MR. ROSE: I would move Exhibit 5 into  
7 evidence, Your Honor.

8 THE COURT: Any objection?

9 [No response.]

10 THE COURT: All right. That's in evidence as  
11 Plaintiff's 5.

12 (Plaintiff's Exhibit No. 5 was received into  
13 evidence.)

14 BY MR. ROSE:

15 Q. Now, we looked at the history when you did the  
16 first set of documents. In the second set, you started  
17 in February through July.

18 Did you have a number of telephone conferences  
19 with Simon during that time?

20 A. Yes, we did.

21 Q. And at least a couple of face-to-face  
22 meetings?

23 A. Yes, we did.

24 Q. Did at any time Simon give you any indication  
25 that he was not fully mentally sharp and aware and



1 acting of his own volition?

2 A. Nope. He was Si that we had known since 2007.

3 Q. I'll close with Exhibit 17. This is a letter  
4 you sent to Simon Bernstein, enclosing a copy of his  
5 conformed will for him.

6 A. Yes, it is.

7 Q. And it's dated the 26th, the day after he  
8 signed the documents?

9 A. Correct.

10 Q. And did you also leave him with two of the  
11 originals of his trust?

12 A. Yes, we did.

13 MR. ROSE: I move -- did I move 17 in? Or I  
14 will move it in.

15 THE COURT: Number 7, is it?

16 MR. ROSE: Seventeen, sir.

17 THE COURT: Oh, I'm sorry.

18 Any objection?

19 [No response.]

20 THE COURT: All right. Then that's in  
21 evidence as Plaintiff's 17.

22 (Plaintiff's Exhibit No. 17 was received into  
23 evidence.)

24 BY MR. ROSE:

25 Q. Now, Simon passed away on September 13, 2012.

1 Does that sound right?

2 A. Yes, it does.

3 Q. I have Exhibit 18 as his death certificate.

4 MR. ROSE: I'll just move 18 into evidence.

5 THE COURT: Any objection?

6 [No response.]

7 THE COURT: All right. That's in evidence as  
8 Plaintiff's 18.

9 (Plaintiff's Exhibit No. 18 was received into  
10 evidence.)

11 BY MR. ROSE:

12 Q. So that's the death certificate for Simon  
13 Bernstein.

14 Did you have any further discussions or  
15 meetings with Simon after he signed the will and trust  
16 in 2012 and before he died?

17 A. Not that I recall, no.

18 Q. And you filed a notice of administration,  
19 opened an asset, published it in the Palm Beach Daily  
20 Review, did what you had to do?

21 A. Yes, we did.

22 Q. And you and Mr. Tescher were the personal  
23 representatives of the estate?

24 A. Yes, we were.

25 Q. And you and Mr. Tescher became the successor

1 trustees of Simon's amended trust after he passed away?

2 A. Yes, we did.

3 Q. I guess while he was still alive, he was still  
4 the sole trustee of his trust, which was revocable  
5 still?

6 A. Correct.

7 Q. And then upon his death, at some point, did  
8 Ted Bernstein become aware that he was going to become  
9 the successor trustee to the Shirley trust?

10 A. Yes. We had a meeting with Ted.

11 Q. And that was the first time he learned about  
12 the contents of her trust, as far as you know?

13 A. Correct.

14 Q. Initially, did anybody object to the documents  
15 or the fact that the beneficiaries were supposed to be  
16 the 10 grandchildren?

17 A. No.

18 Q. When was there first some kind of an objection  
19 or a complaint?

20 A. I can't recall exactly when it happened.

21 Q. Okay. Did you at some point get a letter from  
22 a lawyer at the Tripp Scott firm?

23 A. Yes, we did.

24 Q. Okay. I think she was asking you about  
25 something called the status of something called I View

1 It Company? Do you recall that?

2 A. Vaguely.

3 Q. Did you know what the Iviewit company was  
4 before you received a letter from the Tripp Scott  
5 lawyer?

6 A. I'm not sure. I'm not sure. I know today. I  
7 can't tell if I'm answering because I know about it  
8 today or if I knew about it at that time.

9 Q. Okay. And did -- was she asking for some  
10 documents from you?

11 A. Is this Ms. Yates?

12 Q. Yes.

13 A. Yes.

14 Q. And did you provide her with certain  
15 documents?

16 A. She had asked for copies of all of Shirley's  
17 and Si's estate planning documents.

18 Q. And did you provide her with all of the  
19 documents?

20 A. Yes, we did.

21 Q. Was one of the documents that you provided her  
22 not an accurate copy of what Shirley had executed during  
23 her lifetime?

24 A. That is true.

25 Q. Okay. And I guess I'll hand you Exhibit 6,

1 and this -- is Exhibit 6 a document that is not a  
2 genuine and valid testamentary document of Shirley  
3 Bernstein?

4 A. That's correct.

5 Q. Can you explain to the Court why Exhibit 6 was  
6 prepared and the circumstances?

7 A. It was prepared to carry out the intent of  
8 Mr. Bernstein in the meeting that he had had with his  
9 five children, and perhaps a vague -- or a layman -- a  
10 layman can make a mistake reading Shirley's documents  
11 and not understand who the intended beneficiaries were  
12 or what powers I had. So this document was created.

13 Q. Is it your belief that under the terms of  
14 Shirley's document from -- the ones she actually signed,  
15 that Simon had the power to appoint the funds to the ten  
16 grandchildren?

17 A. Yes. We -- we prepared the documents that  
18 way, and our planning transmittal letter to him  
19 reflected that.

20 Q. And this document is, I think you said, to  
21 explain it to a layperson in simpler fashion?

22 A. It was created so that the person that, you  
23 know, didn't read estate planning documents and prepare  
24 estate planning documents for a living -- you know,  
25 there was no intent to cut out Pam and Ted's children,

1 basically.

2 Q. Now, did you ever file this exhibit in the  
3 courthouse?

4 A. No, we did not.

5 Q. Did you ever use it for any purpose?

6 A. No, we did not.

7 Q. Was it at one point provided to Eliot's  
8 counsel?

9 A. Yes, it was.

10 Q. Now, the fact -- putting aside this document,  
11 were any of the other documents that we're talking about  
12 in any way altered or changed from the ones that were  
13 signed by Shirley or Simon?

14 A. No, they were not.

15 Q. Now, after these issues came to light, did  
16 Mr. Eliot Bernstein begin to attack you through the  
17 internet and through blogging and things like that?

18 A. He was doing that long before this document  
19 came to light.

20 Q. Okay. What was Eliot doing?

21 A. His first thing that he did was -- with  
22 respect to the courts, was to file an emergency petition  
23 to freeze assets and after his brother as successor  
24 trustee of his mother's trust had sold the condo.

25 MR. BERNSTEIN: Your Honor, can I object to

1 this line of questioning for relevance to validity?

2 THE COURT: What's the line of questioning  
3 you're talking about?

4 MR. BERNSTEIN: The slander defamation going  
5 on about me with, you know, what I do and --

6 THE COURT: Well, I wasn't aware there's a  
7 line of questioning going on. There is a question.  
8 You've objected to it.

9 MR. BERNSTEIN: Yes.

10 THE COURT: What's the objection to that  
11 question?

12 MR. BERNSTEIN: The relevancy to a validity  
13 hearing.

14 THE COURT: Okay. Can I have the court  
15 reporter read the question back?

16 (A portion of the record was read by the  
17 reporter.)

18 THE COURT: What is the relevance of whether  
19 this guy's posting on Facebook that's negative or  
20 not?

21 MR. ROSE: Well, a couple of things, but,  
22 primarily, we're just trying to determine whether  
23 these documents are valid.

24 THE COURT: Right.

25 MR. ROSE: And he is the only one who's saying

1           they're not valid, so I want to give some  
2           explanation as to why he's saying they're not  
3           valid, as opposed to --

4           THE COURT: I don't care why he's saying  
5           they're valid or invalid. I'll wait to see what  
6           the facts are. So I'll sustain the objection.

7           MR. ROSE: That's fine.

8 BY MR. ROSE:

9           Q. Did Simon Bernstein make any special  
10          arrangements, other than -- strike that.

11                   Did Simon or Shirley make any special  
12          arrangements, other than the testamentary documents that  
13          are admitted into evidence, for special benefits for  
14          Eliot Bernstein and his family?

15          A. No, they did not.

16          Q. Any special education trusts, other than  
17          the -- these five documents? And I believe there was  
18          some shares of stock that were put in trust for all ten  
19          grandchildren, right?

20          A. There was no special arrangements made other  
21          than the estate planning documents.

22          Q. After Simon died, did Eliot claim to you that  
23          Simon was supposed to have made some special  
24          arrangements for him?

25          MR. BERNSTEIN: Object to the relevancy again.



1 THE COURT: Overruled.

2 THE WITNESS: Yes, he did.

3 BY MR. ROSE:

4 Q. Did he ever give you an indication how much  
5 money he thought he was going to inherit when his  
6 father died, or his children would inherit when his  
7 father died?

8 A. Through his subsequent attorney, yes, he did.

9 Q. And how much money did he indicate he thought  
10 there should be?

11 A. I heard a number from one of his attorneys of  
12 40- to a \$100 million.

13 Q. Are you aware of any assets that Simon  
14 Bernstein had other than what he disclosed to you at the  
15 two times that we've looked at in 2007 and again in  
16 February of 2012?

17 A. No, I am not.

18 MR. ROSE: No further questions, Your Honor.

19 THE COURT: All right. Thanks.

20 Is there any cross?

21 MR. BERNSTEIN: Yes.

22 MR. MORRISSEY: Judge, I have questions as  
23 well.

24 THE COURT: Okay. Well, then, let me have the  
25 direct finished. That way, all the

1 cross-examination can take place without  
2 interruption. So everybody make sure you're  
3 fitting within the Plaintiff's side of the room's  
4 time limitations. We'll strictly obey those.

5 CROSS (ROBERT SPALLINA)

6 BY MR. MORRISSEY:

7 Q. Good afternoon, Mr. Spallina. My name's John  
8 Morrissey. I represent four of the adult grandchildren  
9 of Simon Bernstein.

10 And since we're here today about validity, I'm  
11 just going to go over, and try to be very brief,  
12 concerning the execution of these documents and your  
13 knowledge about the execution.

14 Exhibit 1, which has been entered as the will  
15 of Shirley Bernstein, I'd ask you to direct your  
16 attention to that document. And I'm looking here at  
17 page 7. I ask that you turn to page 7 of Exhibit 1.

18 Were you a witness of this document, this will  
19 that was executed by Shirley Bernstein on May 20th of  
20 2008?

21 A. Yes, I was.

22 Q. And was Diana Banks the other witness?

23 A. Yes, she was.

24 Q. And did you and Diana witness Mrs. Bernstein's  
25 execution of this document?

1 A. Yes, we did.

2 Q. You were present during her execution?

3 A. Yes, we were.

4 Q. And was she present during your execution of  
5 this document as a witness?

6 A. Yes, she was.

7 Q. And was she, Shirley Bernstein, present during  
8 Diana Banks' execution of this document?

9 A. Yes, she was.

10 Q. Okay. And I'm again focused on this  
11 Exhibit No. 1, this will of Shirley Bernstein dated  
12 May 20th of 2008.

13 Is it your opinion that at the time Shirley  
14 Bernstein executed this document she understood  
15 generally the nature and extent of her property?

16 A. Yes, she did.

17 Q. Okay. And at the time Shirley Bernstein  
18 executed Exhibit 1, did she have a general understanding  
19 of those who would be the natural objects of her bounty?

20 A. Yes, she did.

21 Q. Okay. And at the time she -- Shirley  
22 Bernstein executed Exhibit 1, did she have a general  
23 understanding of the practical effect of this will?

24 A. I believe she did.

25 Q. Okay. And in your opinion, was Shirley

1 Bernstein unduly influenced by any beneficiary of  
2 Exhibit 1 in connection with its execution?

3 A. Not to my knowledge.

4 Q. Okay. And do you have any knowledge of any  
5 beneficiary or anyone actively procuring Exhibit 1?

6 A. No, I do not.

7 Q. Okay. Moving on to Exhibit 2, which is  
8 Shirley Bernstein's trust executed on the same date,  
9 that is May 20th of 2008, I'll direct your attention to  
10 page 27 of Exhibit No. 2. And it appears that Shirley  
11 Bernstein executed that document on May 20th of 2008.  
12 And the witnesses were yourself and Traci -- I can't  
13 read her last name.

14 A. Traci Kratish.

15 Q. Okay. Did Shirley Bernstein execute  
16 Exhibit No. 2 in the presence of both you and Traci  
17 Kratish?

18 A. Yes, she did.

19 Q. Okay. And did you execute Exhibit No. 2 in  
20 the presence of Shirley Bernstein and Traci Kratish?

21 A. Yes, I did.

22 Q. Okay. And did Traci Kratish execute  
23 Exhibit No. 2 in your presence and Shirley Bernstein's  
24 presence?

25 A. Yes, she did.

1 Q. Okay. And at the time Shirley Bernstein  
2 executed Exhibit No. 2, which is her 2008 trust, is it  
3 your opinion that she had a general understanding of the  
4 nature and extent of her property?

5 A. Yes, she did.

6 Q. Okay. And at the time that Shirley Bernstein  
7 executed Exhibit No. 2, is it your opinion that she  
8 understood generally the relationship of those who  
9 would -- were the natural objects of her bounty?

10 A. Yes.

11 Q. Okay. And at the time Shirley Bernstein  
12 executed Exhibit No. 2, is it your opinion that she  
13 generally understood the practical effect of this  
14 document?

15 A. I believe she did.

16 Q. Okay. And did you have any belief that  
17 Shirley Bernstein was unduly influenced in connection  
18 with -- by any beneficiary in connection with her  
19 execution of Exhibit No. 2?

20 A. Not to my knowledge.

21 Q. Okay. And do you know or have any information  
22 about any beneficiary or anyone else actively procuring  
23 Exhibit No. 2?

24 A. I do not.

25 Q. Okay. And with respect -- now we'll move on

1 to Exhibit No. 3, which is the first amendment of  
2 Shirley Bernstein's trust, executed on November 18th of  
3 2008. And I'll direct your attention on that Exhibit 3  
4 to Page No. 2. And on Page No. 2 --

5 Well, let me ask this question. Did Shirley  
6 Bernstein execute Exhibit No. 3 in the presence of both  
7 you and Rachel Walker?

8 A. Yes, she did.

9 Q. Okay. And did you execute Exhibit No. 3 in  
10 the presence of Shirley Bernstein and Rachel Walker?

11 A. Yes, I did.

12 Q. And did Rachel Walker execute this document,  
13 Exhibit No. 3, in the presence of Shirley Bernstein and  
14 yourself?

15 A. Yes, she did.

16 Q. Okay. And at the time Exhibit No. 3 was  
17 executed, is it your opinion that Ms. Bernstein  
18 understood generally the nature and extent of her  
19 property?

20 A. Yes, I believe so.

21 Q. And is it your opinion that at the time  
22 Shirley Bernstein executed Exhibit No. 3, she generally  
23 understood the relationship of those who would be the  
24 natural objects of her bounty?

25 A. Yes, I believe so.

1 Q. Okay. And at the time Shirley Bernstein  
2 executed Exhibit No. 3, is it your opinion that she  
3 generally understood the practical effect of this trust  
4 amendment?

5 A. Yes, I believe so.

6 Q. Okay. And do you have any knowledge or  
7 information about any beneficiary or any other person  
8 unduly influencing Shirley Bernstein to execute  
9 Exhibit No. 3?

10 A. I do not.

11 Q. Okay. And do you have any knowledge or  
12 information about any person, beneficiary or otherwise,  
13 actively procuring Exhibit No. 3?

14 A. I do not.

15 Q. Okay. Moving on to Exhibit No. 4 then, which  
16 is the will of Simon Bernstein, and that is a will that  
17 Mr. Bernstein executed on July -- yes, July 25 of 2012.  
18 And let me direct your attention to page 7 of that will,  
19 Exhibit No. 4.

20 And did Simon Bernstein execute this document  
21 in the presence of you and Kimberly Moran on July 25,  
22 2012?

23 A. Yes, he did.

24 Q. And did you execute this document,  
25 Exhibit No. 4, as a witness in the presence of Simon

1 Bernstein and Kimberly Moran on that date?

2 A. Yes, I did.

3 Q. And did Kimberly Moran execute Exhibit No. 4  
4 as a witness in the presence of Simon Bernstein and  
5 yourself?

6 A. Yes, she did.

7 Q. Okay. And on this date -- or at the time of  
8 execution on this date of July 25, 2012, did Simon  
9 Bernstein understand in a general way the nature and  
10 extent of his property?

11 A. Yes, he did.

12 Q. Okay. At the time that Exhibit No. 4 was  
13 executed, did Simon Bernstein generally understand the  
14 relationship of those who would be the natural objects  
15 of his bounty?

16 A. Yes, he did.

17 Q. And at the time Exhibit No. 4 was executed,  
18 did -- in your opinion, did Simon Bernstein understand  
19 the practical effect of this will?

20 A. Yes, he did.

21 Q. Okay. And do you have any knowledge or  
22 information about any person, whether beneficiary or  
23 otherwise, actively procuring this Exhibit No. 4?

24 A. No, I do not.

25 Q. Do you have any information about any person,



1 beneficiary or otherwise, unduly influencing Simon  
2 Bernstein to execute Exhibit No. 4?

3 A. I do not.

4 Q. Okay. And moving on to the last document  
5 then, Exhibit No. 5, which is the Simon Bernstein  
6 Amended and Restated Trust Agreement, and I'll direct  
7 your attention to page 24 of that Exhibit No. 5.

8 On July 25, 2012, did Simon Bernstein execute  
9 this trust agreement in the presence of you and Kimberly  
10 Moran?

11 A. Yes, he did.

12 Q. And did you execute this trust, Exhibit No. 5,  
13 as a witness in front of Simon Bernstein and Kimberly  
14 Moran?

15 A. I did.

16 Q. And did Kimberly Moran execute Exhibit No. 5  
17 as a witness in front of Simon Bernstein and yourself?

18 A. She did.

19 Q. Okay. And at the time Simon Bernstein  
20 executed Exhibit No. 5, in your opinion, did he  
21 generally understand the nature and extent of his  
22 property?

23 A. He did.

24 Q. And at the time Exhibit No. 5 was executed,  
25 did Simon Bernstein, in your opinion, generally

1 understand the relationship of those who would be the  
2 natural objects of his bounty?

3 A. He did.

4 Q. And did Simon Bernstein, when Exhibit No. 5  
5 was executed, understand generally the practical effect  
6 of this trust agreement?

7 A. Yes, he did.

8 Q. And at the time Exhibit No. 5 was executed, do  
9 you have any knowledge about any person, whether  
10 beneficiary or otherwise, unduly influencing  
11 Mr. Bernstein, Simon Bernstein, to execute this  
12 Exhibit No. 5?

13 A. Nothing that I'm aware of.

14 Q. Okay. And do you have any knowledge or  
15 information about any person, whether beneficiary or  
16 otherwise, actively procuring Exhibit No. 5?

17 A. I do not.

18 MR. MORRISSEY: I have no further questions,  
19 Judge.

20 THE COURT: All right. Thanks.

21 Now, is there any cross? You're not required  
22 to ask any questions, but you just need to let me  
23 know if you're going to.

24 MR. BERNSTEIN: Oh, are you asking me? I had  
25 no idea.

1 THE COURT: I'm not asking you. I'm just  
2 telling you, if you have questions for the witness,  
3 this is your opportunity to ask them; if you don't  
4 have any questions, you don't have to ask any. But  
5 if you're going to, you have to start now.

6 CROSS (ROBERT SPALLINA)

7 BY MR. BERNSTEIN:

8 Q. Mr. Spallina, you were called today to provide  
9 some expert testimony, correct, on the --

10 A. No, I was not.

11 Q. Oh, okay. You're just going based on your  
12 doing the work as Simon Bernstein's attorney and Shirley  
13 Bernstein's attorney?

14 A. Yes.

15 Q. Okay. Are you still an attorney today?

16 A. I am not practicing.

17 Q. Can you give us the circumstances regarding  
18 that?

19 A. I withdrew from my firm.

20 Q. Are you under a consent order with the SEC?

21 MR. ROSE: Objection. Relevance.

22 THE COURT: Sustained.

23 BY MR. BERNSTEIN:

24 Q. Did you sign a consent order for insider  
25 trading --

1 A. Yes, I did.

2 Q. -- with the SEC?

3 You did. Can you give us the circumstances of  
4 your consent order?

5 MR. ROSE: Objection. Relevance.

6 THE COURT: That won't be relevant. Please  
7 move on to the next question.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. Were you -- did you plead to a felony crime?

11 MR. ROSE: Objection. Relevance.

12 THE COURT: Overruled.

13 MR. BERNSTEIN: Well, it's relevant as to --

14 THE COURT: I didn't ask for argument.

15 MR. BERNSTEIN: Well, what did you say?

16 THE COURT: I didn't ask for argument. I  
17 sustained the objection -- no, I sustained the last  
18 objection. This one I'm overruling.

19 You can answer.

20 MR. BERNSTEIN: I can't ask him if he's a  
21 felon?

22 THE COURT: You're asking the wrong guy.

23 MR. BERNSTEIN: Okay. Are --

24 THE COURT: The witness is -- you asked the  
25 question.

1 BY MR. BERNSTEIN:

2 Q. Are you a convicted felony?

3 THE COURT: Let's back up a second.

4 MR. BERNSTEIN: Yes, sir.

5 THE COURT: When you're asking for a ruling,  
6 and I make one, then we're going to have the  
7 witness answer.

8 MR. BERNSTEIN: Okay.

9 THE COURT: I made my ruling. I'm letting the  
10 witness answer your earlier question, unless you're  
11 withdrawing it. Are you withdrawing your earlier  
12 question?

13 MR. BERNSTEIN: No.

14 THE COURT: You can answer the question, which  
15 is, did you plead to a felony?

16 MR. BERNSTEIN: Sorry, sir.

17 THE WITNESS: I have not.

18 THE COURT: Okay. Next question.

19 BY MR. BERNSTEIN:

20 Q. Have you pled guilty to a misdemeanor?

21 A. I have not.

22 Q. Were you involved in a insider trading case?

23 MR. ROSE: Objection. Relevance.

24 THE COURT: Sustained. Next question.

25 MR. BERNSTEIN: Does that mean he doesn't have

1 to answer that?

2 THE COURT: How many times have you been in  
3 court?

4 MR. BERNSTEIN: Just a few where I've had to  
5 do this.

6 THE COURT: You know how this works.

7 MR. BERNSTEIN: I really don't.

8 THE COURT: All right. If I sustain an  
9 objection, that's means he does not answer the  
10 question.

11 MR. BERNSTEIN: Okay. And overruled?

12 THE COURT: If I overrule an objection, that  
13 means the witness does answer the question.

14 MR. BERNSTEIN: Okay.

15 THE COURT: And I've asked you to ask your  
16 next question.

17 MR. BERNSTEIN: Okay.

18 BY MR. BERNSTEIN:

19 Q. Is that your picture on the Florida Law  
20 Review, SEC case settled against Florida attorneys?

21 MR. ROSE: Objection. Relevance.

22 THE COURT: Sustained.

23 Do you have any questions on the issues that I  
24 have to decide in this case?

25 MR. BERNSTEIN: Well, his testimony is based

1 on his truthfulness.

2 THE COURT: My question is, do you have any  
3 questions you want to ask about the issues relevant  
4 to this case?

5 MR. BERNSTEIN: Yes. This is relevant to this  
6 case.

7 THE COURT: I disagree.

8 MR. BERNSTEIN: Oh, okay.

9 THE COURT: I thought I made that very clear  
10 in my ruling. You probably want to move on to a  
11 relevant issue.

12 MR. BERNSTEIN: Okay.

13 BY MR. BERNSTEIN:

14 Q. Mr. Spallina, have you been in discussion with  
15 the Palm Beach County Sheriff's Office regarding the  
16 Bernstein matters?

17 MR. ROSE: Objection. Relevance.

18 THE COURT: Overruled.

19 You can answer that.

20 THE WITNESS: Yes, I have.

21 BY MR. BERNSTEIN:

22 Q. And did you state to them that you  
23 fraudulently altered a Shirley trust document and then  
24 sent it through the mail to Christine Yates?

25 A. Yes, I did.

1 Q. Have you been charged with that by the Palm  
2 Beach County Sheriff yet?

3 A. No, I have not.

4 Q. Okay. How many times were you interviewed by  
5 the Palm Beach County Sheriff?

6 MR. ROSE: Objection. Relevance.

7 THE COURT: Sustained.

8 BY MR. BERNSTEIN:

9 Q. Did you mail a fraudulently signed document to  
10 Christine Yates, the attorney for Eliot Bernstein's  
11 minor children?

12 MR. ROSE: Objection. Relevance.

13 THE COURT: Overruled.

14 THE WITNESS: Yes.

15 BY MR. BERNSTEIN:

16 Q. And when did you acknowledge that to the  
17 courts or anybody else? When's the first time you came  
18 about and acknowledged that you had committed a fraud?

19 A. I don't know that I did do that.

20 Q. Well, you just said you went to the Palm Beach  
21 County Sheriff and admitted altering a document and put  
22 it in the mail.

23 THE COURT: Let me stop you there. If you  
24 want to ask the witness questions, you're permitted  
25 to do that. If you would like to argue with the



1 witness, that's not -- do you have any questions  
2 you want to ask?

3 MR. BERNSTEIN: Yes.

4 BY MR. BERNSTEIN:

5 Q. So you sent a fraudulent document to Eli  
6 Bernstein's minor children's counsel.

7 Can you tell us what that document did to  
8 affect the dispositive Shirley trust document?

9 A. It has no effect.

10 Q. What was its intended effect of altering the  
11 document?

12 A. To carry out your father's wishes in the  
13 agreement that he had made with the five of you for a  
14 layperson that would be reading the documents.

15 Q. You were carrying out his wishes by  
16 fraudulently altering a document?

17 MR. ROSE: Objection.

18 THE COURT: Sustained.

19 That's argumentative. I don't want you to  
20 argue with the witness. That's an argument.

21 MR. BERNSTEIN: Okay.

22 BY MR. BERNSTEIN:

23 Q. Did the fraudulently altered document change  
24 the beneficiaries that were listed in Shirley's trust?

25 A. They did not.

1 Q. Who are the beneficiaries of Shirley's trust?

2 A. It depends on -- under the trust instrument,  
3 in the absence of Si exercising his power of  
4 appointment, it would be yourself and your two sisters,  
5 Lisa and Jill.

6 Q. Oh. So the only beneficiaries in Shirley's  
7 trust are me, Lisa and Jill.

8 Is that directly or through a family trust?

9 A. Your father had established -- your parents  
10 had established family trusts for the three of you to  
11 receive assets from the trust.

12 Q. Okay. So in that document that you sent to  
13 Christine Yates, did you include Ted and Pam's lineal  
14 descendants under the amendment that you fraudulently  
15 drafted and sent to her?

16 MR. ROSE: Objection. Argumentative.

17 THE COURT: Sustained.

18 BY MR. BERNSTEIN:

19 Q. Did in any way the document that you  
20 fraudulently altered and sent to Yates change the  
21 beneficiaries from Eliot, Lisa and Jill and their lineal  
22 descendants to anybody else?

23 THE COURT: May I ask a question?

24 MR. BERNSTEIN: Yes, sir.

25 THE COURT: This document that you're

1 referring to, is anybody asking me to probate that  
2 document?

3 MR. BERNSTEIN: Well, it's part of the estate  
4 plan. It's part --

5 THE COURT: Is anybody seeking relief, either  
6 you or the other side, under that document?

7 MR. BERNSTEIN: Yeah. They're seeking to  
8 change the beneficiaries of my mom's trust through  
9 that document and others.

10 THE COURT: You're misperceiving my question.

11 MR. BERNSTEIN: Oh, okay. Sorry.

12 THE COURT: That document, which  
13 is -- nobody's put it in evidence; I don't know  
14 what it is, but it's -- that thing that you're  
15 asking the witness about, is somebody seeking  
16 relief based upon that document?

17 MR. ROSE: Absolutely not. The opposite.

18 THE COURT: All right. Are you seeking relief  
19 based upon that document?

20 MR. BERNSTEIN: Yeah. Oh, absolutely.

21 THE COURT: All right. Are you claiming that  
22 that document is subject to probate?

23 MR. BERNSTEIN: Yeah.

24 THE COURT: Is the lady who's giving you  
25 advice your attorney?

1 MR. BERNSTEIN: No.

2 THE COURT: Ma'am, are you admitted to the bar  
3 in Florida? Remember what I told you earlier.  
4 I've let you sit there as a courtesy. Generally, I  
5 don't let wives or friends or anybody else sit at  
6 the table where the parties are because it confuses  
7 me. But you're giving that guy advice and you're  
8 also not listening to me, which I find odd, because  
9 I'm going to have you move you back to the gallery  
10 now. Please have a seat in the gallery. Please  
11 have a seat in the gallery. Please have a seat in  
12 the gallery. Soon. When courtesy is not returned,  
13 courtesy is withdrawn. Please have a seat in the  
14 gallery. Thank you.

15 Do you have any other questions of the  
16 witness?

17 MR. BERNSTEIN: Can I submit this as evidence  
18 to the Court?

19 THE COURT: Is that the document you've been  
20 asking the witness about?

21 MR. BERNSTEIN: Yeah.

22 THE COURT: All right. Any objection to it  
23 being received as an exhibit?

24 MR. ROSE: I don't have any objection to it  
25 being received as an exhibit. But as Your Honor

1 noted, we aren't seeking to probate it, and we're  
2 not suggesting it's valid in the first place.

3 THE COURT: All right. Well, let me see what  
4 that document is, so then I'll see if I can make  
5 some sense out of it.

6 You can't -- Gary's always afraid that if  
7 somebody's not a member of the bar, they might do  
8 something bad to me. Officers of the court aren't  
9 allowed to do things bad to the judge. Other folks  
10 don't know that. And so Gary watches out carefully  
11 for my well-being.

12 MR. BERNSTEIN: Gotcha.

13 THE COURT: Okay. So this is a document  
14 that's titled "First Amendment to Shirley Bernstein  
15 Trust Agreement."

16 MR. BERNSTEIN: Correct.

17 THE COURT: And it's in the book that I've  
18 been given earlier by the plaintiff as Tab 6.  
19 You're seeking to put it into evidence as  
20 Defendant's 1?

21 MR. BERNSTEIN: Okay.

22 THE COURT: Right?

23 MR. BERNSTEIN: Sure. Yes, sir.

24 THE COURT: You're offering it as an exhibit?

25 MR. BERNSTEIN: No, Evidence 1.

1 THE COURT: The objection to it is that it's  
2 not relevant?

3 MR. ROSE: Not relevant. Right, relevance.  
4 And it's also not something we're seeking to be  
5 probated or treated as authentic and genuine.

6 THE COURT: Well, the other side is seeking to  
7 use the terms of this document instead of the terms  
8 of the amendment that's in evidence, right?

9 MR. ROSE: I don't believe that's what he's  
10 doing.

11 THE COURT: I'm not sure what he's doing, but  
12 in an abundance of caution, I'm going to receive it  
13 for what relevance it might have. I don't perceive  
14 any yet, but we'll see what happens.

15 So this is Defendant 1.

16 (Defendant's Exhibit No. 1 was received into  
17 evidence.)

18 THE COURT: Any other questions of the  
19 witness?

20 MR. BERNSTEIN: Sure.

21 BY MR. BERNSTEIN:

22 Q. You've testified here about Kimberly Moran.  
23 Can you describe your relationship with her?

24 A. She's been our long-time assistant in the  
25 office.

1 Q. Was she convicted of felony fraudulent  
2 notarization in the Estate of Shirley Bernstein?

3 MR. ROSE: Objection. Relevance.

4 THE COURT: Overruled.

5 You're asking if she was convicted of a felony  
6 with respect to the Estate of Shirley Bernstein?

7 You can answer the question.

8 MR. BERNSTEIN: Correct.

9 THE WITNESS: I believe she was.

10 BY MR. BERNSTEIN:

11 Q. And what was she convicted for?

12 A. She had notarized the waiver releases of  
13 accounting that you and your siblings had previously  
14 provided, and we filed those with the court.

15 Q. We filed those with the court.

16 Your law firm submitted fraudulent documents  
17 to the court?

18 A. No. We filed -- we filed your original  
19 documents with the court that were not notarized, and  
20 the court had sent them back.

21 Q. And then what happened?

22 A. And then Kimberly forged the signatures and  
23 notarized those signatures and sent them back.

24 Judge Colon has a rule in his court to have  
25 those documents notarized, even though that's not the

1 requirement under the Florida Probate Code.

2 Q. So when you didn't follow the rule, you  
3 frauded [sic] and forged the document?

4 MR. ROSE: Objection. Argumentative.

5 THE COURT: Sustained.

6 THE WITNESS: I had nothing to do with that.

7 THE COURT: You've got to stop a second.

8 MR. BERNSTEIN: Yes, sir.

9 THE COURT: If you continue to argue with the  
10 witness, then I'll assume you don't have any more  
11 questions. I sustained that last objection to  
12 argumentative.

13 MR. BERNSTEIN: I'm a little confused --

14 THE COURT: I'm sorry about your confusion,  
15 but there are ways you could have dealt with that  
16 before this trial. If you are confused during the  
17 trial, you better get unconfused as quickly as you  
18 can because bad things will happen. And I don't  
19 want bad things to happen. I want to get the facts  
20 so that I can accurately decide the case on its  
21 merits.

22 Stop arguing, ask questions, let the witness  
23 answer, and listen to any rulings that I make on  
24 the objections. That's the last time I'll repeat  
25 that advice to you. Thank you.



1 BY MR. BERNSTEIN:

2 Q. What law firm submitted those documents to the  
3 court?

4 A. Tescher & Spallina, P.A.

5 Q. Are you a partner in that firm?

6 A. I was.

7 Q. So your firm that you were a partner with sent  
8 in documents that were fraudulent to the court?

9 MR. ROSE: Objection. Cumulative.

10 THE COURT: Sustained.

11 BY MR. BERNSTEIN:

12 Q. Did Tescher & Spallina law firm submit  
13 Kimberly Moran's forged and fraudulent document waivers  
14 to the court?

15 MR. ROSE: Objection. Cumulative.

16 THE COURT: He already said he did.

17 MR. BERNSTEIN: What is that?

18 THE COURT: Cumulative means you've already  
19 had that answer given.

20 MR. BERNSTEIN: No, I didn't have that.

21 THE COURT: He's already said that he did.

22 MR. BERNSTEIN: I'm asking if they deposited  
23 them with the court.

24 THE COURT: And he said they didn't.

25 MR. BERNSTEIN: Well, I asked him, and he

1           said --

2           THE COURT: I won't argue with you. Do you  
3           want to go on to the next item or not?

4           MR. BERNSTEIN: Oh, okay, I do.

5           THE COURT: Okay. Next question, please.

6 BY MR. BERNSTEIN:

7           Q. Did your office -- did you submit documents to  
8           close the estate of Shirley with Simon as the personal  
9           representative at a time Simon was dead?

10          A. We did.

11          Q. You did? Excuse me? I didn't hear an answer.

12          A. I said yes.

13          Q. So Shirley's estate was closed by a dead  
14          personal representative.

15                 Can you give me the time that the estate was  
16          closed by Simon while he was dead?

17          MR. ROSE: Objection. Argumentative.

18          THE COURT: Overruled.

19                 You can answer.

20          THE WITNESS: I believe it was October,  
21          November 2012.

22 BY MR. BERNSTEIN:

23          Q. Do you want to check your records on that?

24          A. I believe it was after his death. I know he  
25          died September 13, 2012. And we had received late from

1 one of your sisters the signed waiver. So it was  
2 probably in November, somewhere around there.

3 Q. You stated that Simon -- that Kimberly did  
4 five waivers for the siblings that she sent back in  
5 fraudulently to the court through your law firm.

6 Did she also do a fraudulent forged signature  
7 of a waiver for Simon?

8 A. I'm not sure. I guess if you're saying she  
9 did --

10 Q. Well, the court has on file a waiver of  
11 Simon's that she's admitted to.

12 A. We filed all of the waivers originally with  
13 the court all signed by the appropriate parties, and the  
14 court kicked those back. And she forged and notarized  
15 new documents and sent them to the court. She felt she  
16 had made a mistake.

17 Q. Okay. Are you aware of an April 9th full  
18 waiver that was allegedly signed by Simon and you?

19 A. Yeah. That was the waiver that he had signed.  
20 And then in the May meeting, we discussed the five of  
21 you, all the children, getting back the waivers of the  
22 accountings.

23 Q. Okay. And in that April 9th full waiver you  
24 used to close my mother's estate, does Simon state that  
25 he has all the waivers from all of the parties?

1           A.    He does.  We sent out -- he signed that, and  
2 we sent out the waivers to all of you.

3           Q.    Okay.  So on April 9th of 2012, Simon signed,  
4 with your presence, because your signature's on the  
5 document, a document stating he had all the waivers in  
6 his possession from all of his children.

7                    Had you sent the waivers out yet as of  
8 April 9th?

9           THE COURT:  What is it that you want the  
10 witness to answer?  There was several questions.

11           MR. BERNSTEIN:  Oh, compounded a little bit?

12           THE COURT:  Yes.

13           MR. BERNSTEIN:  Sorry.

14           THE COURT:  So you even --

15           MR. BERNSTEIN:  I'll kick that back.

16           THE COURT:  So you even know the lingo of the  
17 objections.

18           MR. BERNSTEIN:  I'll kick that back to one at  
19 a time, because it's an important point.

20 BY MR. BERNSTEIN:

21           Q.    April 9th, 2012, you have a signed full waiver  
22 of Simon's that says that he is in possession of all of  
23 the signed waivers of all of the parties?

24           A.    Standard operating procedure, to have him  
25 sign, and then to send out the documents to the kids.

1 Q. Was Simon in possession -- because it's a  
2 sworn statement of Simon saying, I have possession of  
3 these waivers of my children on today, April 9th,  
4 correct, the day you two signed that?

5 Okay. So if you hadn't sent out the waivers  
6 yet to the --

7 A. I'm not certain when the waivers were sent  
8 out.

9 Q. Were they sent out after the --

10 A. I did not send them out.

11 Q. Okay. More importantly, when did you receive  
12 those? Was it before April 9th or on April 9th?

13 A. We didn't receive the first one until May.  
14 And it was your waiver that we received.

15 Q. So how did you allow Simon, as his attorney,  
16 to sign a sworn statement saying he had possession of  
17 all of the waivers in April if you didn't get mine 'til  
18 May?

19 MR. ROSE: Objection. I think it's relevance  
20 and cumulative. He's already answered.

21 THE COURT: What's the relevance?

22 MR. BERNSTEIN: Oh, this is very relevant.

23 THE COURT: What is the relevance on the issue  
24 that I have to rule on today?

25 MR. BERNSTEIN: On the validity? Well, it's

1 relevant. If any of these documents are relevant,  
2 this is important if it's a fraud.

3 THE COURT: I'll sustain the objection.

4 MR. BERNSTEIN: Okay. Can I -- okay.

5 BY MR. BERNSTEIN:

6 Q. When did you get -- did you get back prior to  
7 Simon's death all the waivers from all the children?

8 A. No, we did not.

9 Q. So in Simon's April 9th document where he  
10 says, he, Simon, on April 9th has all the waivers from  
11 his children while he's alive, and you didn't even get  
12 one 'til after he passed from one of his children, how  
13 could that be a true statement?

14 MR. ROSE: Objection. Relevance. Cumulative.

15 THE COURT: Sustained.

16 Here's what I'm going to decide at the end of  
17 the day; I'm going to decide whether Shirley's 2008  
18 will and trust and 2008 amendment are valid and  
19 enforceable. I'm going to decide whether Simon's  
20 2012 will and 2012 trust documents are valid and  
21 enforceable. You have a lot more on your mind than  
22 I have on mine. You do. Right? But those are the  
23 things that I'm working on. So I'm focused like a  
24 laser and you're focused more like a shotgun. I'm  
25 telling you this so that you can focus more tightly

1 on the questions you're asking and the facts you're  
2 developing so they'll help me make an accurate  
3 decision on those things that I'm going to decide  
4 today. You can keep asking questions that don't go  
5 anywhere, but I would hope that you'll adjust your  
6 approach so that you'll help me make an accurate  
7 decision.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. And on validity, let's just get right to that  
11 real quick. You've testified to a lot of documents here  
12 today, correct, of the estate documents you drafted,  
13 correct?

14 A. Yes, I did.

15 Q. Did you gain any pecuniary interest, did you  
16 gain any titles in those documents?

17 A. Pecuniary interest? No. I was named by your  
18 father as personal representative and trustee of his  
19 trust.

20 Q. And so you executed -- you drafted the  
21 documents, you signed them as a witness, and you gained  
22 interest in the documents, correct?

23 A. No, I did not.

24 Q. You didn't gain interest as a trustee --

25 MR. ROSE: Objection.

1 BY MR. BERNSTEIN:

2 Q. -- or a personal representative of those  
3 documents?

4 MR. ROSE: Objection. Cumulative. Asked and  
5 answered.

6 THE COURT: Overruled.

7 THE WITNESS: I was named as his personal  
8 representative and trustee, along with my partner.

9 BY MR. BERNSTEIN:

10 Q. Did you witness the document?

11 A. I did.

12 Q. Did you draft the document?

13 A. I did.

14 Q. Okay. You mentioned there was Kimberly Moran  
15 there at the signing of these documents, correct?

16 A. She was.

17 Q. Okay. Can you point her out, because I'm  
18 going to need her to testify as to the validity?

19 A. I do not see her in the courtroom.

20 Q. Okay. You mentioned a Traci Kratish. Can you  
21 point her out in the courtroom today to validate the  
22 documents?

23 A. I don't see Traci in the room either.

24 Q. So she was another witness that is not here  
25 present to validate the documents today? Well, it's



1 awful -- okay.

2 Is Kimberly Moran here who notarized the  
3 documents.

4 MR. ROSE: Objection. Cumulative. Asked that  
5 a minute ago.

6 MR. BERNSTEIN: I didn't -- did I? Was it  
7 Moran --

8 THE COURT: No, I thought it was some other  
9 name.

10 MR. BERNSTEIN: So did I.

11 THE COURT: Is Kimberly here?

12 THE WITNESS: She's not.

13 THE COURT: Okay. Next question.

14 BY MR. BERNSTEIN:

15 Q. Okay. Being a former estate planning  
16 attorney. To validate a document, wouldn't you have the  
17 parties who witnessed and notarized and signed present?

18 MR. ROSE: Objection. Relevance.

19 Misstates --

20 THE COURT: Sustained.

21 BY MR. BERNSTEIN:

22 Q. Is it necessary to validate documents with the  
23 necessary notaries and witnesses present?

24 MR. ROSE: Objection. Calls for a legal  
25 conclusion.

1 THE COURT: Well, I'm the one that's going  
2 make that decision. I don't care what the witness  
3 says about the law.

4 MR. BERNSTEIN: I gotcha. Okay.

5 THE COURT: So this would be a good time for  
6 us to take a pause. We're not making headway.

7 You ever here of cavitation when it comes to  
8 boat propellers?

9 MR. BERNSTEIN: No.

10 THE COURT: Okay. I don't know a lot about  
11 the physics of it, but a boat goes forward based on  
12 a propeller spinning in the water. And it happens  
13 sometimes in racing boats, maybe other boats too,  
14 that you get the propeller going so fast or you do  
15 something so much with the propeller that it  
16 cavitates, which means that it's not actually  
17 pushing in the water. It's making a lot of noise.  
18 It's spinning like crazy. It's furiously working,  
19 but it's not propelling the boat forward. I want  
20 to suggest to you that you've hit a point of  
21 cavitation. So this would be a good time for us to  
22 take our lunch break so that when we get back we'll  
23 go forward with this ship that is our trial.

24 MR. BERNSTEIN: How long?

25 THE COURT: It'll be until 1:30.

1 MR. BERNSTEIN: Okay.

2 THE COURT: That'll give everybody a time to  
3 revive, if necessary, and we'll reconstitute  
4 ourselves at 1:30. Thanks.

5 (A break was taken.)

6 (Proceedings continued in Volume 2.)

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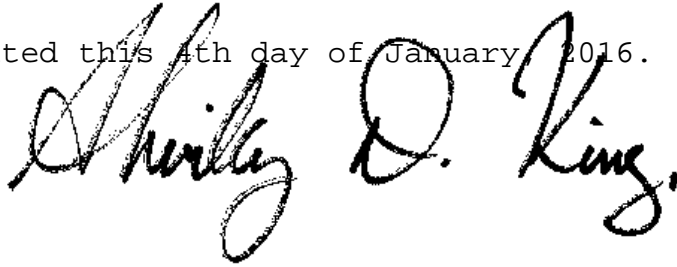
C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Shirley D. King, Registered Professional Reporter, State of Florida at large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 4th day of January, 2016.



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Shirley D. King, RPR, FPR

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