

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

TED BERNSTEIN, as Trustee of the Shirley
Bernstein Trust Agreement Dated May 20,
2008, as Amended

Case No.: 502014CP003698XXXXNBJJ
Probate Division

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC
BERNSTEIN; MICHAEL BERNSTEIN;
MOLLY SIMON; PAMELA B. SIMON,
Individually and as Trustee f/b/o Molly Simon
under the Simon L. Bernstein Trust Dtd 9/13/12;
ELIOT BERNSTEIN, individually, as Trustee
f/b/o D.B., Ja. B. and Jo. B. under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of his
minor children D.B., Ja. B. and Jo. B.; JILL
IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12,
and on behalf of her Minor child J.I.; MAX
FRIEDSTEIN; LISA FRIEDSTEIN,
Individually, as Trustee f/b/o Max Friedstein and
C.F., under the Simon L. Bernstein Trust Dtd
9/13/12, and on behalf of her minor child, C.F.,

Defendants.

PLAINTIFF'S SECOND AMENDED^{1,2} EXHIBIT LIST

Plaintiff, Ted S. Bernstein (the "Trustee"), hereby files his list of exhibits for the trial
scheduled for December 15, 2015, by Order of this Court dated September 24, 2015, as follows:

TAB	DESCRIPTION	BATES	MARKED	ADMITTED
I.	May 20, 2008 Shirley Bernstein Will			
2.	May 20, 2008 Shirley Bernstein Trust Agreement			
3.	November 18, 2008 First Amendment to Shirley Trust Agreement			

¹ First Amended Exhibit List added Exhibit(s) 40A-40F

² Second Amended Exhibit List adds Exhibit 41

TAB	DESCRIPTION	BATES	MARKED	ADMITTED
4.	July 25, 2012 Will of Simon L. Bernstein	TS004297-TS004305		
5.	July 25, 2012 Amended and Restated Trust Agreement of Simon L. Bernstein			
6.	<i>Invalid</i> November 18, 2008 First Amendment to Shirley Bernstein Trust Agreement	TS001397-TS001399		
7.	Bernstein Family Charts			
8.	August 15, 2007 Letter from John A. Herrera, Esq. to Eliot Bernstein Re-Advancement of Inheritance	TS006701-TS006703		
9.	November 16, 2007 Client/Case Maintenance Form of Simon & Shirley Bernstein	TS003232		
10.	Tescher & Spallina Attorney Notes Re: Bernstein	TS003638-TS003646 & TS004061-4063		
11.	April 9, 2008 Letter from Robert Spallina to Mr. and Mrs. Simon Bernstein Re- <i>Estate Planning</i>			
12.	Undated Financial Statement of Simon Bernstein			
13.	2012 Financial Statement of Simon Bernstein			
14.	May, 2012 Email from E. Bernstein to R. Spallina Re-Estate of Shirley Bernstein	TS003977		
15.	May 24, 2012 Letter enclosing draft Wills from Spallina to Simon Bernstein Re- <i>Estate Planning</i>	TS003983-TS004018		
16.	July 2, 2012 Simon L. Bernstein Durable Power of Attorney	TS003916-TS003919		
17.	July 26, 2012 Letter from Spallina to Simon Bernstein Re- <i>Estate Planning</i>	TS003982		
18.	Simon Leon Bernstein Certification of Death	TS004163		
19.	Notice of Administration In Re: Estate of Simon L. Bernstein	TS004177		
20.	October 23, 2012 Palm Beach Daily Business Review Notice of Administration In Re: Estate of Simon L. Bernstein	TS004274		
21.	iViewit.com LLC Promissory Noteholders Chart, Stock Ledger	TS004329, TS004324-TS004325		

TAB	DESCRIPTION	BATES	MARKED	ADMITTED
22.	LIC Holdings, Inc. Analysis of Shareholders and Shareholdings	TS002953		
23.	2006-2010 LIC Holdings, Inc. Tax Return 1120S Forms	TS000925, TS002419, TS002421, CBIZ148, TS001531		
24-A	December, 2013 Amended Inventory In Re: Estate of Simon Bernstein	TS004201-TS004203 TS004206-TS004207		
24-B	December 1, 2014 [2012CP004391 In Re: Estate of Simon L. Bernstein] Inventory by Brian M. O'Connell			
25.	March 26, 2015 Successor Trustee's Notice of Accounting of The Simon Bernstein Revocable Trust From: February 3, 2014 through March 15, 2015			
26.	March 31, 2015 [In Re: Estate of Shirley Bernstein, Case Number: 2011CP000653] Accounting of Successor Personal Representative			
27.	March 31, 2015 [In Re: Estate of Shirley Bernstein, Case Number 2011CP000653] Inventory by Ted S. Bernstein, As Successor Personal Representative			
28.	Fifteenth Judicial Circuit, Palm Beach County Case Number: 2011CP000653SB, In Re: Estate of Shirley Bernstein: <i>Petition to Re-Close Estate Based Upon Prior Signed Waivers and for Discharge of Successor Personal Representative</i>			
29.	Fifteenth Judicial Circuit, Palm Beach County Case Number: 2012CP00439SB, In Re: Estate of Simon L. Bernstein: <i>Ted S. Bernstein's Motion for Instructions</i>			
30.	Fifteenth Judicial Circuit, Palm Beach County Case Number 2012CA013933, Stansbury v. Bernstein et al: <i>Order of Dismissal with Prejudice of Certain Parties and Claims</i>			
31.	January 21, 2014 Resignation of Co-Trustee			

TAB	DESCRIPTION	BATES	MARKED	ADMITTED
32.	March 4, 2014 Affidavit of Donald R. Tescher			
33.	March 10, 2014 Affidavit of Robert Spallina			
34.	Palm Beach County Case Number: 2012CP004391 In Re: The Estate of Simon L. Bernstein- September 22, 2014 <i>Ted. S. Bernstein Amended Designations of the Deposition of Donald Tescher</i>			
35.	Preliminary Statement by Eliot Bernstein in the USDC Southern District of New York, Eliot Bernstein v. Appellate Division, First Department Departmental Disciplinary Committee, et al			
36.	<i>Internet and Blog Postings with negative references to Ted S. Bernstein; Judge Colin; various fiduciaries and counsel, and others</i>			
36-A	January 11, 2014 Ted Bernstein Report by Investigative Blogger, Crystal L. Cox: Filing a Lien Against All Judges In Re: Shirley Bernstein			
36-B	February 21, 2014 Ted Bernstein Report by Investigative Blogger, Crystal L. Cox Re: "Judge Martin Colin has a History of Protecting the Bad Guys..."			
36-C	May 14, 2014 Ted Bernstein Report by Investigative Blogger, Crystal L. Cox Re: "John Pankauski"			
36-D	March 30, 2015 Ted Bernstein Insurance Scam Article by Crystal L. Cox Re: <i>7020 Lions Head Lane Boca Raton, Real Estate Buyers Have a Legal Right to Have FULL DISCLOSURE. Buyer Be Aware</i>			
36-E	April 20, 2015 Article by Crystal Cox Re: <i>Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company; Insurance Fraud, Forged Documents, Murder Allegations, No Policy, and Millions Paid</i>			
36-F	June 4, 2015 Article by Crystal L. Cox Re: <i>Alan B. Rose of Mrachek,</i>			

TAB	DESCRIPTION	BATES	MARKED	ADMITTED
	<i>Fitzgerald, Rose, Konopka, Thomas, & Weiss Florida Probate Case</i>			
36-G	September 14, 2015 Article by Crystal L. Cox Re: <i>Florida Probate Fraud, Forgery, and Corruption</i>			
37.	November 9, 2012 and November 29, 2012 Letters from Christine P. Yates to Robert Spallina Re-Estates of Shirley Bernstein and Simon Leon Bernstein	TS004363- TS004364, TS004365-TS004366		
38.	Accounting for Sale of 7020 Lions Head Lane, Boca Raton, FL (if sale closed)			
39.	Any and all documents listed by Defendants, subject to objections			
40-A	Envelope from S. Greenwald, P.A. to Mr. and Mrs. Simon L. Bernstein	TS000001		
40-B	October 12, 2007 Cover Letter from Greenwald to Mr. and Mrs. Bernstein	TS000043-TS000044		
40-C	August 15, 2000 Last Will and Testament of Simon Bernstein	TS000002-000022		
40-D	August 15, 2000 Last Will and Testament of Shirley Bernstein	TS000023-TS000042		
40-E	December 1, 2001 First Codicil to Last Will and Testament of Shirley Bernstein	TS000045-TS000048		
40-F	November 30, 2001 First Codicil to Last Will and Testament of Simon L. Bernstein	TS000049-TS000052		
41.	December 8, 2015 Ted Bernstein Report by Investigative Blogger, Crystal L. Cox Re: <i>Florida Judge, Judge L. Phillips RULES to not disqualify himself? Wow, is that Lawful? Ethical? Etc.</i>			

The Trustee reserves the right to amend and/or supplement this Exhibit List and to utilize any and all exhibits offered into evidence by the Defendants.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to all persons on the Service List set forth below by email electronic transmission this 10th day of December, 2015.

MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone
(561) 655-5537 Facsimile
email: arose@mrachek-law.com
email: mchandler@mrachek-law.com
Attorneys for Trustee, Ted Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Florida Bar No. 961825)

SERVICE LIST
CASE NO.: 502014CP003698XXXXNBIJ

<p>Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja. B. and Jo. B, Minors 2753 NW 34th Street Boca Raton, FL 33434 (561) 245-8588 - Telephone (561) 886-7628 - Cell (561) 245-8644 - Facsimile Email: Eliot I. Bernstein (iviewit@iviewit.tv)</p> <p>John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0866 - Telephone (561) 833-0867 - Facsimile Email: John P. Morrissey (john@jmorrisseylaw.com) Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein</p> <p>Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein lisa.friedstein@gmail.com</p> <p>Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor jilliantoni@gmail.com</p>	<p>Alan Rose, Esq. Mrachek Fitzgerald Rose Konopka Thomas & Weiss, P.A. 505 S Flagler Drive, Suite 600 West Palm Beach, FL 33401 (561) 655-2250 - Telephone (561) 655-5537 - Facsimile Email: arose@mrachek-law.com</p> <p>Pamela Beth Simon 303 E. Wacker Drive, Suite 2725 Chicago, IL 60601 Email: psimon@stpcorp.com</p> <p>Brian M. O'Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens & O'Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900 - Telephone 561-833-4209 - Facsimile Email: boconnell@ciklinlubitz.com; jfoglietta@ciklinlubitz.com; service@ciklinlubitz.com; slobdell@ciklinlubitz.com</p>
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WILL OF
SHIRLEY BERNSTEIN

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.



CONFORMED COPY

WILL OF

SHIRLEY BERNSTEIN

The original of this Will is being held in the safe deposit box of the law firm of Tescher & Spallina, P.A.

I, SHIRLEY BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. My spouse is SIMON L. BERNSTEIN ("*SIMON*"). My children are TED S. BERNSTEIN ("*TED*"), PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to SIMON, if SIMON survives me, my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if SIMON does not survive me, I give this property to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical, and if neither SIMON nor any child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. RESIDENCES

I give to SIMON, if SIMON survives me, my entire interest in any real property used by us as a permanent or seasonal residence, subject to any mortgage or other lien. If SIMON does not survive me, such interest shall pass with the residue of my estate.

ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate to the Trustee then serving under my revocable Trust Agreement dated today, as may be amended and restated from time to time (the "*Existing Trust*"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

LAST WILL
OF SHIRLEY BERNSTEIN

TESCHER & SPALLINA, P.A.

ARTICLE IV. PERSONAL REPRESENTATIVES

1. Appointment and Bond. I appoint SIMON and TED, one at a time and successively in that order, as my Personal Representative (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by-law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

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

a. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. Distributions or Divisions. To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. Management. To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. Borrowing. To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

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

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right

to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without

cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Articles I and II of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs.

5. Reimbursement for Debts and Expenses. My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. Expenses of Handling Tangible Personal Property. All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. Dealing with Estate. Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. Spouse. The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

[remainder of page intentionally left blank]

I have published and signed this instrument as my Will at Boca Raton, Florida, on the 20 day of May, 2008.

/s/ Shirley Bernstein
SHIRLEY BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testatrix to be the Testatrix's Will in our presence, and at the Testatrix's request and in the Testatrix's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this _____ day of _____, 2008.

/s/ Robert L. Spallina residing at 7387 Wisteria Ave
[Witness Signature] [Witness Address]

Parkland, FL 33076
[Witness Address]

/s/ Diana Banks residing at 23415 Boca Trace Dr.
[Witness Signature] [Witness Address]

Boca Raton, FL 33433
[Witness Address]

State Of Florida

SS.

County Of Palm Beach

I, SHIRLEY BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

/s/ Shirley Bernstein
SHIRLEY BERNSTEIN, Testatrix

We, Robert L. Spallina and Diana Banks,
have been sworn by the officer signing below, and declare to that officer on our oaths that the Testatrix declared the instrument to be the Testatrix's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testatrix and of each other.

/s/ Robert L. Spallina
Witness

/s/ Diana Banks
Witness

Acknowledged and subscribed before me, by the Testatrix, SHIRLEY BERNSTEIN, who is personally known to me or who has produced _____ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (state type of identification) as identification, and Diana Banks, who is personally known to me or who has produced _____ (state type of identification) as identification, and subscribed by me in the presence of SHIRLEY BERNSTEIN and the subscribing witnesses, all on this 20 day of May, 2008.

Kimberly Moran
Commission # DD766470
Expires: APR. 28, 2012

/s/ Kimberly Moran
Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

F:\MYDATA\Wills\Bernstein, Shirley & Simon\2008 Estate Planning\Will of Shirley Bernstein.vpd [08 15:26:41 5 19]

LAST WILL
OF SHIRLEY BERNSTEIN

TESCHER & SPALLINA, P.A.

SHIRLEY BERNSTEIN

TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com



TESCHER & SPALLINA, P.A.

SHIRLEY BERNSTEIN

TRUST AGREEMENT

This Trust Agreement is dated this 20 day of MAY, 2008, and is between SHIRLEY BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN, of Palm Beach County, and SHIRLEY BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for his Welfare. Any income not so paid shall be added to principal.

C. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent

SHIRLEY BERNSTEIN
TRUST AGREEMENT

TESCHER & SPALLINA, P.A.

SB

(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

D. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Specific Cash Devise. The Trustee shall set aside in a separate trust the sum of Two Hundred Thousand (\$200,000.00) Dollars for MATTHEW LOGAN, and said separate trust shall be administered as provided in Subparagraph II.F below. If MATTHEW LOGAN does not survive me this devise shall lapse.

C. Marital Deduction Gift. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "*Family Trust*" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.

2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "Marital Trust."

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

D. During Spouse's Life. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

E. Disposition of Trusts Upon Death of Survivor of My Spouse and Me. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, per stirpes. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by my spouse as grantor on even date herewith (the "Family Trusts" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "beneficiary," with their separate trusts to be administered as provided in Subparagraph II.E. below.

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F. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

G. Termination of Small Trust. If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

H. Contingent Gift. If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

I. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be

liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

J. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

K. Florida Homestead Possessory Rights. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

ARTICLE III. GENERAL

A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.

C. Substance Abuse.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate

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takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL LANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

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2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "My spouse" is SIMON L. BERNSTEIN ("SIMON").

6. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "Welfare" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "per stirpes" each generation shall be represented and counted whether or not it has a living member.

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

9. Spouse. A person's "spouse" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

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H. Presumption of Survivorship. If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Mandatory Notice Required by Florida Law. The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

L. Release of Medical Information.

1. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or

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at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "estate"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise,

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and

personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

b. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to

exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under

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a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such

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allocation between the date of valuation for federal estate tax purposes and the date or dates of said allocation and selection.

26. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

27. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

28. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate or my spouse's estate.

29. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

30. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, SIMON and TED, one at a time and successively in that order, shall serve as successor Trustee. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

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2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances:

a. Trustee of the Marital Trust. SIMON and TED, one at a time and successively in that order, shall serve as Trustee of the Marital Trust. While serving as Trustee, my spouse may designate a co-Trustee to serve with my spouse and my spouse may remove and/or replace such co-Trustee from time to time.

b. Trustee of the Family Trust. SIMON and TED, one at a time and successively in that order, shall serve as Trustee of the Family Trust. While serving as Trustee, my spouse may designate a co-Trustee that is not a Related or Subordinate Party to serve with my spouse and my spouse may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

c. Trustee of Separate Trusts for My Children. Each child of mine shall serve as sole Trustee of his or her separate trust. While serving alone as Trustee, a child of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such child and such child may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

d. Trustee of Separate Trusts for My Lineal Descendants Other Than My Children. In regard to a separate trust held for a lineal descendant of mine other than a child of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon reaching age twenty-five (25) years.

e. Trustee of Separate Trust for MATTHEW LOGAN. In regard to a separate trust held MATTHEW LOGAN, his mother, DEBORAH BERNSTEIN ("DEBORAH"), shall serve as Trustee until MATTHEW attains age 25 years, at which time he shall serve as a co-Trustee with DEBORAH of such separate trust.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

a. The remaining Trustees, if any; otherwise,

b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 25 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1. each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

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ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts.

1. Family Trust. I direct (a) that the Trustee shall divide any trust other than the Marital Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions of this Trust Agreement relating to the trust that is being divided) so that the generation-skipping tax inclusion ratio of one such trust is zero.

2. Marital Trust. I direct that, if possible, (a) the Trustee shall divide the Marital Trust into two separate Marital Trusts (each subject to the provisions hereof concerning the Marital Trust) so that through allocation of my GST exemption remaining unallocated at my death and not otherwise allocated to transfers occurring at or by reason of my death (including allocations to the Family Trust), if any, the generation-skipping tax inclusion ratio of one such Marital Trust is zero (the GST Marital Trust), (b) my Personal Representative to exercise the election provided by Code Section 2652(a)(3) as to the GST Marital Trust, and (c) that upon the death of my spouse the total amount recoverable by my spouse's estate from the property of the Marital Trusts under Code Section 2207A shall first be recoverable in full from the non-GST Marital Trust to the extent thereof.

3. Misc. I direct that (a) upon the death of the survivor of me and my spouse, any property then directed to be paid or distributed which constitutes a direct skip shall be paid first from property then exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) to the extent thereof, (b) property exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) and not directed to be paid or distributed in a manner which constitutes a direct skip shall be divided and distributed as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and lineal descendants, in such estates, interests, and proportions as such beneficiary may, by a will specifically referring to this general power appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

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Notwithstanding any other provision of this Trust Agreement, for purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. In regard to the division or severance of a trust hereunder, including the Marital Trust, such division or severance shall be made in a manner that all resulting trusts are recognized for purposes of Chapter 13 of the Code, including without limitation complying with the requirements of Treas.Reg. §26.2654-1(b). Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this Article which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to

a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and

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5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the property disposed of pursuant to the prior paragraphs captioned "Disposition of Tangible Personal Property", "Specific Cash Devise" nor from the Marital Trust.

E. Marital Trust. I intend the maximum obtainable reduction of federal estate tax due by reason of my death by use of the federal estate tax marital deduction, and qualification of all property of the Marital Trust for the marital deduction. This Agreement shall be construed and all powers shall be exercised consistent with such intent. For example, the Trustee shall not allocate any receipt to principal or any disbursement to income if such allocation understates the net income of the Marital Trust under Florida law; and upon the written demand of my spouse, the Trustee shall convert unproductive or underproductive property of said trust into productive property within a reasonable time notwithstanding any other provision hereunder. The foregoing notwithstanding, if my spouse survives me but dies within six months after my death, the Marital Trust provided in Subparagraph II.B will be reduced to that amount, if any, required to obtain for my estate an estate tax marital deduction resulting in the lowest combined estate taxes in my estate and my spouse's estate, on the assumption that my spouse died after me on the date of my death, that my spouse's estate is valued on the same date and in the same manner as my estate is valued for federal estate tax purposes, and that elections in my spouse's estate were made that would be consistent with minimizing taxes. The purpose of this provision is to equalize, insofar as possible, our estates for federal estate tax purposes, based on the above assumptions.

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise

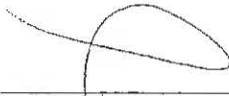
manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal residence so that such right shall constitute a possessory right in such real property within the meaning of Florida Statute Section 196.041.

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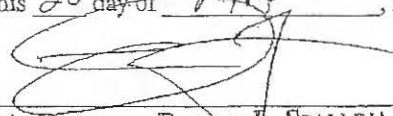
IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:




SHIRLEY BERNSTEIN

This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:



Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

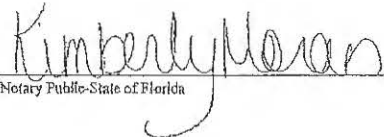


Print Name: TRACI KRATICH
Address: 16068 CLENCREST AVENUE
DELERY BEACH, FL 33446

STATE OF FLORIDA
SS.
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SHIRLEY BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission # DD766470
Expires: APR. 28, 2012
BONDED THROUGH ATLANTIC BONDING CO., INC.
[Seal with Commission Expiration Date]



Signature - Notary Public-State of Florida

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

P:\WPDATA\Mrd\Bernstein, Shirley & Simon\2008 Estate Planning\Shirley Bernstein Trust Agreement.vpd [05/15/11 19:08]

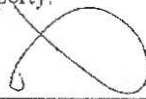
SHIRLEY BERNSTEIN
TRUST AGREEMENT

ATTACHMENT

The following property has been delivered in trust under this Agreement:

One Dollar (\$1.00) Cash

During my life, the Trustee has no duty to maintain, invest, review, insure, account for, or any other responsibility with respect to trust property other than income producing property, or any duty to pay premiums on life insurance payable to the trust, and shall receive no fee for its services as Trustee based on any trust property other than income producing property.



SHIRLEY BERNSTEIN, Settlor and Trustee

FIRST AMENDMENT TO
SHIRLEY BERNSTEIN TRUST AGREEMENT

This First Amendment is dated this ____ day of _____, 2008, and is between SHIRLEY BERNSTEIN of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN of Palm Beach County, Florida as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SHIRLEY BERNSTEIN TRUST AGREEMENT (the "Trust Agreement," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke the said Trust Agreement, in whole or in part.

NOW THEREFORE, by executing this instrument, I hereby amend the Trust Agreement as follows:

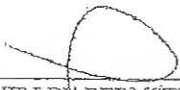
1. I hereby delete Paragraph B. of Article II, in its entirety.
3. I hereby ratify and reaffirm the Trust Agreement as amended by this First Amendment.

[remainder of page intentionally left blank]




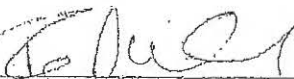
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

SETTLOR and TRUSTEE:


SHIRLEY BERNSTEIN

This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 19 day of Nov, 2008:


Print Name: ROBERT L. SPALLINA
Address: 7327 VICTORIA AVENUE
PARKLAND, FL 33076


Print Name: Rachel Walker
Address: 100 Plaza Real South
Apt. 308
Boca Raton, FL 33432

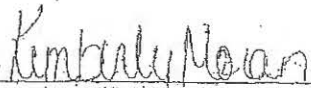
STATE OF FLORIDA

SS,

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 19 day of November, 2008, by SHIRLEY BERNSTEIN.

NOTARY PUBLIC STATE OF FLORIDA
KIMBERLY MORAN
Commission #DD766470
Expires APR. 28, 2012
ISSUED THRU ATLANTIC CRUISE CO., INC.


Signature - Notary Public - State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known or Produced Identification _____
Type of Identification Produced _____

NEWDATE\Morán, Shirley & Simon\2008 Estate Planning\First Amendment to Shirley Bernstein Trust Agreement.spd [11/09/26 12:06]

FIRST AMENDMENT TO
SHIRLEY BERNSTEIN TRUST AGREEMENT

TESCHER & SPALLINA, P.A.

WILL OF
SIMON L. BERNSTEIN

COPY
SOUTH COUNTY BRANCH OFFICE
ORIGINAL RECEIVED

OCT - 2 2012

SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com



LAW OFFICES
TESCHER & SPALLINA, P.A.

TS004297

WILL OF

SIMON L. BERNSTEIN

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. I am a widower, but in the event that I marry subsequent to the execution of this Will, I specifically make no provision for my spouse. My children are TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if no child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. EXERCISE OF POWER OF APPOINTMENT

Under Subparagraph E.1. of Article II. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "*Shirley Trust*"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and the Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining trust assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate, including my homestead, to the Trustee then serving under my revocable Trust Agreement dated May 20, 2008, as amended and restated from time to time and on even date herewith (the "*Existing Trust*"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in Article II., above, and in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under

LAST WILL
OF SIMON L. BERNSTEIN

LAW OFFICES
TESCHER & SPALLINA, P.A.

TS004298

the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

ARTICLE IV. PERSONAL REPRESENTATIVES

1. Appointment and Bond. I appoint ROBERT L. SPALLINA and DONALD R. TESCHER to serve together as my co-Personal Representatives, or either of them alone as Personal Representative if either of them is unable to serve (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.


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

a. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. Distributions or Divisions. To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. Management. To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. Borrowing. To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the



estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

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

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the



operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Article I of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs. If the amount of the above-described taxes, and interest and penalties arising by reason of my death (without regard to where payable from under the terms of this paragraph or applicable law) is increased because of the power of appointment granted to me under Subparagraph II.E.1. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, I hereby appoint to my probate estate from the property subject to such power (to the extent allowable under such power) the amount of such increase (calculating such increase at the highest applicable marginal rates) and exercise such power to this extent only, and notwithstanding the other provisions of this paragraph further direct my fiduciary to make payment of such increase in taxes,



interest and penalties to the appropriate taxing authorities from the appointed property or the proceeds thereof. Any trustee holding such appointive property may pay to my fiduciary the amount which my fiduciary certifies as due under this paragraph and is not responsible for the correctness or application of amounts so paid.

5. **Reimbursement for Debts and Expenses.** My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. **Expenses of Handling Tangible Personal Property.** All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.


7. **Dealing with Estate.** Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse.** The term "spouse" herein means, as to a designated individual, the person to whom that individual is from time to time married.

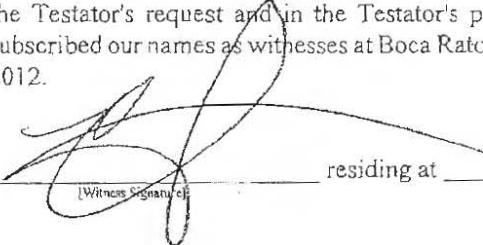
9. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

[remainder of page intentionally left blank]

I have published and signed this instrument as my Will at Boca Raton, Florida, on the 24 day of July, 2012.


SIMON L. BERNSTEIN


This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 24 day of July, 2012.


[Witness Signature]

residing at

ROBERT L. SPALLINA
7387 WISTERIA AVENUE
PARKLAND, FL 33076

[Witness Address]


[Witness Signature]

residing at

Kimberly Moran
6362 Las Flores Drive
Boca Raton, FL 33433

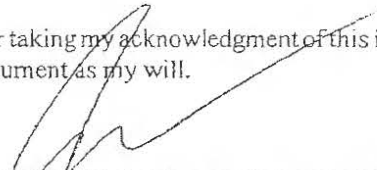
[Witness Address]

State Of Florida

SS.

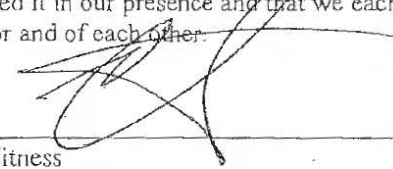
County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.


SIMON L. BERNSTEIN, Testator

We, Robert L. Spallina and Kimberly Moran

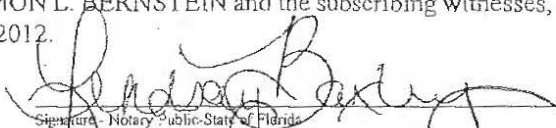
have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.


Witness

Kimberly Moran
Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced _____ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (state type of identification) as identification, and Kimberly Moran, who is personally known to me or who has produced _____ (state type of identification) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 25 day of July, 2012.

[Seal with Commission: Expiration Date]


Signature - Notary Public - State of Florida
Lindsay Baxley
Print, type or stamp name of Notary Public

NOTARY PUBLIC-STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

LAST WILL
OF SIMON L. BERNSTEIN

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

LAW OFFICES
TESCHER & SPALLINA, P.A.



SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "Trust Agreement," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

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

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

LAW OFFICES
TESCHER & SPALLINA, P.A.

C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "beneficiary" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. Termination of Small Trust. If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. Contingent Gift. If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE III. GENERAL

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-3-

LAW OFFICES
TESCHER & SPALLINA, P.A.



A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.

C. Substance Abuse.

1. **In General.** If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. **Testing.** The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. **Treatment.** If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an



in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.


6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*," "*grandchild*," "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is



raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to



such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

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

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such



Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Release of Medical Information.

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested



beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph 1.A hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee: During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "estate"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any



decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.



4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole



proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.



11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

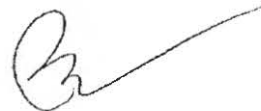
13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.



18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this



paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla. Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust



hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C., subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or



entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual



and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the



Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts. I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons



designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:



1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).


2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph I. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."



F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

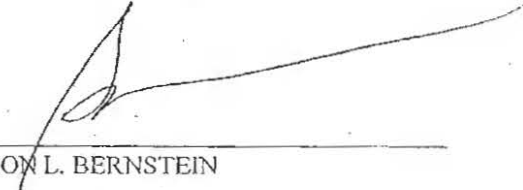
G. Residence as Homestead. I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

[remainder of page intentionally left blank]



IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

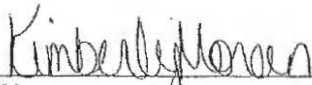
SETTLOR and TRUSTEE:



SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 25 day of July, 2012:

Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076


Print Name: Kimberly Moran
Address: 6362 Las Flores Drive
Boca Raton, FL 33433

STATE OF FLORIDA


SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.



Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]
NOTARY PUBLIC STATE OF FLORIDA
 Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

Lindsay Baxley

Print, type or stamp name of Notary Public

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

FIRST AMENDMENT TO
SHIRLEY BERNSTEIN TRUST AGREEMENT

This First Amendment is dated this 18 day of NOV, 2008, and is between SHIRLEY BERNSTEIN of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN of Palm Beach County, Florida as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SHIRLEY BERNSTEIN TRUST AGREEMENT (the "*Trust Agreement*," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke the said Trust Agreement, in whole or in part.

NOW THEREFORE, by executing this instrument, I hereby amend the Trust Agreement as follows:

1. I hereby delete Paragraph B. of Article II. in its entirety.

3. I hereby ratify and reaffirm the Trust Agreement as amended by this First Amendment.

[remainder of page intentionally left blank]

FIRST AMENDMENT TO
SHIRLEY BERNSTEIN TRUST AGREEMENT

TESCHER & SPALLINA, P.A.

TS001398


IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

SETTLOR and TRUSTEE:




SHIRLEY BERNSTEIN

This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 18 day of Nov, 2008:



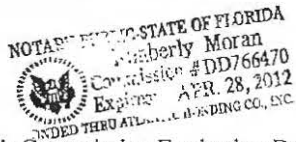
Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076



Print Name: Rachel Walker
Address: 100 Plaza Real South
Apt. 508
Boca Raton, FL 33432

STATE OF FLORIDA
SS.
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 18 day of November, 2008, by SHIRLEY BERNSTEIN.



[Seal with Commission Expiration Date]



Signature - Notary Public - State of Florida

Print, type or stamp name of Notary Public

Personally Known or Produced Identification _____
Type of Identification Produced _____

N:\WPDATA\krt\Bernstein, Shirley & Simon\2008 Estate Planning\First Amendment to Shirley Bernstein Trust Agreement.wpd [11/09/26 18:08]

BERNSTEIN FAMILY

Simon Bernstein
Death 9-13-12

Shirley Bernstein
Death 12-10-10

Ted Bernstein
(Deborah)

Pam Simon
(David)

Eliot Bernstein
(Candice)

Jill Iantoni
(Guy)

Lisa Friedstein
(Jeffrey)

Matthew
Logan
(M)

Alexandra
(25)

Eric
(24)

Michael
(21)

Molly
(23)

Daniel
(M)

Jacob
(M)

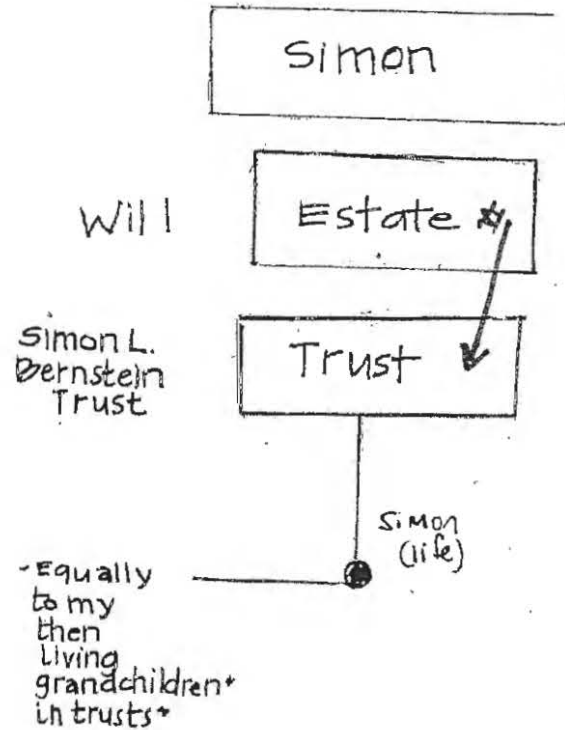
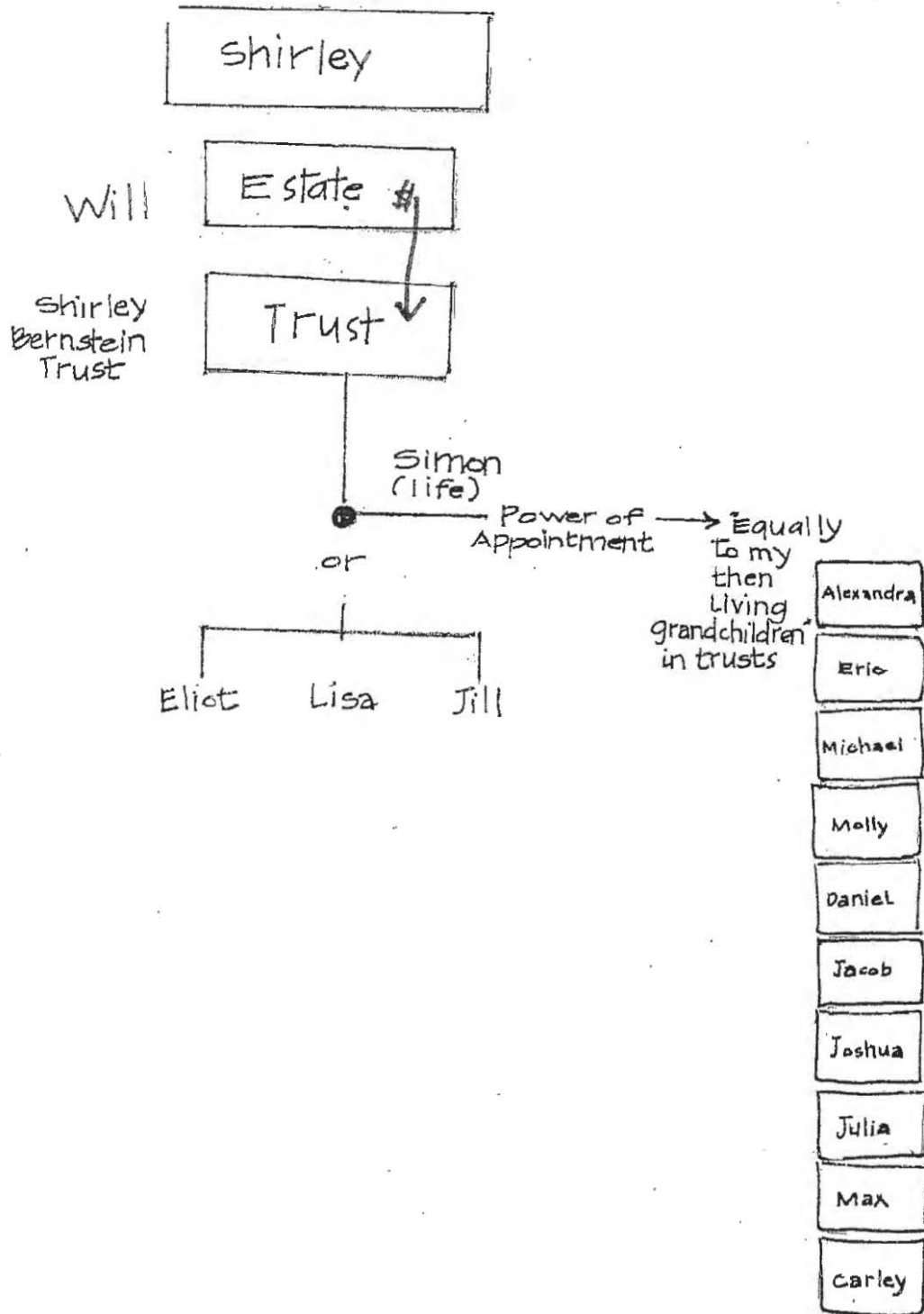
Joshua
(M)

Julia
(M)

Max
(M)

Carley
(M)

Blumberg No. 5113
PLAINTIFF'S
EXHIBIT
7



LAW OFFICES OF
JOHN A. HERRERA, M.ACC., J.D., LL.M., CPA
BOARD CERTIFIED TAX ATTORNEY
2501 SOUTH OCEAN BOULEVARD, SUITE 107
BOCA RATON, FLORIDA 33432

LICENSED TO
PRACTICE LAW IN
FLORIDA, CALIFORNIA
& COLORADO

VOICE: (561) 392-4626
FAX: (561) 392-9889
WATS: (888) 445-3656
E: jherrera@ix.netcom.com

BY FACSIMILE: (530) 529-4110

August 15, 2007

Eliot Bernstein
39 Little Avenue
Red Bluff, CA 96080-3519

Re: Advancement of Inheritance
Our file number 1522-2.0

Dear Mr. Bernstein:

I have been retained by your parents to assist them in their estate planning. You parents have asked me to contact you regarding a possible plan to advance you a portion of the inheritance that you may ultimately receive upon their deaths.

The plan would work as follows:

1. Your parents would each month pay the health insurance premiums for you, your wife Candice and your three children.
2. In addition, your parents want to make gifts to provide your family with a monthly cash flow. The annual amount of these gifts would be \$100,000 per year less the amount that they pay in health insurance premiums for your family. This amount would be distributed evenly over the year in monthly distributions by me.
3. The health insurance premiums and the monthly payments will reduce dollar-for-dollar the amount that you will ultimately inherit when your parents die.

While your parents may decide to alter or discontinue this plan at any time, they wanted me to make sure that you understand that they will discontinue making the above health insurance premiums and the monthly payments if you harass or threaten to sue or initiate litigation with anyone in your family at any time. However, you may counter claim if you are sued by them.

Additional Offices in West Palm Beach & Boca Raton



TS006701

Eliot Bernstein
August 15, 2007
Page 2

Your parents also want to have the opportunity to visit with their grandchildren at least four times a year. Your parents will either come to California or gladly pay all transportation costs for your children to come to another destination. You and Candice are more than welcome to join your children for these family visits.

My purpose in writing to you is to confirm in advance that your parents' plan is acceptable to you and to make sure that you understand that the payment of your health insurance premiums and other distributions will reduce any amounts that you may receive later. If you find these terms acceptable, please sign and date below and return one copy of this letter to me in the enclosed self addressed envelope.

I look forward to hearing from you. Please call me if you have any questions.

Sincerely,


JOHN A. HERRERA

I, Eliot Bernstein, understand the above terms and conditions of my parents' proposed gift plan and find them acceptable. While I understand that it is my parents' present intention to continue this plan indefinitely, I also understand that they may at any time discontinue or alter this plan for any reason. If I die, I ask that any future gifts be paid to my wife Candice Bernstein rather than to the executor or administrator of my estate.

ELIOT BERNSTEIN
August ____, 2007

I, Candice Bernstein, understand the above terms and conditions of my husband's parents' proposed gift plan and find them acceptable. While I understand that it is my husband's parents' present intention to continue this plan indefinitely, I also understand that they may at any time discontinue or alter this plan for any reason.

CANDICE BERNSTEIN
August ____, 2007

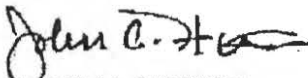
Eliot Bernstein
August 15, 2007
Page 2

Your parents also want to have the opportunity to visit with their grandchildren at least ~~two~~ times a year. Your parents will either come to California or gladly pay all transportation costs for your children to come to another destination. You and Candice are more than welcome to join your children for these family visits.

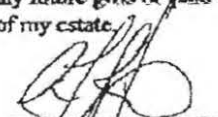
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I look forward to hearing from you. Please call me if you have any questions.

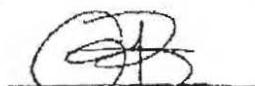
Sincerely,


JOHN A. HERRERA

I, Eliot Bernstein, understand the above terms and conditions of my parents' proposed gift plan and find them acceptable. While I understand that it is my parents' present intention to continue this plan indefinitely, I also understand that they may at any time discontinue or alter this plan for any reason. If I die, I ask that any future gifts be paid to my wife Candice Bernstein rather than to the executor or administrator of my estate.


ELIOT BERNSTEIN
August 15, 2007

I, Candice Bernstein, understand the above terms and conditions of my husband's parents' proposed gift plan and find them acceptable. While I understand that it is my husband's parents' present intention to continue this plan indefinitely, I also understand that they may at any time discontinue or alter this plan for any reason.


CANDICE BERNSTEIN
August __, 2007

kec (first) ___ drt ___ co. **D** rac ___ pjf ___ mcg ___ raj ___ naf ___ jlk **D** rls ___ dbr ___ sml ___

Bookkeeping:

- open new billing file/subfile
- bill to file no. _____

CLIENT/CASE MAINTENANCE

Client No. 11187.001
Case No.
Date Added: 11/16/2007

CLIENT NAME: **Simon & Shirley Bernstein**
Address: **7020 Lions Head Lane,**
City: **Boca Raton** State: **FL** Zip: **33496**
Business Phone: Home Phone:
Fax Phone:

Contact Name: **Simon & Shirley Bernstein**
Referral Source:
Originating Attorney: **DRT**
Primary Attorney: **DRT**
Secondary Attorney: **RLS**
Category Code: Rate Code:

CASE NAME: **Bernstein, Shirley & Simon**
Estate Planning

Fee Type: Bill Type:
Related Cases:
Engagement Letter:
Retainer: Fees: Costs: \$
Notes:

Related Parties:

Name:
Addr:
Tel. No.:
Fax No.:
Relationship:

Name:
Addr:
Tel. No.:
Fax No.:
Relationship:

Opposing Parties:

Name:
Addr:
Tel. No.:
Fax No.:
Relationship:

Name:
Addr:
Tel. No.:
Fax No.:
Relationship:



3/12/08 Si Bernstein & Shily c/w

Fund Foundation
- S Corp. issue

House - JTT
Condo - name to Shaley's name

Business:

- Voting Trust for Ted & Si w/ Bill as an ^{successor} add'l trustee
- Buy - Sell for Ted
- If Ted predeceases Si, his shares go to Ted's kids & Bill.

Bill/Ted - discuss w/ Ted

Shily's doc. - leave \$100,000 to Matt (Ted's stepson)



BANKING

2/12/99

FUNDING

- Director
 - Dr Scott Brown
 - Julie Landon
 - Tracy Knapp
 - Si Stanley
 - Alexander Bernstein
- Si Stanley to Fund of \$125k

- "S" Case to Funding??

- Reference

- Si was taking 3%

* - Bindon After we receive funding
Determination Letter

COMP

- Transfer to Simon's New Trust

LLP

- Ted: Plan out for Current Purposes

COMPANION

- Vance Trust - Buy as Successor Trustee

- Ted PROPERTIES →

- Buy-Sell - Buy

* Buy Trust
Comp of
Si
Done

Mattias Logan

- ~~SP~~ ~~with~~ Sample Left in Truck

Fiorini

Spoke

- Success Transfer

To for Spoke

- Buy for Sp

*

No Spoke

1/21/08

BEINSTEIN

- Buy-Sell @ J's Death (Association or
- Value is \$10M (Cash Purchase)

- Voting Trust

- 33; 45 Shares Share of Trust

= J's Special Estate Plan (Asset Protection)

- CCP for J

- Deferring Asset Protection Trust

- Home

- Look into Title on the
properties

1/31/08 Bernstein, Si + Kirby

c/w Si, Ted
RW, DRT

yes — Simple buy-sell:
Ted to have power to buy Si's
shares (1/3) for ~~8~~ X

Terms

- 1st redemption
- 2d Ted buyout
- 303
- 6166

ND — GRAT

yes — Voting Trust

yes — Asset Protection
Delaware Asset Protection Trust

yes — FLP

Steve Greenwald

17
PENNSYLVANIA

18
12/19/07

- State of PA
for PA

- 21 States

- 12 States PA Pennsylvania.

- PA: ST PA AGEN PA

12/19/07 Bernstein

Sell $\frac{x}{100}\%$ to trust
put $\frac{y}{100}\%$ WYMERUIT

Sy

Shares = 33%

~~Sell
put
vol. share~~

Grantor trust

Trusts
for other
kids

option to buy
purchase
shares

Ted

cap. the
price
estate tax values

Lisa
Jill
Elliot
Pam
Ted

-	New voting shares only	}	7% - Lisa Trust
-			7% - Jill Trust
-			7% - Elliot Trust
Fwd'n			12% Foundation/CRT ??

Seymour
J. Bernstein

11187.00 I

Lowry, List
To B. Dr. B.
D/T

4/14/07

- Jimmy Tables One OK } Part Backen for
 - IP for Fox Kids } Rooms for 2 more
 - Fridge Unit or Space } - 200k list 2nd
 - New @C Parts } - 200k for 1st
- J 30M in doof

Assets

- J - 2.5M Paint
- J - 2.5M SY
- J - 1.0M SY
- Home - 2.0M Paint
- Car - 1.0M Storage
- Misc - 2.0M
- CC -

Planning Man To Dr.

- Change Planning Hours in Contract @ Mr. Smith.
- J 150k/yr - List
- J 2M - Doort
- Best Commercial for work

11/14/01

Sy & Shirley Bernstein

\$
10,000,000+

the company

Pam

- Lisa

- Jill

- Elliott 3

- Feb - 3

S/H Agreement - Book value buy-out

2.5M Joint brokerage n/c

2.5M Sy

1.0M Sy

3.0M House J/T

1.07M MTG

1.0M net Condo - Shirley? - The Aragon

2.0M misc

2.0M Life ins.

5.0M 33 Sh. of CO.

- CLAT? Mt. Sinai - M.B.

Boca Raton Community Hosp

- Patricia Becket - wants to provide for her

TESCHER & SPALLINA, P.A.

ATTORNEYS-AT-LAW

DONALD R. TESCHER
ROBERT L. SPALLINA
KIMBERLY MORAN
LEGAL ASSISTANT

BOCA CORPORATE CENTER, SUITE 107
2101 CORPORATE BOULEVARD
BOCA RATON, FLORIDA 33431

TEL: 561.998.7847
FAX: 561.998.2642
WWW.TESCHERLAW.COM

April 9, 2008

Personal and Confidential

VIA FEDERAL EXPRESS

Mr. and Mrs. Simon Bernstein
c/o Simon L. Bernstein
Life Insurance Concepts
950 Peninsula Corporate Circle
Suite 3010
Boca Raton, Florida 33487

*Missing
Attachments*

Re: Estate Planning

Dear Shirley and Si:

Enclosed are drafts of each of your Wills and Revocable Trusts, the children's Family Trusts, and each of your Durable Powers of Attorney, Designations of Health Care Surrogate and Living Wills. The following is a brief summary of the enclosed documents.

Will of Simon L. Bernstein. The Will is a simple one since most of the dispositive provisions are contained in your Revocable Trust Agreement, discussed below. The Will disposes of your tangible personal property (jewelry, personal effects, etc.) by leaving all such items to Shirley, or if she has not survived you, to your children in equal shares. We have made provision in your Will for any residences that you own individually to pass to Shirley if she survives you. The remaining assets of your probate estate are directed to be distributed to the Trustees of your Revocable Trust. As discussed, we have designated Shirley and Bill as the Personal Representatives of your estate, and either of them will serve alone if the other is unable to serve.

As an aside, I checked the Palm Beach County property records and your residence is currently titled in Shirley's name alone and the condo is titled in both your names as tenants by the entireties (see enclosed). Interestingly, neither of these properties is designated as your homestead. You should file a homestead application on your residence and retitle this property in your joint names. This will cap increases to the value on your residence to 3% each year, afford you protection under the Florida Constitution for creditor purposes, and save you taxes on \$50,000 in assessed value each year. With regard to the condo, we can prepare a deed transferring the property to Shirley's trust. This will pass outside of probate under her trust at the time of her death (either to you in a protected manner or to your children as the case may be).



Mr. and Mrs. Simon L. Bernstein
April 9, 2008
Page 2

Will of Shirley Bernstein. Shirley's Will is essentially identical to Si's Will, described above. Si is appointed as the Personal Representative of Shirley's estate, and Ted is designated as successor if Si is unable to serve. With regard to your jewelry and other valuables, Florida allows disposition of tangible personal property by separate written memorandum apart from the Will. We will provide each of you with forms so that you may provide specifically to whom you want certain items to pass at each of your deaths.

Simon L. Bernstein Trust Agreement. This Trust is a Revocable Trust, which means that you may alter, amend, revoke or terminate the Trust, in whole or in part, at any time and from time to time during your lifetime. Except in the event of your incapacity during your lifetime, this Trust has no legal or tax significance. It is designed for two specific purposes: to avoid the need for a guardianship should you become incapacitated during your lifetime, and to avoid a full probate of all of your assets since any assets titled in your name as Trustee under this Trust Agreement will pass in accordance with the Trust Agreement without being subjected to probate administration.

After your death, the Trust becomes irrevocable and contains all of the dispositive provisions of your estate. Assuming Shirley survives you, the Trust directs that your assets will be distributed in two parts, a Marital Trust and a Family Trust. The Family Trust will be funded with assets totaling your remaining estate tax exemption amount (currently \$2 million less any taxable gifts made during your lifetime). The balance of the remaining Trust assets will fund the Marital Trust.

Both trusts provide for mandatory income distributions during each year of Shirley's life, and both trusts also provide for discretionary distributions of principal during Shirley's life for her "Welfare" (which is a broad standard under the Trust). Upon Shirley's death, she has been given a special power to appoint the remaining assets of both the Marital Trust and the Family Trust to any of your lineal descendants and their spouses (a power to redirect and reallocate), and any assets that Shirley does not appoint will be divided among and held in a separate trusts for your children. The shares created for your children will be distributed to each of their respective Family Trusts and administered as provided under those trusts (discussed below).

As discussed, under both of your Revocable Trusts, we have excluded Ted and Pam (and their lineal descendants) from inheriting. In the unlikely event that all your other children and their respective children do not survive the two of you, then Ted and Pam (and their lineal descendants) become eligible beneficiaries.

You have been named as Trustee of your Trust during your life, and Shirley and Bill are designated as your successor if you are unable to serve (or either of them alone as the case may be). Shirley is designated as the Trustee of the Marital Trust and Family Trust and she has the power to designate a co-Trustee to serve with her and she may remove and replace a co-Trustee. Bill is named as her successor if she is unable to serve.

Mr. and Mrs. Simon L. Bernstein
April 9, 2008
Page 3

In the event that separate trusts are established for your lineal descendants under your Revocable Trust (if their Family Trusts are not then in existence), each of them will serve as Trustee of their separate trusts, and the administration provisions of their separate trusts would pay them each all of the income, and discretionary principal for their Welfare (again a broad standard). They would each have the power to appoint a co-Trustee to serve with them and they could remove and replace a co-trustee. We have given them special powers of appointment at their deaths, similar to those discussed below under the Family Trust headings. Again, these trusts would only be established if the Family Trusts are not in existence at the death of the survivor of the two of you. As you intend to fund the Family Trusts during your lifetimes and are designating those trusts as the ultimate receptacles for your collective estates, these provisions are only precautionary in nature.

Shirley Bernstein Trust Agreement. Shirley's Revocable Trust is virtually identical to Si's Trust above, except that Si has been named as successor Trustee of your Trust, and Trustee of the Marital Trust and Family Trust (Ted is named as Si's successor). Si has the power to appoint a co-Trustee and name successors. Again, we have provided for the possibility that separate trusts are established for your children under your Trust, with the same provisions discussed above. We have also provided for a specific gift in the amount of \$200,000 to be distributed to Matthew Logan at your death. This amount will be held in a separate trust for his benefit and Debbie shall serve as Trustee thereunder until Matthew attains age 25 at which time he will serve as co-Trustee with Debbie.

Family Trusts

Family Trusts for Children. These trusts are irrevocable and will be the ultimate receptacles for your collective estates. We have prepared trusts for all of your children, including Pam and Ted in the event that you change your mind regarding them participating in your estates (or gifts during your lifetimes). Each of these trusts is intentionally defective for income tax purposes, so that you will be responsible for the income tax consequences of these trusts, and the Independent Trustee (to be determined) of these trusts has the discretion to reimburse you for these taxes. By paying the taxes on these trusts, you are making additional tax free gifts to your children which do not count against your annual exclusion gifts (\$24,000 for the two of you), or your lifetime exclusions of \$1,000,000 each. Additionally, any sales to these trusts (estate freeze techniques that we can discuss further) while you are living will not trigger any gain recognition, as these trusts are treated as your alter ego for income tax purposes.

The Family Trusts name each of your children as the principal beneficiary, and their respective children (if any) are also designated as beneficiaries while such children (grandchildren) are dependent on your children. All of these beneficiaries will receive distributions of income and principal in the Independent Trustee's discretion. The language we have included regarding the Independent Trustee's discretion is fairly extensive and you should read through it carefully to determine if it is consistent with your own ideals and beliefs. We can modify this language as you wish. Upon the death of the survivor of the two of you, we have designated each of your children (or more remote lineal descendants) to serve as co-Trustees of their separate trusts at age 30 and sole Trustee at age 35 (there would still be an

Mr. and Mrs. Simon L. Bernstein
April 9, 2008
Page 4

Independent Trustee serving), and they would each have the ability to distribute income and principal to themselves for their Needs (health, education, maintenance and support) without the consent of the Independent Trustee.

Upon each of your children's deaths, they have been given a power to appoint the remaining assets of each of their Family Trusts to any of your lineal descendants or their spouses. Any assets that they do not appoint, will be divided among and held in separate trusts for their respective children. If one of your children appoints assets to a spouse, then that spouse will receive assets in a separate trust which will distribute income and principal on a discretionary basis for Needs. Upon the death of the spouse, the remaining assets will be distributed to their surviving children and held in further trust and administered in the same fashion as your children. These provisions are the same at every generation.

Si is designated as the grantor and co-Trustee of the Family Trusts along with Shirley, and we have left open the designation of the Independent Trustee. You will need to designate someone other than Bill, as he works for you and is not independent under the tax code. We have provided that there will always be an Independent Trustee serving over the Trusts due to their wholly discretionary nature (this is for tax reasons). We can discuss this further after you have had time to review the trusts.

We have provided for flexibility with regard to the removal and replacement of the Trustees and Independent Trustee. During your lifetimes, while you are serving as Trustees, either of you can remove and replace the Trustees and Independent Trustees, and we have given your children the power at the death of the survivor of the two of you to do the same.

When we met, we discussed your making gifts of limited partnership interests to the trusts during your lifetime. We can discuss this further after you have had an opportunity to review the documents.

Ancillary Documents

Durable Powers of Attorney. We have prepared Durable Powers of Attorney for each of you designating the other as your attorneys-in-fact to act for you in accordance with the terms of the Power of Attorney.

Health Care Surrogates. We have prepared Designation of Health Care Surrogates for each of you naming the other as surrogate to make health care decisions in the event that either of you is unable to make such decisions.

Living Wills. We have also prepared and are enclosing Living Wills for each of you. These documents permit you to express your wishes to not be kept artificially alive in the event that you have one of the three conditions described in the Living Wills.

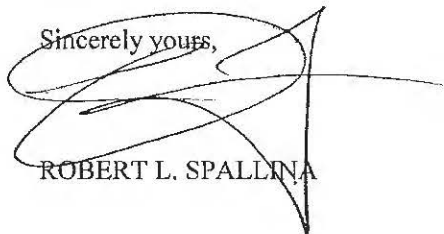
After you have had time to review the enclosed, please contact us with any questions or changes you may have. We know that there is a lot to digest here and would be happy to set-up a meeting to

TESCHER & SPALLINA, P.A.

Mr. and Mrs. Simon L. Bernstein
April 9, 2008
Page 5

review the documents with you in person. You will receive from us under separate cover the buy-sell agreement and related documents related to the business. We look forward to hearing from you shortly.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'R. Spallina', written over the typed name. The signature is stylized with a large loop and a long horizontal stroke.

ROBERT L. SPALLINA

RLS/wp

Enclosures

cc: Donald R. Tescher, Esq.

TESCHER & SPALLINA, P.A.

Loan 793,946.20 - Bernstein Investment

2,111,666.20

Bc Family Drivers

250,031.50

73,20

Joint

1,383,815.27

S.C.D

731,988.58

L. Pac

937,726.71

P.P. USX

625,196 -

Hedge Funds (2) LLP

1,079,680.79

LLP (C.P)

Total

7,101,105.85

6,700,000 Net of Loan

3,400,000 ST. A. Home

1,000,000 Co. (50%)

1,000,000 Ocean Dr (- Mort) NET

600,000 "E" Home

1,600,000 Mrs Cars - Jew. House Hold Act

13,200,000

500,000 - Equity Loan

12,700,000

6,600,000 33% of AIM Bond @ 20M

1,500,000



JE/MLP

Si Perkowski

2/1/12

SIPC - Perkowski - 500k
 LIC Perkowski - 100k
 J-FR 600k

LOANS	Si's Estate	Value	Estate Tax
1.2M JON	- LLP	- 1.15	.8M
5M WF	- INA	.75	.25M
			<u>1.55M</u>

Stanley Estate

Stanley's Trust	Tax	FMV
- Charco	- 1.0M	2.0M
- Heller	- 1.0M	2.0M
- 1/2 LLP	- 1.15M	.8M
		<u>5.8M</u>

~~LIC~~

← - 150	45	Φ Value (Tax)
← - 50	33	
← - 60	12	
← - 100	60	
	<u>200.5M</u>	

Blumberg No. 8113
 PLAINTIFF'S EXHIBIT
 13

Item	Value	Term	Rate
1.25M	→	250k	Tax: Ann (App)
Mortgage	→	0-2 yrs	250k
		24 yrs	100k
		24	800k

Also, please reply with a time and day that we are meeting and if you could please send any documents to the attorneys and others I mentioned in my prior email correspondences copied below prior to the meeting time this would be of great service.

Thank you ~ Eliot

From: Eliot Ivan Bernstein [<mailto:iviewit@iviewit.tv>]
Sent: Thursday, May 17, 2012 8:17 AM
To: Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A. (atrspallina@tescherspallina.com)
Cc: 'Simon Bernstein'; 'Caroline Prochotska Rogers, Esquire (caroline@cprogers.com)'; Michele M. Mulrooney ~ Partner @ Venable LLP (mmulrooney@Venable.com); 'Andy Dietz'; 'Donna Dietz'
Subject: Estate of Shirley Bernstein

PRIVATE & CONFIDENTIAL

May 17, 2012

Robert L. Spallina, Esq.
Tescher & Spallina, P.A.
Boca Village Corporate Center I
4855 Technology Way
Suite 720
Boca Raton, FL 33431

Hi Robert ~ attached is the Waiver of Accounting and Portions of Petition For Discharge; Waiver of Service of Petition for Discharge; and Receipt of Beneficiary and Consent to Discharge. As I mentioned in the phone call, I have not seen any of the underlying estate documents or my mother's will at this point, yet I sign this document after our family call so that my father can be released of his duties as Personal Representative and put whatever matters that were causing him stress to rest. For my trustees I would like the following individuals in the following order to be trustees:

1. Caroline Prochotska Rogers, Esq.
3500 North Lake Shore Drive
17th Floor
Chicago, IL 60657
(773) 804-9400 ext 19
caroline@cprogers.com
2. Michele M. Mulrooney, Esq.
mmulrooney@Venable.com
(will get new address shortly)
3. Andrew & Donna Dietz
2002 Circle Drive
Hermosa Beach, California 90254
(310) 410-0936 ext1271
andyd@rockitcargo.com

Please send copies of all estate documents to Caroline and Michele and if my dad would like them to keep the information private and confidential, including from me, until some later point in time, you can arrange that with them directly with my approval granted herein. Please also reply to this email to confirm receipt, a hard copy of my signed document will be sent via mail.

5



TS003977

LAW OFFICES
TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER I
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FLORIDA 33431

ATTORNEYS
DONALD R. TESCHER
ROBERT L. SPALLINA
LAUREN A. GALVANI

TEL: 561-997-7008
FAX: 561-997-7308
TOLL FREE: 888-997-7008
WWW.TESCHERSPALLINA.COM

SUPPORT STAFF
DIANE DUSTIN
JOAN MAPLE
KIMBERLY MORAN
SUANN TESCHER

May 24, 2012

Personal and Confidential

Via Federal Express

Mr. Simon Bernstein
7020 Lions Head Lane
Boca Raton, FL 33496

Re: Estate Planning

Dear Si:

We have prepared you drafts of a new Will and an Amended and Restated Trust Agreement. Under the terms of your Will, any items of personal property that you do not designate by a separate written memorandum will be divided in equal shares between your children as they see fit. If they cannot decide who will retain certain items of this property, your Personal Representative, William Stansbury, will make the final decisions. In addition, you have exercised the special power of appointment granted to you under Shirley's Trust Agreement in favor of your grandchildren who survive you. Upon your death, the remaining assets of the Shirley Bernstein Marital Trust and the Shirley Bernstein Family Trust will be distributed in equal shares to the then serving Trustees of the separate trusts established for your grandchildren under your Amended and Restated Trust Agreement.

Your Amended and Restated Trust Agreement provides that upon your death, your assets will be divided among and held in separate trusts for your then living grandchildren. Pursuant to the definition of grandchildren under your Trust Agreement, any grandchildren who are not adopted prior to attaining 12 years of age by a child of yours are excluded as beneficiaries of your Trust. The separate trusts for your grandchildren will provide them with discretionary distributions of net income and principal for their Welfare, a broad standard. Upon the death of a grandchild, he or she can direct the remaining assets of his or her trust to one or more your lineal descendants (other than your children). If a grandchild does not appoint the assets upon his or her death, these assets will be distributed to his or her children. If such deceased grandchild does not have children, these assets will be divided equally and distributed to separate trusts for your surviving grandchildren. If you would like your grandchildren to have the power to direct assets to spouses, please let us know.

You are the Grantor and Trustee of your Trust and William Stansbury is designated as your



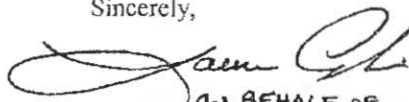
TS003983

Mr. Simon L. Bernstein
May 24, 2012
Page 2

successor Trustee. Your children will serve as sole Trustees of their respective children's trusts until such grandchildren become co-Trustees upon attaining 25 years of age. At age 35, a grandchild will serve as sole Trustee of his or her separate trust and may appoint and replace co-Trustees that are not Related or Subordinate Parties, as defined under the document, to serve with him or her. Separate trusts for lineal descendants other than your grandchildren will serve as co-Trustees or sole Trustees of their separate trust at age 25.

If you have any questions or if there are any changes you would like to make, please let us know. We look forward to hearing from you.

Sincerely,



ON BEHALF OF
ROBERT L. SPALLINA

RLS/lag

Enclosure(s)

LAW OFFICES
TESCHER & SPALLINA, P.A.

TS003984

WILL OF
SIMON L. BERNSTEIN

Prepared by:

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DRAFT: May 24, 2012

WILL OF

SIMON L. BERNSTEIN

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. I am a widower, but in the event that I marry subsequent to the execution of this Will, I specifically make no provision for my spouse. My children are TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if no child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. EXERCISE OF POWER OF APPOINTMENT

Under Subparagraph E.1. of Article II. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "*Shirley Trust*"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and the Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining trust assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate, including my homestead, to the Trustee then serving under my revocable Trust Agreement dated May 20, 2008, as amended and restated from time to time and on even date herewith (the "*Existing Trust*"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in Article II., above, and in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under

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the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

ARTICLE IV. PERSONAL REPRESENTATIVES

1. Appointment and Bond. I appoint WILLIAM E. STANSBURY as my Personal Representative (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

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

a. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. Distributions or Divisions. To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. Management. To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. Borrowing. To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security

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for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

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

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or

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persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

k. Reimbursement. To reimburse itself from the estate for all reasonable expenses

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incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Article I of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs. If the amount of the above-described taxes, and interest and penalties arising by reason of my death (without regard to where payable from under the terms of this paragraph or applicable law) is increased because of the power of appointment granted to me under Subparagraph II.E.1. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, I hereby appoint to my probate estate from the property subject to such power (to the extent allowable under such power) the amount of such increase (calculating such increase at the highest applicable marginal rates) and exercise such power to this extent only, and notwithstanding the other provisions of this paragraph further direct my fiduciary to make payment of such increase in taxes, interest and penalties to the appropriate taxing authorities from the appointed property or the proceeds

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thereof. Any trustee holding such appointive property may pay to my fiduciary the amount which my fiduciary certifies as due under this paragraph and is not responsible for the correctness or application of amounts so paid.

5. **Reimbursement for Debts and Expenses.** My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. **Expenses of Handling Tangible Personal Property.** All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. **Dealing with Estate.** Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse.** The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

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I have published and signed this instrument as my Will at Boca Raton, Florida, on the ____ day of _____, 2012.

SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this ____ day of _____, 2012.

_____ residing at _____
[Witness Signature] [Witness Address]

[Witness Address]

_____ residing at _____
[Witness Signature] [Witness Address]

[Witness Address]

=====

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State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

SIMON L. BERNSTEIN, Testator

We, _____ and _____, have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

Witness

Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced _____ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, _____, who is personally known to me or who has produced _____ (state type of identification) as identification, and _____, who is personally known to me or who has produced _____ (state type of identification) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this ____ day of _____, 2012.

[Seal with Commission Expiration Date]

Signature - Notary Public-State of Florida

Print, type or stamp name of Notary Public

LAST WILL
OF SIMON L. BERNSTEIN

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

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SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this _____ day of _____, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "*Trust Agreement*," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

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

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

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C. **Upon My Death.** Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. **Disposition of Tangible Personal Property.** If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. **Disposition of Trust Upon My Death.** Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "beneficiary" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. **Trusts for Beneficiaries.** The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

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1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. Termination of Small Trust. If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. Contingent Gift. If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE III. GENERAL

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A. **Disability.** Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. **Timing of Income Distributions.** The Trustee shall make required payments of income at least quarterly.

C. **Substance Abuse.**

1. **In General.** If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. **Testing.** The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. **Treatment.** If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an

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in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*," "*grandchild*," "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is

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raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (d) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to

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such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

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

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such

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Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Release of Medical Information.

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested

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beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph LA hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any

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decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

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4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole

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proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

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11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

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18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

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paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, WILLIAM E. STANSBURY shall serve as successor Trustee. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

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2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

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4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

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3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in

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money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts. I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such

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fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

I. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

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a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

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3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section

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663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

[remainder of page intentionally left blank]

DRAFT: May 24, 2012

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this ___ day of _____, 2012:

Print Name: _____
Address: _____

Print Name: _____
Address: _____

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ___ day of _____, 2012, by SIMON L. BERNSTEIN.

Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

DURABLE POWER OF ATTORNEY

I, SIMON L. BERNSTEIN, Social Security No. 371-324211, of Palm Beach County, Florida, revoke all powers of attorney previously issued by me and appoint ROBERT L. SPALLINA as attorney-in-fact for me and to otherwise act for me and on my behalf, as provided herein:

- a. To create and fund an inter vivos trust for my benefit, the benefit of a family member or for the benefit of my pet as part of my estate planning and tax minimization objectives.
- b. To amend, modify, revoke, or terminate a trust created by me or on my behalf if the trust explicitly provides for amendment, modification or termination by my agent.
- c. To create or change rights of survivorship on financial accounts and property, real, intangible and tangible, owned by me.
- d. To deal with retirement plans, including individual retirement accounts, rollovers, and voluntary contributions, changing the ownership or beneficiary designations on such accounts, plans and/or annuities.
- e. To deal with life insurance, including the power to cash in or change the ownership or beneficiary designations of life insurance policies, excluding, however, life insurance policies of which my attorney-in-fact is not an owner nor co-owner thereof but is an insured thereof.
- f. To make gifts on my behalf as part of my estate planning and tax minimization objectives to my spouse, my lineal descendants or to trusts primarily for their benefit, that to any one such recipient does not exceed annually in aggregate the exclusion amount provided for under Code Section 2503(b). When a person eligible to receive gifts is serving as my agent hereunder, the aggregate of all gifts to such agent during the calendar year allowable shall not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of my estate. However, gifts completed prior to a recipient's commencing to serve as agent shall not be affected by this limitation. Furthermore, to pay any charitable pledges I have made even if they are not yet due.
- g. To waive my right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
- h. To make statutory elections and disclaimers, including the power to disclaim or refuse to accept an inheritance, life insurance proceeds, or elective share.
- i. To establish bank accounts, including renting safe deposit boxes, and brokerage accounts on my behalf.



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TESCHER & SPALLINA, P.A.

- j. To have access to any safe deposit box rented by me or by me with others (including authority to have it drilled), to remove the contents therefrom and to terminate the lease of the box.
- k. To sell, purchase or to assign, transfer and deliver all cash, bonds, stocks, securities, annuities and other property of any kind, real or personal, owned by me.
- l. To withdraw any funds standing to my credit or to my credit jointly with others in any bank, savings and loan association or other financial institution.
- m. To conduct banking transactions as provided in section 709.2208(1) of the Florida Statutes, including but not limited to endorsing and delivering any checks, drafts, certificates of deposit, notes or other instruments for the payment of money payable to or belonging to me.
- n. To convey any real property, interest in real property, or beneficial interest in a trust holding real property, including, but without limitation, homestead real property and real property in any type of joint ownership, including tenancy by the entireties, which I may own or possess.
- o. To mortgage real property, including homestead real property, and to join with my spouse and my spouse's legal guardian where necessary, to accomplish this encumbrance.
- p. To execute and deliver any assignment, stock power, deed or other instrument which my attorney-in-fact deems necessary or appropriate to carry out and effectuate this power of attorney, to sign my name to any instrument pertaining to or required in connection with the transfer of my property, and to give full receipts and discharges.
- q. To conduct investment transactions as provided in section 709.2208(2) of the Florida Statutes, including but not limited to delegating to a transfer agent or similar person the authority to register any stocks, bonds or other securities either into or out of the principal's or nominee's name.
- r. To borrow funds to avoid forced liquidation of assets.
- s. To enter into buy-sell agreements.
- t. To forgive and collect debts.
- u. To make and complete funding of charitable pledges.
- v. To hire counsel and otherwise act to represent and/or protect my interest in any

legal action.

- w. To collect amounts due to me and to qualify me for various government entitlements such as Medicaid or Supplemental Social Security.
- x. To deal with and collect proceeds from health and/or long term care insurance.
- y. To sign tax returns, IRS powers of attorney, and to settle tax disputes.
- z. To petition a court of competent jurisdiction for an elective share of the estate of my deceased spouse.
- aa. To convey any property, tangible or intangible, real or personal, to the trustee of a revocable trust of which I was an original grantor, including my homestead.
- bb. To execute any document on my behalf for the purpose of qualifying for any public/private benefit; and if when applying for Medicaid benefits, my income exceeds the income cap, to create an irrevocable income trust and to transfer so much of my income of said trust as will enable me to qualify for Medicaid benefits.
- cc. To exercise all rights and privileges over, or relating to the ownership of, property, including without limitation the exercise of voting rights relating to such property or ownership.
- dd. To deal with the United States Postal Service on my behalf, including but not limited to renting a post office box and collecting mail or forwarding my mail.
- ee. To expend funds for the maintenance and day-to-day care of my pets; to provide informed consent for veterinary treatment and surgical and diagnostic procedures for my pets; to give informed consent and make health care decisions for my pets and to provide, withhold or withdraw such consent on my behalf; to make decisions regarding the administration of drugs for my pets; to apply for pet insurance to defray the costs of veterinary services; and to submit claims to my pet insurance company.

Every bank or other financial institution, insurance company, transfer agent, issuer, obligor, safe deposit box company, title insurance company or other person, firm or corporation to which this power of attorney or a photocopy hereof is presented is authorized to receive, honor and give effect to all instruments signed pursuant to the foregoing authority without inquiring as to the circumstances of their issuance or the disposition of the property delivered pursuant thereto. All acts done hereunder by my attorney-in-fact after revocation of this power of attorney or after my death shall be valid and enforceable in favor of anyone who relies on this power of attorney and has not received prior actual written notice of the revocation or death. All acts done by my attorney-in-fact pursuant to this power shall be binding upon me and my heirs, devisees and personal representatives.

My said attorney-in-fact shall not be liable for any acts or decisions made by said attorney-in-fact in good faith and under the terms of this Durable Power of Attorney.

I give and grant unto my said attorney-in-fact full power and authority to do and perform all and every act and thing that may be requisite and necessary as fully to all intents and purposes as I might or could if personally present, hereby ratifying and confirming all that my said attorney-in-fact shall lawfully do or cause to be done by virtue of this power of attorney.

This Durable Power of Attorney shall not be affected by subsequent incapacity of the principal except as provided by statute.

IN WITNESS WHEREOF I have signed this Durable Power of Attorney this 21 day of July, 2012.

Signed in the presence of:

Print Name: Robert Spallina

[Signature]
SIMON L. BERNSTEIN

[Signature]
Print Name: Kimberly Moran

STATE OF FLORIDA
COUNTY OF PALM BEACH

SS.

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

[Signature]
Signature - Notary Public - State of Florida
Lindsay Baxley
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]
NOTARY PUBLIC-STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

Personally Known [initials] or Produced Identification _____
Type of Identification Produced _____

LAW OFFICES
TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER I
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FLORIDA 33431

ATTORNEYS
DONALD R. TESCHER
ROBERT L. SPALLINA
LAUREN A. GALVANI

TEL: 561-997-7008
FAX: 561-997-7308
TOLL FREE: 888-997-7008
WWW.TESCHERSPALLINA.COM

SUPPORT STAFF
DIANE DUSTIN
KIMBERLY MORAN
SUANN TESCHER

July 26, 2012

VIA U.S. MAIL

Mr. Simon Bernstein
950 Peninsula Corporate Circle, Suite 3010
Boca Raton, FL 33487

Re: Estate Planning

Dear Si,

Enclosed for your file is a conformed copy of your Last Will (the original of which is being held in our safe).

If you have any questions, please do not hesitate to call.

Sincerely,

Robert L. Spallina/km
ROBERT L. SPALLINA

RLS/ac

Enclosures



TS003982

OFFICE of VITAL STATISTICS

CERTIFICATION OF DEATH

STATE FILE NUMBER: 2012256765

DATE ISSUED: September 18, 2012

DECEDENT INFORMATION

STATE FILE DATE: September 17, 2012

NAME: SIMON LEON BERNSTEIN

DATE OF DEATH: September 13, 2012

SEX: MALE

AGE: 076 YEARS

DATE OF BIRTH: December 2, 1935

SSN: [REDACTED]

BIRTHPLACE: FLINT, MICHIGAN

PLACE WHERE DEATH OCCURRED: INPATIENT

FACILITY NAME OR STREET ADDRESS: DELRAY MEDICAL CENTER

LOCATION OF DEATH: DELRAY BEACH, PALM BEACH COUNTY

SURVIVING SPOUSE, DECEDENT'S RESIDENCE AND HISTORY INFORMATION

MARITAL STATUS: WIDOWED

SPOUSE: NONE

RESIDENCE: [REDACTED]

COUNTY: PALM BEACH

OCCUPATION, INDUSTRY: SALES, LIFE INSURANCE

RACE: White Black or African American Asian Indian Chinese Filipino Native Hawaiian American Indian or Alaskan Native--Tribe: Guamanian or Chamorro Samoan Other Pacific Isl: Japanese Korean Vietnamese Other Asian: Other: Unknown

HISPANIC OR HAITIAN ORIGIN? NO, NOT OF HISPANIC/HAITIAN ORIGIN

EDUCATION: HIGH SCHOOL GRADUATE OR GED

EVER IN U.S. ARMED FORCES? NO

PARENTS AND INFORMANT INFORMATION

FATHER: THEODORE BERNSTEIN

MOTHER: NORA UNKNOWN

INFORMANT: TED STUART BERNSTEIN

RELATIONSHIP TO DECEDENT: SON

INFORMANT'S ADDRESS: [REDACTED]

PLACE OF DISPOSITION AND FUNERAL FACILITY INFORMATION

PLACE OF DISPOSITION: THE GARDENS MEMORIAL PARK
BOCA RATON, FLORIDA

METHOD OF DISPOSITION: ENTOMBMENT

FUNERAL DIRECTOR/LICENSE NUMBER: GARRETT JACOBS, F019844

FUNERAL FACILITY: BOCA RATON FUNERAL HOME F040152

19785 HAMPTON DRIVE, BOCA RATON, FLORIDA 33434

CERTIFIER INFORMATION

TYPE OF CERTIFIER: MEDICAL EXAMINER

MEDICAL EXAMINER CASE NUMBER: 121500913

TIME OF DEATH (24 hr): 0227

CERTIFIER'S NAME: MICHAEL D BELL

CERTIFIER'S LICENSE NUMBER: ME54359

NAME OF ATTENDING PHYSICIAN (if other than Certifier): NOT ENTERED



REQ: 2013124648

THE ABOVE SIGNATURE CERTIFIES THAT THIS IS A TRUE COPY OF THE OFFICIAL RECORD ON FILE IN THIS OFFICE.

WARNING: THIS DOCUMENT IS PRINTED OR PHOTOCOPIED ON SECURITY PAPER WITH WATERMARKS OF THE GREAT SEAL OF THE STATE OF FLORIDA. DO NOT ACCEPT WITHOUT VERIFYING THE PRESENCE OF THE WATERMARKS. THE DOCUMENT FACE CONTAINS A MULTICOLORED BACKGROUND, GOLD ENBOSSED SEAL, AND THERMOCHROMIC FL. THE BACK CONTAINS SPECIAL LINES WITH TEXT.



OH FORM 1946 (04-10)

CERTIFICATION OF VITAL RECORD



TS004163

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF

PROBATE DIVISION

SIMON L. BERNSTEIN,

File No. 502012CP004391
IZ XXXSB

Deceased.

NOTICE OF ADMINISTRATION

The administration of the estate of SIMON L. BERNSTEIN, deceased, File Number 502012CP004391IZ is pending in the Circuit Court for Palm Beach County, Florida, Probate Division, the address of which is Palm Beach South County Courthouse, 200 W. Atlantic Avenue, Delray Beach, Florida 33444. The decedent's Will, which is dated July 25, 2012, has been admitted to probate. The name and address of the personal representative and of the personal representative's attorney are set forth below. XXXX SB

A beneficiary of a Will or Codicil described above is not required to have an attorney or to file and document in order to receive the inheritance provided in that Will or Codicil.

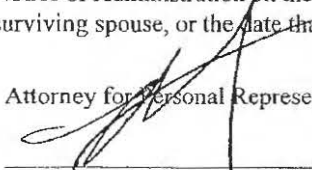
Any interested person on whom a copy of this Notice of Administration is served who challenges the validity of the Will and/or Codicil, qualifications of the personal representative, venue, or jurisdiction of the court, is required to file any objection with the court following the form and procedure provided in the Florida Probate Rules WITHIN THE TIME REQUIRED BY LAW, which is on or before the date that is three (3) months after the date of service of a copy of the Notice of Administration on that person, or those objections are forever barred.

A petition for determination of exempt property is required to be filed by or on behalf of any person entitled to exempt property under Section 732.402 of the Florida Probate Code WITHIN THE TIME REQUIRED BY LAW, which is on or before the later of the date that is four (4) months after the date of service of a copy of the Notice of Administration on that person or the date that is forty (40) days after the date of termination of any proceeding involving the construction, admission to probate, or validity of the Will and/or Codicil or involving any other matter affecting any part of the exempt property, or the right of the personal to exempt property is deemed to have been waived.

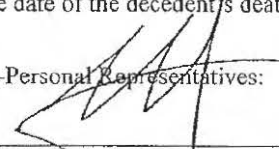
Any election to take an elective share must be filed WITHIN THE TIME REQUIRED BY LAW, which is on or before the earlier of the date that is six (6) months after the date of service of a copy of the Notice of Administration on the surviving spouse, or an attorney in fact or a guardian of the property of the surviving spouse, or the date that is two (2) years after the date of the decedent's death.


Attorney for Personal Representative:

Co-Personal Representatives:


ROBERT L. SPALLINA, ESQUIRE
Florida Bar No. 497381
Tescher & Spallina, P.A.
4855 Technology Way, Ste. 720
Boca Raton, FL 33431
561-997-7008

Primary: rspallina@tescherspallina.com
Secondary: kmoran@tescherspallina.com


ROBERT L. SPALLINA
7387 Wisteria Ave.
Parkland, FL 33076


DONALD R. TESCHER
2600 Whispering Oaks Lane
Delray Beach, FL 33445



TS004177

PALM BEACH DAILY BUSINESS REVIEW

Published Daily except Saturday, Sunday and
Legal Holidays
West Palm Beach, Palm Beach County, Florida

STATE OF FLORIDA
COUNTY OF PALM BEACH:

Before the undersigned authority personally appeared N. LYONS, who on oath says that he or she is the LEGAL CLERK, Legal Notices of the Palm Beach Daily Business Review /k/a Palm Beach Review, a newspaper published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertisement, being a Legal Advertisement of Notice in the matter of

502012CP004391XXXXSB
NOTICE OF ADMINISTRATION
IN RE: ESTATE OF SIMON L. BERNSTEIN, DECEASED

in the CIRCUIT Court,
was published in said newspaper in the issues of

10/16/2012 10/23/2012

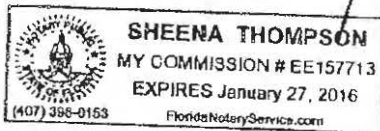
Affiant further says that the said Palm Beach Daily Business Review is a newspaper published at Palm Beach, in said Palm Beach County, Florida and that the said newspaper has heretofore been continuously published in said Palm Beach County, Florida, and has been entered as second class mail matter at the post office in West Palm Beach in said Palm Beach County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this

23 day of OCTOBER A.D. 2012

(SEAL)

N. LYONS personally known to me



NOTICE OF ADMINISTRATION IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL PROBATE DIVISION File No. 502012CP004391- XXXXSB

IN RE: ESTATE OF
SIMON L. BERNSTEIN,
Deceased.

The administration of the estate of SIMON L. BERNSTEIN, deceased, File Number 502012CP-004391XXXXSB is pending in the Circuit Court for Palm Beach County, Florida, Probate Division, the address of which is Palm Beach South County Courthouse, 200 W. Atlantic Avenue, Delray Beach, Florida 33444. The decedent's Will, which is dated July 25, 2012, has been admitted to probate. The name and address of the personal representative and the personal representative's attorney are set forth below.

A beneficiary of a Will or Codicil described above is not required to have an attorney or to file and document in order to receive the inheritance provided in that Will or Codicil.

Any interested person on whom a copy of this Notice of Administration is served who challenges the validity of the Will and/or Codicil, qualifications of the personal representative, venue, or jurisdiction of the court, is required to file any objection with the court following the form and procedure provided in the Florida Probate Rules WITHIN THE TIME REQUIRED BY LAW, which is on or before the date that is three (3) months after the date of service of a copy of the Notice of Administration on that person, or those objections are forever barred.

A petition for determination of exempt property is required to be filed by or on behalf of any person entitled to exempt property under Section 732.402 of the Florida Probate Code WITHIN THE TIME REQUIRED BY LAW, which is on or before the later of the date that is four (4) months after the date of service of a copy of the Notice of Administration on that person or the date that is forty (40) days after the date or termination of any proceeding involving the construction, admission to probate, or validity of the Will and/or Codicil or involving any other matter affecting any part of the exempt property, or the right of the personal to exempt property is deemed to have been waived.

Any election to take an elective share must file be filed WITHIN THE TIME REQUIRED BY LAW, which is on or before the earlier of the date that is six (6) months after the date of service of a copy of the Notice of Administration on the surviving spouse, or an attorney in fact

or a guardian of the property of the surviving spouse, or the date that is two (2) years after the date of the decedent's death.

Co-Personal Representatives:
ROBERT L. SPALLINA
7387 Wisteria Ave.
Parkland, FL 33076
DONALD R. TESCHER
2600 Whispering Oaks Lane
Delray Beach, FL 33445

Attorney for Personal Representative:
ROBERT L. SPALLINA, ESQUIRE
Florida Bar No. 497381
TESCHER & SPALLINA, P.A.
4855 Technology Way, Ste. 720
Boca Raton, FL 33431
561-997-7008
Primary:
rspallina@tescherspallina.com
Secondary:
kmoran@tescherspallina.com
10/16-23 12-7-73/1964015P

TS004274

**iviewit.com LLC
Promissory Noteholders**

Noteholder/Requested Amount	Date Letter Sent	Date Letter Received	Amount of Check Received	Date Promissory Note Mailed
Simon L. Bernstein \$30,000	7/8/99	7/13/99	\$30,000	8/23/99
Gerald R. Lewin \$15,000	7/8/99	8/3/99	\$15,000	8/23/99
Barbara Lewin \$15,000	7/8/99	8/3/99	\$15,000	8/18/99
Guy Iantoni \$11,790 \$ 3,210	7/8/99 10/8/99	7/14/99 10/29/99	\$11,790 \$ 3,210	8/18/99 11/5/99
Jill Iantoni \$10,000 \$ 5,000	7/8/99 10/8/99	7/14/99 10/29/99	\$10,000 \$ 5,000	8/18/99 11/5/99
James F. Armstrong \$15,000 \$ 6,000	7/8/99 9/27/99	7/23/99 Not Rec'd	\$15,000 N/A	8/18/99 N/A
Andrew Dietz \$15,000 \$15,000	7/8/99 9/27/99	Not Rec'd 10/18/99	N/A \$15,000	N/A 10/19/99
Donna Dietz \$15,000	7/8/99	11/5/99	\$15,000	11/9/99
James A. Osterling \$15,000 \$15,000 \$15,000	7/8/99 9/27/99 11/9/99	Not Rec'd Not Rec'd	N/A N/A	N/A N/A
Lisa Friedstein \$15,000 \$15,000	7/8/99 9/27/99	7/23/99 Not Rec'd	\$15,000 N/A	8/18/99 N/A
Donald G. Kane, II \$22,500	7/8/99	7/30/99	\$22,500	8/18/99

Note: As indicated in the above chart, Jerry Lewin, on behalf of iviewit.com LLC, has requested additional loans (although some loans will be original loans) from Jill Iantoni, Guy Iantoni, Andrew Dietz, Lisa Friedstein, James Armstrong and James Osterling.



STOCK LEDGER

Capitalization of iviewit Holdings, Inc.
Fully-Diluted
(For Non-Diluted, See End of Chart)

Shareholder	Number and Class of Shares
Eliot I. Bernstein (1)	11,320 Class A Common
Simon L. Bernstein (1)	5,350 Class A Common
The Joshua Bernstein 1999 Trust (1)	2,415 Class B Common
The Jacob Bernstein 1999 Trust (1)	2,415 Class B Common
Gerald R. Lewin & Barbara S. Lewin (1)	2,000 Class B Common
Erika R. Lewin (1)	250 Class B Common
Jennifer P. Lewin (1)	250 Class B Common
James Osterling (1)	1,250 Class B Common
James Armstrong (1)	1,750 Class B Common
Guy Iantoni (1)	1,250 Class B Common
Jill Iantoni (1)	1,250 Class B Common
Andrew Dietz (1)	1,250 Class B Common
Donna Dietz (1)	1,250 Class B Common
Patricia Daniels (1)	1,250 Class B Common
Bettie Stanger (1)	500 Class B Common
Lisa Friedstein (1)	2,500 Class B Common
Donald G. Kane, II (1)	1,663 Class B Common
Eliot I. Bernstein (1)	7,500 Class B Common

Simon L. Bernstein (1)	5,000 Class B Common
Brian G. Utley (1) (2)	1,714 Class B Common
INVESTTECH Holdings L.L.C.	3,007 Class A Common
Alpine Venture Capital Partners LP	2,580 Series A Preferred
Joan Stark (3)	522 Class B Common
Emerald Capital Partners, Inc. (4)	2,250 Class B Common
Jason Gregg	645 Class A Common

LIC HOLDINGS, INC.
 ANALYSIS OF SHAREHOLDERS AND
 SHAREHOLDINGS
 INCEPTION - PRESENT

	Percentage Ownership		
	Inception 9/1/2006 To 12/31/10	1/1/2011 To 9/13/2012	9/14/2012 To Present
Simon Bernstein	33.00	36.70	
Estate of Simon Bernstein			36.70
Ted Bernstein	45.00	50.00	50.00
William Stansbury	10.00		
Alexandra Bernstein Irrevocable Trust	1.20	1.33	1.33
Daniel Bernstein Irrevocable Trust	1.20	1.33	1.33
Eric Bernstein Irrevocable Trust	1.20	1.33	1.33
Jacob Bernstein Irrevocable Trust	1.20	1.33	1.33
Josh Bernstein Irrevocable Trust	1.20	1.33	1.33
Michael Bernstein Irrevocable Trust	1.20	1.33	1.33
Carly Friedstein Irrevocable Trust	1.20	1.33	1.33
Max Friedstein Irrevocable Trust	1.20	1.33	1.33
Julia Iantoni Irrevocable Trust	1.20	1.33	1.33
Molly Simon Irrevocable Trust	1.20	1.33	1.33
	<u>100.00</u>	<u>100.00</u>	<u>100.00</u>

LIC-AIM-TB-000025



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF PROBATE DIVISION
SIMON BERNSTEIN File No. 502012CP004391IZXXXXSB
Deceased.

AMENDED INVENTORY

The undersigned co-personal representatives of the estate of SIMON BERNSTEIN, deceased, who died on September 13, 2012, and whose social security number is XXX-XX-5211, submits this Amended Inventory of all the property of the estate, that has come into the hands, possession, control, or knowledge of these personal representatives:

REAL ESTATE IN FLORIDA – Exempt (Protected) Homestead:

Description

NONE

REAL ESTATE IN FLORIDA – Non-Exempt Homestead:

Description

Estimated Fair Market Value

NONE

(Whether homestead property is exempt from the claims of creditors, whether it is properly devised and whether it is a probate asset may have to be determined by appropriate proceedings.)

OTHER REAL ESTATE IN FLORIDA:

Description

Estimated Fair Market Value

NONE

\$

Total Real Estate in Florida – Except Exempt (Protected) Homestead

\$



Estate of Simon Bernstein
File No. 502012CP004391ZXXXX SB
AMENDED INVENTORY

PERSONAL PROPERTY WHEREVER LOCATED:

<u>Description</u>	<u>Estimated Fair Market Value</u>
Legacy Bank of Florida - Acct. Ending 2587	\$384.25
Wells Fargo - Acct. Ending 1945	1,599.49
Sabadell Bank - Acct. Ending 9414	15,153.18
JP Morgan (4788015220)	77,491.27
JP Morgan (W32585007)	519,266.37
LIC Holdings, Inc. (33% ownership)	UNDETERMINED
Furniture, furnishings, household goods and personal effects	51,135.00
Jewelry	63,205.00
US Life Proceeds	50,800.08
Monarch Life Proceeds	4,000.00
Cincinnati Life Proceeds	7,685.00
Promissory Note from Bernstein Family Realty, LLC (not including accrued interest)	365,000.00
TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATE	\$ <u>1,155,719.40</u>

All real estate located outside the State of Florida owned by the decedent of which the personal representative is aware, if any, is described on a schedule attached hereto. [If none, so indicate]

NONE

NOTICE: Each residuary beneficiary in a testate estate or heir in an intestate estate has the right to request a written explanation of how the inventory value of any asset was determined, including whether the personal representative obtained an independent appraisal for that asset and from whom the appraisal was obtained. Any other beneficiary may request this information regarding all assets distributed to or proposed to be distributed to that beneficiary.




Estate of Simon Bernstein
File No. 502012CP0043911ZXXXX SB
AMENDED INVENTORY

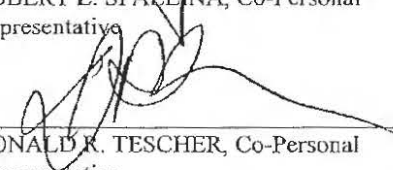
Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

Signed on this 28th day of Dec, 2013.



ROBERT L. SPALLINA, Esq.
Attorney for Personal Representative
Florida Bar No. 497381
Tescher & Spallina, P.A.
4855 Technology Way, Suite 720
Boca Raton, FL 33431
Telephone: (561) 997-7008
Primary: rspallina@tescherspallina.com
Secondary: kmoran@tescherspallina.com



ROBERT L. SPALLINA, Co-Personal
Representative


DONALD R. TESCHER, Co-Personal
Representative



7010 1670 0001 8551 2040

U.S. Postal Service™
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For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	mailed 12/27/13 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	
Bernstein Amended Inventory		
Sent To		
Lisa S. Friedstein		
Street, Apt. No., or PO Box No. 2142 Church Hill Lane		
City, State, ZIP+4 Highland Park IL 60035		

PS Form 3800, August 2006 See Reverse for Instructions

EE02 1559 1000 0491 7010 1670 0001 8551 2040

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OFFICIAL USE

Postage	\$	mailed 12/27/13 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	
Bernstein Amended Inventory		
Sent To		
Alexandra Bernstein		
Street, Apt. No., or PO Box No. 3000 Washington Blvd Apt 424		
City, State, ZIP+4 Arlington VA 22201		

PS Form 3800, August 2006 See Reverse for Instructions

7010 1670 0001 8551 2064

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OFFICIAL USE

Postage	\$	mailed 12/27/13 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	
Bernstein Amended Inventory		
Sent To		
Eliot Bernstein		
Street, Apt. No., or PO Box No. 2753 NW 34th Street		
City, State, ZIP+4 Boca Raton FL 33434		

PS Form 3800, August 2006 See Reverse for Instructions

7010 1670 0001 8551 2064

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For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	mailed 12/27/13 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	
Bernstein Amended Inventory		
Sent To		
Jill Lantoni		
Street, Apt. No., or PO Box No. 2101 Magnolia Lane		
City, State, ZIP+4 Highland Park IL 60035		

PS Form 3800, August 2006 See Reverse for Instructions

7010 1670 0001 8551 2066

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	mailed 12/27/13 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	
Bernstein Amended Inventory		
Sent To		
Ted S. Bernstein		
Street, Apt. No., or PO Box No. 880 Berkeley Street		
City, State, ZIP+4 Boca Raton FL 33487		

PS Form 3800, August 2006 See Reverse for Instructions

7010 1670 0001 8551 2071

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	mailed 12/27/13 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	
Bernstein Amended Inventory		
Sent To		
Pamela Simon		
Street, Apt. No., or PO Box No. 950 North Michigan Ave #2108		
City, State, ZIP+4 Chicago IL 60608		

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Lisa S. Friedstein
2142 Churchill Lane
Highland Park IL 60035

Simon Bernstein Amended Inventory

2. Article Number

(Transfer from service label)

7010 1870 0001 8551 2040

PS Form 3811 February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Lisa S. Friedstein

Agent

Addressee

B. Received by (Printed Name)

Lisa S. Friedstein

C. (Date of Delivery)

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

Certified Mail

Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

TS004207

IN THE CIRCUIT COURT FOR PALM BEACH
COUNTY, FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

SIMON L. BERNSTEIN
Deceased.

FILE NO: 502012CP004391XXXXSB

**INVENTORY BY BRIAN M. O'CONNELL, AS
SUCCESSOR PERSONAL REPRESENTATIVE**

The undersigned Successor Personal Representative of the estate of SIMON L. BERNSTEIN, deceased, who died September 12, 2012 submits this inventory of all the property of the estate, that has come into the hands, possession, control, or knowledge of this Personal Representative:¹

REAL ESTATE IN FLORIDA – Exempt (Protected) Homestead: NONE

REAL ESTATE IN FLORIDA – Non Exempt Homestead: NONE

(Whether or not homestead property is exempt from the claims of creditors, is properly devised and is a probate asset may have to be determined by appropriate proceedings.)

OTHER REAL ESTATE IN FLORIDA: NONE

Total Real Estate in Florida – Except Exempt (Protected) Homestead \$ 0.00

¹ This Inventory reports all assets which have come into the possession and knowledge of the undersigned as Successor Personal Representative as of this date. The undersigned plans on conducting discovery as to possible additional assets and an Amended Inventory will be filed, if necessary.



PERSONAL PROPERTY WHEREVER LOCATED:

Description	Estimated Fair Market Value
Sabadell Bank -- estate checking account # 15346	\$ 11,735.84
JP Morgan -- estate checking account	25,531.59
JP Morgan -- estate inherited IRA account # 8004	559,217.78
Promissory Note dated July 1, 2008, payable to Decedent by Bernstein Family Realty LLC	365,000.00
Jewelry (as of 5/14/13 appraisal by A. Matteini & Co.)	63,205.00
Furniture & furnishings (as of 1/22/13 appraisal by Robert A. Hittel)	51,135.00
Reimbursements owed to the Estate by Bernstein Family Realty LLC for expenses and legal fees per Schedule D of the T&S Accounting and per Schedule E of the Amended Accounting of Curator	25,500.00
Reimbursements owed to the Estate by the Simon Bernstein Insurance Trust for legal fees per Schedule D of the T&S Accounting and per Schedule E of the Amended Accounting of Curator	20,000.00
LIC Holdings, Inc. (Company stock held at corporate office per Schedule E of the Amended Accounting of Curator)	Unknown
Objection to the Final Accounting of Personal Representative for the time period of September 13, 2012 through February 28, 2014, dated August 13, 2014	Unknown
Claim for insurance proceeds pending under <u>Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company</u> , Case Number 13 cv 3643 (N.D. Ill., E. Div.)	Unknown
Total Personal Property -- Wherever Located	\$1,121,325.21

TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATE

(Except exempt (protected) homestead)

\$ 1,121,325.21

All real estate located outside the State of Florida owned by the decedent of which the Personal Representative is aware, if any, is described on a schedule attached hereto, [If none, so indicate]

NONE KNOWN AT THIS TIME.


NOTICE: Each residuary beneficiary in a testate estate or heir in an intestate estate has the right to request a written explanation of how the inventory value of any asset was determined, including whether the Personal Representative obtained an independent appraisal for that asset and, if so, a copy of the appraisal. Any other beneficiary may request this information regarding all assets distributed to or proposed to be distributed to that beneficiary.

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

Signed on December 1, 2014.

For
 94238

ASHLEY N. CRISPIN
Florida Bar # 37495
CIKLIN, LUBITZ, MARTENS, & O'CONNELL
515 North Flagler Drive, 20th Floor
West Palm Beach, FL 33401
Telephone No. (561) 832-5900
Facsimile: (561) 833-4209
Primary e-mail: service@ciklinlubitz.com
Secondary email: probateservice@ciklinlubitz.com



BRIAN M. O'CONNELL
Successor Personal Representative

[Print or Type Names Under All Signature Lines]

**SUCCESSOR TRUSTEE'S NOTICE OF ACCOUNTING OF
THE SIMON BERNSTEIN REVOCABLE TRUST**

From: February 3, 2014 through March 15, 2015

Ted S. Bernstein, as Successor Trustee, hereby gives notice of serving upon all interested persons an accounting of the Simon L. Bernstein Amended and Restated Trust u/a/d 7-25-2012. This accounting is rendered from the date on which the Trustee became accountable, February 3, 2014.

LIMITATION NOTICE

Pursuant to Florida Statute Section 736.1008, this Limitation Notice is provided with respect to the enclosed trust accounting for the Simon L. Bernstein Amended and Restated Trust u/a/d 7-25-2012, for the period from February 3, 2014 and ending March 15, 2015.

AN ACTION FOR BREACH BASED ON MATTERS DISCLOSED IN A TRUST ACCOUNTING OR OTHER WRITTEN REPORT OF THE TRUSTEE MAY BE SUBJECT TO A SIX (6) MONTH STATUTE OF LIMITATIONS FROM THE RECEIPT OF THE TRUST ACCOUNTING OR OTHER WRITTEN REPORT. IF YOU HAVE ANY QUESTIONS, PLEASE CONSULT YOUR ATTORNEY.

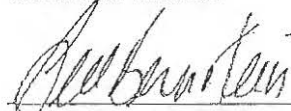
SUMMARY INFORMATION FOR ATTACHED ACCOUNTING

This summary information is provided pursuant to Florida Statute 736.08135:

Trust name: Simon L. Bernstein Amended and Restated Trust Agreement u/a/d 7-25-2012
Trustee: Ted S. Bernstein
Time Period: February 3, 2014 through March 15, 2015

Signed on March 10, 2015

Successor Trustee:



Ted S. Bernstein



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all interested persons on the Service List set forth below by: E-mail Electronic Transmission; Facsimile and U.S. Mail; U.S. Mail this 30th day of March, 2015.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone / (561) 655-5537 Facsimile
Email: arose@mrachek-law.com
Secondary: mchandler@mrachek-law.com
Attorneys for Ted S. Bernstein, as Successor Trustee

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0766 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
lisa@friedsteins.com
Individually and as trustee for her children, and
as natural guardian for M.F. and C.F., Minors

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com
Individually and as trustee for her children, and
as natural guardian for J.I. a minor

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 West Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552 - Telephone
(561) 734-5554 - Facsimile
Email: service@feamanlaw.com;
mkoskey@feamanlaw.com
Counsel for William Stansbury

Robert Spallina, Esq.
Donald Tescher, Esq.
Tescher & Spallina
925 South Federal Hwy., Suite 500
Boca Raton, Florida 33432

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

Former Curator
Matwiczuk & Brown, LLP
625 North Flagler Drive, Suite 401
West Palm Beach, FL 33401
(561) 651-4004 - Telephone
(561) 651-4003 - Facsimile
Email: attorneys@matbrolaw.com

Gary R. Shendell, Esq.
Kenneth S. Pollock, Esq.
Shendell & Pollock, P.L.
2700 N. Military Trail, Suite 150
Boca Raton, FL 33431
(561) 241-2323 - Telephone
(561) 241-2330 - Facsimile
Email: gary@shendellpollock.com
ken@shendellpollock.com
estella@shendellpollock.com
britt@shendellpollock.com
grs@shendellpollock.com

ACCOUNTING OF SIMON BERNSTEIN TRUST
BY TED S. BERNSTEIN, SUCCESSOR TRUSTEE

Trust: Simon L. Bernstein Amended and Restated Trust Agreement u/a/d 7-25-2012

Trustee: Ted S. Bernstein

Time Period: February 3, 2014 through March 15, 2015

	<u>Income</u>	<u>Principal</u>	<u>Total</u>
<u>I. Starting Balance</u>			
Assets per Inventory or on Hand at Close of Last Accounting Period		\$30,177.17	\$30,177.17
<u>II. Receipts</u>			
	\$0	\$0	\$0
<u>III. Disbursements</u>			
	\$0	(\$7,250.00)	(\$7,250.00)
<u>IV. Distributions</u>			
	\$0	\$0	\$0
<u>V. Capital Transactions and Adjustments</u>			
	\$0	\$0	\$0
<u>VI. Assets of Hand at Close of Accounting Period</u>			
	\$0	\$22,927.17	\$22,927.17

During Tenure of Ted Bernstein as Successor Trustee

Total Assets in existence at time of acceptance of appointment: Feb. 3, 2014

1.	Interest in Bernstein Family Investments, LLLP	\$illiquid/undetermined
2.	JP Morgan Account	\$30,177.17
3.	Expectancy – sole beneficiary of Simon Bernstein Estate	\$ unknown

Accounting:

1. Interest in Bernstein Family Investments, LLLP

No known activity

Value: maximum would be 49% of total value (BFI, LLLP assets = approx. \$436,275 less tax liabilities, expenses)	\$illiquid/undetermined Est. range: \$150,000-200,000
--	--

2. Funds from JP Morgan Account:

Starting balance: \$30,177.17

Additions: \$0

Expenses:

11/19/2014

Expert Witness Fee: Bruce Stone (\$ 7,250.00)

Ending balance 3-18-15 \$22,927.17*

* Balance at JP Morgan	\$10,000.00
Balance in Mrachek-Law IOTA	\$12,927.17

Additional Information

The prior trustees have not done any accounting, formal or informal.

The Successor Trustee has investigated and makes the following report (which does not constitute any accounting required of the prior trustees, including Simon Bernstein, as Settlor/Trustee (initial trustee), or Donald Tescher and Robert Spallina, as Successor Co-Trustees.

**Transactions during trusteeship of
Simon Bernstein, Settlor/Trustees**

No knowlegde. Settlor-Trustee deceased.

**Transactions during trusteeship of
Donald Tescher and Robert Spallina, as Successor Co-Trustees**

Total Assets in existence at time of appointment:

- | | | |
|----|---|--------------------------|
| 1. | Interest in Bernstein Family Investments, LLLP | \$ illiquid/undetermined |
| 2. | Bank Accounts or other assets: | \$ none |
| 3. | Expectancy – sole beneficiary of Simon Bernstein Estate | \$ unknown |

Accounting:

1. Transactions involving Bernstein Family Investments, LLLP

Outflows: Several cash distributions made to limited partner,
Simon Bernstein Restated Trust u/a/d 7/25/12:

10/23/12	60,000.00
11/2/12	39,000.00
12/20/13	<u>100,000.00</u>
Total	199,000.00

Ending Value: see above

2. Bank Accounts:

JP Morgan Account (newly opened account)

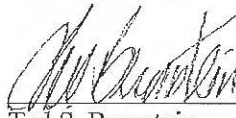
Starting Balance: \$0

<u>Transactions</u>		DEPOSIT	WITHDRAWAL
DATE	DESCRIPTION		
10/23/12	Deposit from LLLP	60,000.00	
11/2/12	Deposit from LLLP	39,000.00	
12/26/2012	Fees - CBIZ (tax return Jill Trust)		(500.00)
	Fees - CBIZ (tax return Lisa Trust)		(500.00)
	Fees - CBIZ (tax return Eliot Trust)		(500.00)
	Fees - CBIZ (Bernstein Holdings, LLC)		(595.05)
	Fees - CBIZ (Bernstein Holdings, LLC)		(8,237.60)
10/1/2013	Fees - T&S Professional Fees		(15,146.12)
10/16/2013	Fees - Mark Manceri (Stansbury litigation)		(8,277.00)
11/25/2013	Fees - T&S Professional Fees		(15,067.06)
12/20/13	Deposit from LLLP	100,000.00	
01/15/2014	<u>Internal Revenue Service</u>		<u>(120,000.00)</u>
	TOTALS Receipts	199,000.00	
	Payments		(168,882.83)
Ending balance @ Tescher Resignation		\$30,177.17	

Under penalties of perjury, the undersigned Trustee declares that I have read and examined this accounting and that the facts and figures set forth in are true, to the best of my knowledge and belief, and that it is a complete report of all cash and property transactions and of all receipts and disbursements by me as Trustee from February 3, 2014 to March 15, 2015.

Signed on March 26, 2015

Successor Trustee:



Ted S. Bernstein

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

IN RE: Case No. 502011CP000653XXXXSB
ESTATE OF SHIRLEY BERNSTEIN, Probate Division
Deceased, Division: IY

ACCOUNTING OF SUCCESSOR PERSONAL REPRESENTATIVE

From: October 11, 2013 to March 15, 2015

Ted S. Bernstein, as Successor Personal Representative, hereby gives notice of filing and serving upon all interested persons an accounting of this Estate, since the date of the appointment of the Successor Personal Representative.

All objections to the accounting must be filed within 30 days from the date of service of Notice.

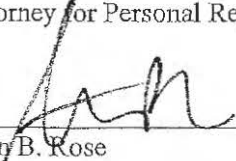
This accounting is to acquaint all interested persons with the transactions that have occurred during the period covered by the accounting and the assets that remain on hand.

Under penalties of perjury, the undersigned personal representative declares that I have read and examined this accounting and that the facts and figures set forth in are true, to the best of my knowledge and belief, and that it is a complete report of all cash and property transactions and of all receipts and disbursements by me as personal representative of the estate of Shirley Bernstein, deceased, from October 11, 2013 to March 15, 2015.



Signed on March 26, 2015

Attorney for Personal Representative:



Alan B. Rose
Florida Bar No. 961825

Successor Personal Representative:



Ted S. Bernstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all interested persons on the Service List set forth below by: E-mail Electronic Transmission; Facsimile and U.S. Mail; U.S. Mail this 30th day of March, 2015.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone/(561) 655-5537 Facsimile
Email: arose@mrachek-law.com
Secondary: mchandler@mrachek-law.com
Attorneys for Ted S. Bernstein, as Successor Personal
Representative

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

ACCOUNTING OF ESTATE OF SHIRLEY BERNSTEIN

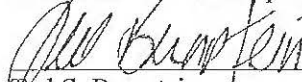
	<u>Income</u>	<u>Principal</u>	<u>Total</u>
<u>I. Starting Balance</u>			
Assets per Inventory or on Hand at Close of Last Accounting Period			\$0
<u>II. Receipts</u>			\$0
<u>III. Disbursements</u>			\$0
<u>IV. Distributions</u>			\$0
<u>V. Capital Transactions and Adjustments</u>			\$0
<u>VI. Assets of Hand at Close of Accounting Period</u>			\$0

TRANSACTIONS

Total Assets in existence at time of acceptance of appointment	NONE
Outflows:	NONE ¹
Inflows:	NONE
Total Assets currently held:	NONE

Signed on March 7th, 2015

Successor Personal Representative:



Ted S. Bernstein

¹ All expenses of the Estate have been paid by the decedent's revocable trust in accordance with section 736.05053 of the Florida Statutes, and will be included within the accounting provided by the trustee of that trust.

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

IN RE: Case No. 502011CP000653XXXXSB

ESTATE OF SHIRLEY BERNSTEIN,

Deceased.

Division: IY

**INVENTORY BY TED S. BERNSTEIN, AS
SUCCESSOR PERSONAL REPRESENTATIVE**

The undersigned Successor Personal Representative of the estate of Shirley Bernstein, deceased, who died December 8, 2010, submits this inventory of all the property of the estate, that has come into the hands, possession, control, or knowledge of this Personal Representative:¹

REAL ESTATE IN FLORIDA - Exempt (Protected) Homestead: NONE

REAL ESTATE IN FLORIDA- Non Exempt Homestead: NONE

(Whether or not homestead property is exempt from the claims of creditors, is properly devised and is a probate asset may have to be determined by appropriate proceedings.)

OTHER REAL ESTATE IN FLORIDA: NONE

Total Real Estate in Florida - Except Exempt (Protected) Homestead \$ 0.00

PERSONAL PROPERTY WHEREVER LOCATED:

Description: NONE

TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATE
(Except exempt (protected) homestead) \$ 0.00

¹ This Inventory reports all assets which have come into the possession and knowledge of the undersigned as Successor Personal Representative as of the date of his Appointment. The undersigned did not receive possession of any property disclosed in the initial Personal Representative's Inventory dated August 29, 2011 (attached as Exhibit "A").



All real estate located outside the State of Florida owned by the decedent of which the Personal Representative is aware, if any, is described on a schedule attached hereto, [if none, so indicate].

NONE KNOWN AT THIS TIME.


NOTICE: Each residuary beneficiary in a testate estate or heir in an intestate estate has the right to request a written explanation of how the inventory value of any asset was determined, including whether the Personal Representative obtained an independent appraisal for that asset and, if so, a copy of the appraisal. Any other beneficiary may request this information regarding all assets distributed to or proposed to be distributed to that beneficiary.

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

Signed on March 26, 2015.



ALAN B. ROSE
Florida Bar No. 961825
MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone
(561) 655-5537 Facsimile
Email: arose@mrachek-law.com
Secondary: mchandler@mrachek-law.com
Attorneys for Ted S. Bernstein



TED S. BERNSTEIN
Successor Personal Representative

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all interested persons on the Service List set forth below by: E-mail Electronic Transmission; Facsimile **and** U.S. Mail; U.S. Mail this 30 day of March, 2015.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone / (561) 655-5537 Facsimile
Email: arose@mrachek-law.com
Secondary: mchandler@mrachek-law.com
Attorneys for Ted S. Bernstein, as Successor Personal
Representative

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0766 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
lisa@friedsteins.com
Individually and as trustee for her children, and
as natural guardian for M.F. and C.F., Minors

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com
Individually and as trustee for her children, and
as natural guardian for J.I. a minor

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 West Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552 - Telephone
(561) 734-5554 - Facsimile
Email: pfeaman@feamanlaw.com;
service@feamanlaw.com;
mkoskev@feamanlaw.com
Counsel for William Stansbury

Robert Spallina, Esq.
Donald Tescher, Esq.
Tescher & Spallina
925 South Federal Hwy., Suite 500
Boca Raton, Florida 33432
rspallina@tescherspallina.com
dtescher@tescherspallina.com

Pam Simon
Pam Simon <psimon@stpcorp.com>

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF PROBATE DIVISION
SHIRLEY BERNSTEIN File No. 50201 ICP000653XXXX SB
Deceased,

INVENTORY

The undersigned personal representative of the estate of SHIRLEY BERNSTEIN, deceased, who died on December 8, 2010, and whose social security number is XXX-XX-9749, submits this inventory of all the property of the estate, that has come into the hands, possession, control, or knowledge of these personal representatives:

REAL ESTATE IN FLORIDA – Exempt (Protected) Homestead:

Description

NONE

REAL ESTATE IN FLORIDA – Non-Exempt Homestead:

Description

Estimated Fair Market Value

NONE

(Whether homestead property is exempt from the claims of creditors, whether it is properly devised and whether it is a probate asset may have to be determined by appropriate proceedings.)

OTHER REAL ESTATE IN FLORIDA:

Description

Estimated Fair Market Value

NONE

\$

Total Real Estate in Florida -- Except Exempt (Protected) Homestead

\$



Estate of Shirley Bernstein
File No. 502011CP000653XXXX SB
INVENTORY

PERSONAL PROPERTY WHEREVER LOCATED:

<u>Description</u>	<u>Estimated Fair Market Value</u>
Furniture, furnishings, household goods and personal effects	\$ <u>25,000.00 (est.)</u>
TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATE	\$ <u>25,000.00</u>

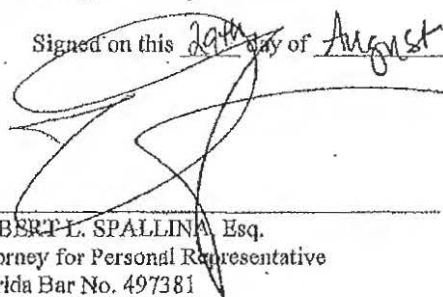
All real estate located outside the State of Florida owned by the decedent of which the personal representative is aware, if any, is described on a schedule attached hereto, [If none, so indicate]

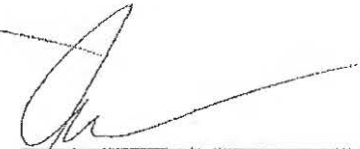
NONE

NOTICE: Each residuary beneficiary in a testate estate or heir in an intestate estate has the right to request a written explanation of how the inventory value of any asset was determined, including whether the personal representative obtained an independent appraisal for that asset and from whom the appraisal was obtained. Any other beneficiary may request this information regarding all assets distributed to or proposed to be distributed to that beneficiary.

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

Signed on this 20th day of August, 2011.


ROBERT L. SPALLINA, Esq.
Attorney for Personal Representative
Florida Bar No. 497381
Tescher & Spallina, P.A.
4855 Technology Way, Suite 720
Boca Raton, FL 33431
Telephone: (561) 997-7008


SIMON BERNSTEIN, Personal Representative



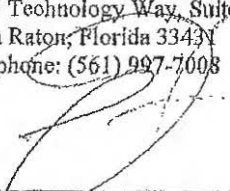
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Inventory was furnished by U.S. certified mail to:

Florida Department of Revenue
5050 W. Tennessee St., Bldg. K
Tallahassee, FL 32399-0100

on this 8 day of SEP, 2011.

TESCHER & SPALLINA, P.A.
Attorneys for the Personal Representative
of the Estate of Shirley Bernstein
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
Telephone: (561) 997-7008

BY: 
ROBERT L. SPALLINA, ESQ.
Florida Bar No. 497381



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

IN RE:

Case No. 502011CP000653XXXXSB

ESTATE OF SHIRLEY BERNSTEIN,

Deceased.

Division: IY

**PETITION TO RE-CLOSE ESTATE BASED UPON PRIOR SIGNED WAIVERS
AND FOR DISCHARGE OF SUCCESSOR PERSONAL REPRESENTATIVE**

Ted S. Bernstein, as Successor Personal Representative, petitions this Court for the entry of an order re-closing this Estate and discharging the Successor Personal Representative, and in support thereof states:

1. The initial Personal Representative, Simon L. Bernstein, fully administered this estate and Petitioned for a discharge, with signed (but un-notarized) waivers by all interested persons. §731.301, Fla. Stat. (See Exhibit "A")

2. Under her Will, admitted to probate, Shirley left all of her personal effects, jewelry, collections, furnishings, automobiles and all non-business assets to her husband, Simon, if he survived her, which he did. Shirley residences were to go to Simon, but she had no residences other than property already in her trust. The remainder of her estate was to pour-over into the Shirley Bernstein Trust Agreement dated May 20, 2008 (the "Shirley Trust"). Simon was the sole beneficiary of the Shirley Trust while he was alive.

3. Based upon the foregoing, everything that was Shirley's became Simon's, and Simon's alone. It is believed by the current Successor Personal Representative that the Estate's assets consisted only of tangible personal property (furnishing, jewelry, clothes, etc.) located in Simon's home, but no one other than Simon would know for sure and he is dead. While Shirley was alive,



none of Shirley's and Simon's children were apprised of the state of her affairs nor shown her testamentary documents. Because Simon survived Shirley, none of her children were entitled to any portion of her estate.

4. Shirley died on December 8, 2010. Sometime thereafter, Simon directly took possession and control of all assets of her estate, and indirectly took control of the Shirley Bernstein Trust's assets as the initial Successor Trustee and sole beneficiary during his lifetime.

5. On April 9, 2012, Simon signed a Petition for Discharge and his own Waiver form. By that time, Simon had completed the administration of Shirley's Estate and he wanted the Estate to be closed. Because the five children – Ted, Pam, Eliot, Jill and Lisa – were interested parties, Simon also sought from each of them a Waiver.

6. In May 2012, Simon gathered his children on a conference call to advise them of his estate plan – to leave everything to his ten grandchildren equally. During that call, Simon mentioned the need for each of them to waive an accounting and allow the Estate to be closed. At that time, Simon was mentally competent, had the capacity to alter any and all of his testamentary documents, and held a power of appointment over the assets in the Shirley Trust.¹ If any of his children had disobeyed his request to sign a Waiver, Simon would have had within his power the ability to completely disinherit that child and all of that child's lineal descendants.

¹ Upon Shirley's death, Simon was the sole beneficiary of her Estate and Trust, and was the sole trustee of her Trust. As such, Simon had all rights of ownership of all assets that formerly were in Shirley's Estate, and had the full power to do whatever he wanted with the assets, including selling or giving away anything he chose. As noted above, neither Simon nor Shirley shared their testamentary documents with their children prior to Shirley's death. In fact, Simon never shared with Eliot any of Shirley's or Simon's testamentary documents. That was his prerogative as the sole owner and sole beneficiary of all of their wealth.

7. Based upon the request of their father, each of his children signed a Waiver, including Eliot. Indeed, Eliot, who was being financially supported by Simon, signed his first and immediately, on May 15, 2012. (Three of the children signed in August, and the last did not sign the Waiver until October.)

8. In the correspondence that accompanied Eliot's signed Waiver, Eliot wrote:

Hi Robert ~ attached is the Waiver of Accounting and Portions of Petition For Discharge; Waiver of Service of Petition for Discharge; and Receipt of Beneficiary and Consent to Discharge. As I mentioned in the phone call, **I have not seen any of the underlying estate documents or my mother's will at this point, yet I sign this document after our family call so that my father can be released of his duties as Personal Representative and put whatever matters that were causing him stress to rest** Thank you for your efforts on behalf of my family ~ Eliot

(See Exhibit "B")

9. Thus, Eliot confirmed that he lacked knowledge of Shirley's testamentary documents. Eliot also had no knowledge of Simon's or Shirley's true financial picture, yet he agreed to and did sign a Waiver. After he signed the Waiver, Eliot (i) emailed the Waiver to his father's counsel; and (ii) printed the email, signed it and mailed it to his father's counsel with the original signed Waiver. The email and the Waiver signed by Eliot are undeniably genuine and authentic because the printed document bears Eliot's trademark "signature" – his initials inside his thumb print. (See Exhibit "B")

10. For some reason, the final waivers took an extended period of time to be signed and the last one was not returned to Simon's counsel until October. In the intervening period, Simon died. Eventually, all of the Waivers were delivered to this Court, but rejected for lack of a notary. While there is no requirement under Florida law for a waiver to be notarized, this Court has imposed such a requirement, presumably to confirm the validity of the documents. The Successor Personal

Representative believes that, after learning that the Waivers needed to be notarized, a notary in the office of Simon's counsel created a second set of "notarized" documents purporting to be signed by Simon (after he was dead) and his five children (none of whom signed in the presence of the notary). These "notarized" documents were then submitted to this Court, which closed the Estate.

11. After this irregularity came to light, and based upon pleadings filed by the Estate's counsel, the Court re-opened the case and appointed Ted S. Bernstein as Successor Personal Representative (by that time, Simon, the initial Personal Representative, had passed away).² The irregularity in the second set of waivers, as revealed to this Court on September 13, 2013, in the end is a matter of little to no consequence to the outcome here. This Court noted as much during the hearing, stating on the record:

The Court: Mr. [Eliot] Bernstein, I want you to understand something. Let's say you prove what seems perhaps to be easy, that Moran notarized your signature, your father's signature, other people's signatures after you signed it, and you signed it without the notary there and they signed it afterwards. *That may be a wrongdoing on her part as far as her notary republic (sic) ability, but the question is, unless someone claims and proves forgery, okay, forgery, proves forgery, the document will purport to be the document of the person who signs it, and then the question is, will something different happen in Shirley's estate then what was originally intended?* Originally intended they say, the other side, was for Simon to close out the estate. The estate they say was small. The estate gave everything to the trust and that's what it did, and that was the end of the estate Remember, this is not everything about your parents and their estate planning.

(See Exhibit "C")

12. Despite the problems with the second set of waivers, the first set of un-notarized Waivers were properly signed by each of the Beneficiaries. That is not in dispute. There were six

² In her Will, Shirley had named Ted as Successor Personal Representative.

signed Waivers: Simon individually; and the five children, Ted, Pam, Eliot, Jill, and Lisa. Every child but Eliot has given a separate affidavit (Exhibit "D") confirming the genuineness and validity of their original signature, and confirming their desire to have the Estate closed.

13. Only Eliot, who is attempting to use this irregularity to his advantage, objects to closing this Estate. There is no basis in law for the Court to allow Eliot to withdraw his Waiver form, which was knowingly, intelligently and voluntarily signed. This fact is confirmed in Eliot's cover e-mail, which clearly notes that the document was signed at his father's request to reduce his father's stress. Moreover, Eliot should be estopped from withdrawing his waiver, because his father took action after receiving his waiver form, presumably in reliance upon receipt of the signed waiver form. Simon asked each of his children to sign the waiver form. After receiving Eliot's waiver form, Simon Amended and Restated his Trust and revoked his earlier Will in favor of a new 2012 Will, exercising his power of appointment in favor of ten grandchildren, including Eliot's children. Theoretically, had Eliot refused to sign the waiver form, Simon could have disinherited not only Eliot, but each of his three children, and Simon could have cutoff his financial support.

14. Eliot signed a waiver form and it should be enforced as written and as signed by Eliot. The so-called "fraud" which Eliot claims to have discovered was on the court, not on these parties, and does not alter in any way the fact that Eliot signed the Waiver. (Exhibit "B") To put this in perspective, the only person who "lost" as a result of the "improper notarization" is the notary who created the second set of documents³ and potentially her employers. The persons who likely would have benefitted from the "fraud," theoretically, were the beneficiaries of the Trust because no Trust

³ Although not relevant to this case, upon the Successor Personal Representative's belief, the notary lost her notary license, was arrested and was placed on probation.

assets would need to be depleted in closing the Estate. As there were no assets in the Estate at the time, funds would have been taken from the Shirley Bernstein Trust to pay the additional legal fees and costs that would have been incurred trying to start anew the process of closing the Estate, and ultimately those potentially substantial expenses would have been borne by the beneficiaries.

15. Under the Probate Code, section 731.302, an interested person may waive the requirements of the code, including an accounting. That is precisely what Eliot and the others did. There does not appear to be any provision allowing the waiver to be revoked. Under a similar provision in the Trust Code, section 736.0813(2), a qualified beneficiary who has waived the trustee's duty to account "may withdraw a waiver previously given"; however, such withdrawal of a prior waiver must be in writing and "[w]ithdrawals of prior waivers are effective *only with respect to accountings for future periods.*" Thus, even if the Court to allow Eliot to withdraw his waiver in the Estate proceeding, which it should not, that should only apply to future accountings. Thus, Eliot still will have waived his right to an accounting of anything Simon did from Shirley's death on December 8, 2010, to at least Simon's death on September 13, 2012, and more accurately until the date of Eliot's written withdrawal of his waiver. Regardless, from and after Simon's death there were no assets in Shirley's estate; nothing to account for; and nothing to distribute. There simply is no practical need for an accounting, other than to cause an additional expense.

16. Importantly, the nonsense with the waivers played no role in altering the disposition of the assets of Shirley's Estate, because those assets already had been disposed of by Simon Bernstein. It is absurd that Eliot continues to use this improper notarization as some evidence of a massive fraud and conspiracy against him, when the evidence and the facts, and logic and common sense, are clearly to the contrary.

17. At the time of his appointment, the Successor Personal Representative received no assets and administered no claims because, while Simon was alive, he disposed of all assets (believed to tangible personal property only) and resolved all claims (if any) which were presented. There was nothing left in the Estate. There were no estate taxes due (Shirley died in 2010) and Simon had paid or caused to be paid all claims and expenses of administration. More than two years has passed since Shirley's death, so there can and will be no more claims. There currently are no assets in the Estate and no reason for it to remain open.

18. Although this Court reopened the Estate, the Successor Personal Representative has possession of no assets and never has, and is aware of no liabilities. The Successor Personal Representative will never have any assets to distribute because there are no assets and anything which conceivably could have existed on the date of Shirley's death, would have been transferred to Simon as her surviving spouse under the terms of her Will. Any such assets Simon retained as of his death would now be in Simon's estate. Thus, there is and will be nothing in this Estate.

19. Moreover, it would be virtually impossible for anyone to conduct an accurate accounting, because no one – including the Successor Personal Representative – knows exactly what assets were in the Estate at the time of Shirley's death. Simon had the sole and absolute right to all such assets, either as sole beneficiary of her tangible personal property or as the initial Successor Trustee of the Shirley Trust, and Simon shared none of that information with his children.

20. The Estate seeks an order of this Court, based upon the genuineness of the Waivers signed while Simon was alive, to enforce the Waivers and close this Estate. Doing so will avoid an inordinate waste of resources. Thus, the Successor Personal Representative requests that the Court enforce the Waivers signed by all beneficiaries, re-close this Estate, and bring an end to this tragedy.

WHEREFORE, the Successor Personal Representative respectfully requests the entry of an Order re-closing this Estate; discharging the Successor Personal Representative and releasing the surety on any bond which the Successor Personal Representative may have posted in this proceeding; and granting such other relief as it just.

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

/s/ Ted S. Bernstein (see attached)
Ted S. Bernstein
Successor Personal Representative

Dated this 2nd day of September, 2014.

CERTIFICATE OF SERVICE

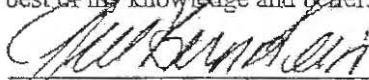
I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: Facsimile **and** U.S. Mail; U.S. Mail; E-mail Electronic Transmission; FedEx; Hand Delivery this 2nd day of September, 2014.

MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone / (561) 655-5537 Facsimile
email: arose@mrachek-law.com
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

WHEREFORE, the Successor Personal Representative respectfully requests the entry of an Order re-closing this Estate; discharging the Successor Personal Representative and releasing the surety on any bond which the Successor Personal Representative may have posted in this proceeding; and granting such other relief as it just.

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



Ted S. Bernstein
Successor Personal Representative

Dated this 2 day of September, 2014.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: Facsimile and U.S. Mail; U.S. Mail; E-mail Electronic Transmission; FedEx; Hand Delivery this 2nd day of September, 2014.

MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone / (561) 655-5537 Facsimile
email: arose@mrachek-law.com
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0766 - Telephone
(561) 833-0867 - Facsimile
Email: [John P. Morrissey
\(john@jpmorrisseylaw.com\)](mailto:John.P.Morrissey@jpmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

William H. Glasko, Esq.
Golden & Cowan, P.A.
17345 S. Dixie Highway
Palmetto Bay, FL 33157
(305) 856-5440 - Telephone
(305) 856-9388 - Facsimile
Email: wglasko@palmettobaylaw.com
Counsel for Lisa Sue Friedstein, individually and
as trustee for her children, and as natural guardian
for M.F. and C.F., Minors; Jill Marla Iantoni,
individually and as trustee for her children, and as
natural guardian for J.I. a minor

Benjamin P. Brown, Esq.
Matwiczuk & Brown, LLP
625 North Flagler Drive, Suite 401
West Palm Beach, FL 33401
(561) 651-4004 - Telephone
(561) 651-4003 - Facsimile
Email: attorneys@matbrolaw.com

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 West Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552 - Telephone
(561) 734-5554 - Facsimile
Email: pfeaman@feamanlaw.com;
service@feamanlaw.com;
mkoskey@feamanlaw.com
Counsel for William Stansbury

Irwin J. Block, Esq.
700 South Federal Highway, Suite 200
Boca Raton, FL 33432
(561) 910-3071 - Telephone
(561) 910-3080 - Facsimile
Email: ijb@ijblegal.com
Counsel for Tescher & Spallina

Robert Spallina, Esq.
Donald Tescher, Esq.
Tescher & Spallina
Wells Fargo Plaza
925 South Federal Hwy
Suite 500
Boca Raton, Florida 33432

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased; Division

2012 OCT 24 PM 1:31
SHARON H. CUMPLEY
PALM BEACH COUNTY FL
SOUTH CITY BRANCH FILED


**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR
DISCHARGE; AND RECEIPT OF BENEFICIARY AND
CONSENT TO DISCHARGE**

The undersigned, Simon L. Bernstein, whose address is 7020 Lions Head Lane, Boca Raton, Florida 33496, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 4/9/12 2012.

Beneficiary

By: 
SIMON L. BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 50201 JCP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased. Division

2012 OCT 24 PM 1:31
SHARON M. BERRY, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY TOWER, 1000
FILED

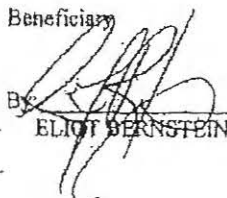
**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR
DISCHARGE; AND RECEIPT OF BENEFICIARY AND
CONSENT TO DISCHARGE**

The undersigned, Eliot Bernstein, whose address is 2753 NW 34th Street, Boca Raton, FL 33434, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on May 15, 2012.

Beneficiary

BY 
ELIOT BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased. Division

2012 OCT 24 PM 1:31
SHIRLEY BERNSTEIN
PALM BEACH COUNTY
SOUTH DCA
FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR
DISCHARGE; AND RECEIPT OF BENEFICIARY AND
CONSENT TO DISCHARGE**


The undersigned, Ted S. Bernstein, whose address is 880 Berkeley Street, Boca Raton, Florida 33487, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 8/1/12, 2012.

Beneficiary

By:


TED BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011 CP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased. Division

2012 OCT 24 PM 1:31
SHARON L. AUSTIN, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH-FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR
DISCHARGE; AND RECEIPT OF BENEFICIARY AND
CONSENT TO DISCHARGE**

The undersigned, Pamela B. Simon, whose address is 950 North Michigan Avenue, Suite 2603, Chicago, IL 60606, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 8/8, 2012.

Beneficiary

By: 
PAMELA B. SIMON

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXXSB
SHERLEY BERNSTEIN, Probate Division
Deceased, Division

2012 OCT 24 PM 1:31
SHARON L. BROWN, CLERK
PALM BEACH COUNTY
SOUTH CITY CENTER BLDG
FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR
DISCHARGE; AND RECEIPT OF BENEFICIARY AND
CONSENT TO DISCHARGE**

The undersigned, Lisa S. Friedstein, whose address is 2142 Churchill Lane, Highland Park, IL 60035,
and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on August 21, 2012.

Beneficiary

By: 

LISA S. FRIEDSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased: Division

2012 OCT 24 PM 1:31
SHARON A. TERRY, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY CENTER - FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR
DISCHARGE; AND RECEIPT OF BENEFICIARY AND
CONSENT TO DISCHARGE**

The undersigned, Jill Iantoni, whose address is 2101 Magnolia Lane, Highland Park, IL 60035, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on OCTOBER 1st, 2012.

Beneficiary

By: _____

JILL IANTONI

Eliot Ivan Bernstein

From: Eliot Ivan Bernstein [iviewit@iviewit.tv]
Sent: Thursday, May 17, 2012 8:17 AM
To: Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.
(atrspallina@tescherspallina.com)
Cc: 'Simon Bernstein'; 'Caroline Prochotska Rogers, Esquire (caroline@cprogers.com)'; Michele M. Mulrooney ~ Partner @ Venable LLP (mmulrooney@Venable.com); 'Andy Dietz'; 'Donna Dietz'
Subject: Estate of Shirley Bernstein
Attachments: Eliot I Bernstein.vcf; 20120515 Estate Simon Shirley Bernstein Doc.pdf

PRIVATE & CONFIDENTIAL

May 17, 2012

Robert L. Spallina, Esq.
Tescher & Spallina, P.A.
Boca Village Corporate Center I
4855 Technology Way
Suite 720
Boca Raton, FL 33431

Hi Robert ~ attached is the Waiver of Accounting and Portions of Petition For Discharge; Waiver of Service of Petition for Discharge; and Receipt of Beneficiary and Consent to Discharge. As I mentioned in the phone call, I have not seen any of the underlying estate documents or my mother's will at this point, yet I sign this document after our family call so that my father can be released of his duties as Personal Representative and put whatever matters that were causing him stress to rest. For my trustees I would like the following individuals in the following order to be trustees:

1. Caroline Prochatska Rogers, Esq.
3500 North Lake Shore Drive
17th Floor
Chicago, IL 60657
(773) 804-9400 ext 19
caroline@cprogers.com
2. Michele M. Mulrooney, Esq.
mmulrooney@Venable.com
(will get new address shortly)
3. Andrew & Donna Dietz
2002 Circle Drive
Hermosa Beach, California 90254
(310) 410-0936 ext1271
andyd@rockitcargo.com

Please send copies of all estate documents to Caroline and Michele and if my dad would like them to keep the information private and confidential, including from me, until some later point in time, you can arrange that with them directly with my approval granted herein. Please also reply to this email to confirm receipt, a hard copy of my signed document will be sent via mail.

Thank you for your efforts on behalf of my family ~ Eliot



Eliot I. Bernstein

Inventor

Iviewit Holdings, Inc. - DL

Iviewit Holdings, Inc. - DL (yes, two identically named)

Iviewit Holdings, Inc. - FL

Iviewit Technologies, Inc. - DL

Uviewit Holdings, Inc. - DL

Uview.com, Inc. - DL

Iviewit.com, Inc. - FL

Iviewit.com, Inc. - DL

I.C., Inc. - FL

Iviewit.com LLC - DL

Iviewit LLC - DL

Iviewit Corporation - FL

Iviewit, Inc. - FL

Iviewit, Inc. - DL

Iviewit Corporation

2753 N.W. 34th St.

Boca Raton, Florida 33434-3459

(561) 245.8588 (o)

(561) 886.7628 (c)

(561) 245-8644 (f)

iviewit@iviewit.tv

<http://www.iviewit.tv>

<http://iviewit.tv/inventor/index.htm>

<http://iviewit.tv/wordpress>

<http://www.facebook.com/#!/iviewit>

<http://www.myspace.com/iviewit>

<http://iviewit.tv/wordpresseliot>

<http://www.youtube.com/user/eliotbernstein?feature=nhum>

<http://www.TheDivineConstitution.com>

Also, check out

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Part 1

http://www.youtube.com/watch?v=8Cw0gogF4Fs&feature=player_embedded

and Part 2 @ my favorite part

http://www.youtube.com/watch?v=Apc_Zc_YNlk&feature=related

and

Christine Anderson New York Supreme Court Attorney Ethics Expert Whistleblower Testimony, FOX IN THE HENHOUSE and LAW WHOLLY VIOLATED TOP DOWN EXPOSING JUST HOW WALL STREET / GREED STREET / FRAUD STREET MELTED DOWN AND WHY NO PROSECUTIONS OR RECOVERY OF STOLEN FUNDS HAS BEEN MADE. Anderson in US Fed Court Fingers, US Attorneys, DA's, ADA's, the New York Attorney General and "Favored Lawyers and Law Firms" @

<http://www.youtube.com/watch?v=6BlK73p4Ueo>

and finally latest blog

<http://iviewit.tv/wordpress/?p=594>

Eliot Part 1 - The Iviewit Inventions @

<http://www.youtube.com/watch?v=LQn4hwemqW0>

Eliot for President in 2012 Campaign Speech 1 with No Top Teeth, Don't Laugh, Very Important

<http://www.youtube.com/watch?v=DuIHODcwOfM>

Elit for President in 2012 Campaign Speech 2 with No Top OR Bottom Teeth, Don't Laugh, Very Important
<http://www.youtube.com/watch?v=jbOP3U1q6mM>

Elit for President in 2012 Campaign Speech 3 Very Important
https://www.facebook.com/iviewit/?ref=tn_tmn#!/note.php?note_id=319280841435989

Other Websites I like:

<http://www.deniedpatent.com>
<http://exposecorruptcourts.blogspot.com>
<http://www.judgewatch.org/index.html>
<http://www.enddiscriminationnow.com>
<http://www.corruptcourts.org>
<http://www.makeourofficialsaccountable.com>
<http://www.parentadvocates.org>
<http://www.newyorkcourtcorruption.blogspot.com>
<http://cuiomotarp.blogspot.com>
<http://www.disbarthefloridabar.com>
<http://www.trusteeffraud.com/trusteeffraud-blog>
<http://www.constitutionalguardian.com>
<http://www.americans4legalreform.com>
<http://www.judicialaccountability.org>
www.electpollack.us
<http://www.ruthmpollackesq.com>
www.HireLyrics.org
www.Facebook.com/Roxanne.Grinage
www.Twitter.com/HireLyrics
www.YouTube.com/HireLyrics
www.YouTube.com/WhatIsThereLeftToDo
www.YouTube.com/RoxanneGrinage
www.BlogTalkRadio.com/Born-To-Serve
www.ireport.cnn.com/people/HireLyrics
<http://www.VoteForGreg.us> Greg Fischer
<http://www.liberty-candidates.org/greg-fischer/>
<http://www.facebook.com/pages/Vote-For-Greg/111952178833067>
<http://www.killallthelawyers.ws/law> (The Shakespearean Solution, The Butcher)

"We the people are the rightful master of both congress and the courts - not to overthrow the Constitution, but to overthrow the men who pervert the Constitution." - Abraham Lincoln

"Each time a person stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, these ripples build a current that can sweep down the mightiest walls of oppression and resistance." - Robert F. Kennedy

"Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty, or give me death!" - Patrick Henry

I live by the saying,

ELLEN G. WHITE

The greatest want of the world is the want of men, --men who will not be bought or sold; men who in their inmost souls are true and honest, men who do not fear to call sin by its right name; men whose conscience is as true to duty as the needle to the pole, men who will stand for the right though the heavens fall. -Education, p. 57(1903)

If you are one of these people, nice to see your friend ~ Eliot

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IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased. Division

2012 OCT 24 PM 1:31
SHARON K. BROWN, CLERK
PALM BEACH COUNTY, FL
SOUTH CIVIL AVENUE - FILED

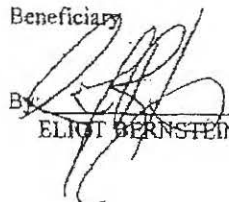
**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR
DISCHARGE; AND RECEIPT OF BENEFICIARY AND
CONSENT TO DISCHARGE**

The undersigned, Eliot Bernstein, whose address is 2753 NW 34th Street, Boca Raton, FL 33434, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on May 15, 2012.

Beneficiary

By 
ELIOT BERNSTEIN

In Re_ The Estate of Shirley Bernstein.txt

00001

1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 PROBATE/GUARDIANSHIP DIVISION IV
4 CASE NO.: 502011CP000653XXXXSB

5 IN RE: THE ESTATE OF:
6 SHIRLEY BERNSTEIN,
7 Deceased

8 _____/
9 ELIOT IVAN BERNSTEIN, PRO SE,
10 Petitioner,

11 vs.

12 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,
13 ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA
14 (BOTH PERSONALLY & PROFESSIONALLY); DONALD
15 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);
16 THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL
17 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH
18 PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE
19 DOE'S (1-5000),
20 Respondents.

21 _____/
22 TRANSCRIPT OF PROCEEDINGS
23 BEFORE
24 THE HONORABLE MARTIN H. COLIN

25 South County Courthouse
26 200 West Atlantic Avenue, Courtroom 8
27 Delray Beach, Florida 33344

28 Friday, September 13, 2013
29 1:30 p.m. - 2:15 p.m.

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32
33 Stenographically Reported By:
34 JESSICA THIBAUT

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1 APPEARANCES

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3 On Behalf of the Petitioner:
4 ELIOT IVAN BERNSTEIN, PRO SE
5 2753 NW 34th Street
6 Boca Raton, Florida 33434



In Re_ The Estate of Shirley Bernstein.txt

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On Behalf of the Defendants:
LAW OFFICE OF MARK MANCERI, P.A.
2929 East Commercial Blvd., Ste. 702
Fort Lauderdale, Florida 33308
(954) 491-7099
mrmlaw@comcast.net
BY: MARK MANCERI, ESQ.

Also present:
Robert Spallina, Esq.
Theodore Bernstein
Mrs. Bernstein, Petitioner's wife

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P R O C E E D I N G S

1 THE COURT: All right, we're here on the
2 Shirley Bernstein estate, 2011CP000653.
3 Counsel, make your appearances.

4 MR. MANCERI: Good afternoon, your Honor
5 Mark Manceri. I'm here on behalf of Robert
6 Spallina and Donald Tescher, named respondents.

7 MR. ELIOT BERNSTEIN: Good afternoon, your
8 Honor, my name is Eliot Bernstein, and I'm
9 representing myself pro se.

10 MR. THEODORE BERNSTEIN: Your Honor, Ted
11 Bernstein, trustee of the estate, and I'm here
12 representing myself today.

13 THE COURT: Okay, thanks.

14 Let me just get the case up on the
15 computer, please.

16 All right, so I set oral argument based
17 upon Mr. Bernstein's emergency motions, and I
18 did so with the cautionary language in the
19 notice of hearing that I assume both of you
20 have, that indicates that I first want to hear
21 what makes this matter emergency as defined by
22 our law, so, because you're pro se,
23 Mr. Bernstein, I want to make sure you're aware
24

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of that particular aspect of what I just said.

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1 Counsel knows. This is not an emergency in
2 your mind. It's an emergency as the law calls
3 it an emergency. You're probably going to show
4 me a case or an administrative order and tell
5 me how this is an emergency.

6 The second part of it is what type of
7 evidentiary hearing we need to have, so you're
8 up first.

9 MR. ELIOT BERNSTEIN: Okay, you want me to
10 step up or?

11 THE COURT: You could do it right from
12 there.

13 MR. ELIOT BERNSTEIN: It's an emergency
14 because three of the beneficiaries --

15 THE COURT: Say again? I couldn't -- you
16 mumbled, I couldn't hear you.

17 MR. ELIOT BERNSTEIN: It's an emergency
18 because three of the beneficiaries of the
19 estates lives have been put in danger.

20 THE COURT: Okay, so they're about to be
21 killed?

22 MR. ELIOT BERNSTEIN: They're about to be
23 cut off of school, insurance, the necessary
24 care that was set aside in the estates.

25 THE COURT: So it's not physical harm?

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1 MR. ELIOT BERNSTEIN: No.

2 THE COURT: So it's financial harm?

3 MR. ELIOT BERNSTEIN: Correct.

4 THE COURT: Educational harm?

5 MR. ELIOT BERNSTEIN: Correct.

6 THE COURT: Show me in either the law or
7 the administrative order where that is defined
8 as an emergency.

9 MR. ELIOT BERNSTEIN: If it's not then I
10 made a mistake.

11 THE COURT: You're supposed to know that.
12 That's why we're having this hearing.

13 MR. ELIOT BERNSTEIN: Well, I'm pro se.

14 THE COURT: I know. We brought all this
15 judicial effort here. No, sir, this is not a
16 free shot for you.

17 MR. ELIOT BERNSTEIN: I thought that it
18 was an emergency.

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19 THE COURT: No, it's not your thought.

20 MR. ELIOT BERNSTEIN: Okay.

21 THE COURT: I cautioned you in the notice
22 of hearing you so came today -- I kind of
23 cautioned you whether this is an emergency,
24 okay? So you need to demonstrate to me where
25 under our laws this situation that you say the

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1 evidence would show is imminently happening,
2 imminent means today, okay, where an emergency
3 exists.

4 The last two emergencies I did, someone
5 was on the way to the airport waiting to be
6 taken illegally to Iran, a non-hate convention
7 country. We had to get an order out so that
8 Homeland Security would rush down with armed
9 guards and protect a child from going overseas
10 and never coming back to the U.S.

11 The other one was we had to get an order
12 so police could break down the door to prevent
13 someone from being physically killed or harmed
14 physically.

15 Those two were emergencies. Is this an
16 emergency like that?

17 MR. ELIOT BERNSTEIN: I believe so.

18 THE COURT: Okay, all right, so let me
19 tell you, I'm going to let you go forward. If
20 I do not believe so, get your checkbook out.

21 MR. ELIOT BERNSTEIN: Okay.

22 THE COURT: You're going to personally pay
23 for the cost of this.

24 MR. ELIOT BERNSTEIN: Okay.

25 THE COURT: It doesn't seem so based upon

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1 what you've told me, but you have this belief
2 that it is. Remember, show me that it's a
3 legal emergency like I gave the example of it.
4 Someone is going to die, be taken out of the
5 jurisdiction, someone's wellbeing today is
6 going to be -- you know, they're going to be
7 without food, they'll be on the street
8 tomorrow.

9 MR. ELIOT BERNSTEIN: Okay.

10 THE COURT: So is that the type of hearing
11 I need?

12 MR. ELIOT BERNSTEIN: Yes.

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13 THE COURT: Okay. So tell me how that --
14 what evidence is there that this is an
15 emergency along those lines?

16 MR. ELIOT BERNSTEIN: Okay, the estate
17 representatives when my parents died told us
18 that they were understanding the special
19 circumstances me and my three children are in,
20 and that funds had been set aside and not to
21 worry, there would be no delay of paying their
22 living costs and everything that my father and
23 mother had been paying for years to take care
24 of them, and then they were paying that out of
25 a bank account at Legacy Bank.

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1 THE COURT: Who is they?

2 MR. ELIOT BERNSTEIN: Mr. Spallina had
3 directed Rachel Walker to pay the expenses of a
4 Legacy bank account. It was being paid. And
5 then Mr. Spallina stated that I should or that
6 Rachel should -- she was fired, she should now
7 turn the accounts over to my wife to start
8 writing checks out of an account we've never
9 seen.

10 So I said I didn't feel comfortable
11 writing checks out of an account, especially
12 where it appeared my dad was the signer, so I
13 called Legacy Bank with Rachel and they were
14 completely blown away that checks had been
15 being written out of a dead person's account.
16 Nobody had notified them that Simon had
17 deceased. And that no --- by under no means
18 shall I write checks out of that account, and
19 so then Mr. Spallina told me to turn the
20 accounts over to Janet Craig of Oppenheimer,
21 and Oppenheimer was going to pay the bills as
22 it had been done by Rachel in the past. And so
23 we sent her the Legacy account. We thought all
24 that was how things were being done and, you
25 know, he doesn't give us any documents

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00009

1 whatsoever in the estate, so we don't know, you
2 know, what he's operating out of, but
3 Oppenheimer then started to pay the things --
4 first they said, wait a minute, these are
5 school trust funds -- well, they actually said
6 that after they started paying, and they were a

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7 little hesitant that these funds were being
8 used for personal living expenses of everybody,
9 which the other Legacy account had been paying
10 for through an agreement between and my
11 parents. And then what happened was
12 Mr. Spallina directed them to continue, stating
13 he would replenish and replace the funds if he
14 didn't get these other trusts he was in the
15 process of creating for my children in place
16 and use that money he would replenish and
17 replace it.

18 So the other week or two weeks or a few
19 week ago Janet Craig said that funds are
20 running low and she contacted Mr. Spallina who
21 told her that he's not putting any money into
22 those trusts and that there's nothing there for
23 me, and that basically when that money runs out
24 the kids' insurance, school, their home
25 electricity and everything else I would

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1 consider an emergency for three minor children
2 will be cut off, and that was not --

3 THE COURT: Let me ask you a question.

4 MR. ELIOT BERNSTEIN: Yes, sir.

5 THE COURT: At the time when you say
6 things were as they should be, your parents
7 were alive and they were paying bills of you
8 and your children?

9 MR. ELIOT BERNSTEIN: Correct,
10 100-percent, through an agreement.

11 THE COURT: An agreement with them?

12 MR. ELIOT BERNSTEIN: Yes.

13 THE COURT: Okay. Then who died first?

14 MR. ELIOT BERNSTEIN: My mom.

15 THE COURT: Because this is what -- you
16 filed it under your mom's estate.

17 MR. ELIOT BERNSTEIN: Okay.

18 THE COURT: Is your father alive or dead?

19 MR. ELIOT BERNSTEIN: My father is
20 deceased today a year ago.

21 THE COURT: All right. So you're saying
22 that after your father died, however it
23 happened, bills for you and your children
24 continued to be paid somehow?

25 MR. ELIOT BERNSTEIN: First out of an

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In Re_ The Estate of Shirley Bernstein.txt
1 account that they shouldn't have been being
2 paid out of.

3 THE COURT: And then it stopped?

4 MR. ELIOT BERNSTEIN: It stopped. Then it
5 was transferred to Oppenheimer.

6 THE COURT: And they paid for a little
7 while?

8 MR. ELIOT BERNSTEIN: Correct.

9 THE COURT: And when did that stop?

10 MR. ELIOT BERNSTEIN: Correct, just on
11 August 28th, with one-day's notice.

12 THE COURT: Okay. So the bills that they
13 were paying for you were what bills?

14 MR. ELIOT BERNSTEIN: All of them.

15 THE COURT: All the bills.

16 MR. ELIOT BERNSTEIN: Health insurance,
17 electricity, water, food, clothing, everything,
18 100-percent.

19 THE COURT: When did the emergency take
20 place?

21 MR. ELIOT BERNSTEIN: On August 28th.
22 They told me if I didn't sign releases that
23 Robert wanted me to sign and turn the money
24 over to my brother, the remaining corpus of the
25 trust, that they were going to shut the funds

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1 off as of that day.

2 THE COURT: And they did?

3 MR. ELIOT BERNSTEIN: I'm not 100-percent
4 sure, because then I asked them for their
5 operating documents that Mr. Spallina had sent
6 them, and once again we've got un-notarized
7 documents --

8 THE COURT: We'll talk about the notary
9 thing in a second.

10 MR. ELIOT BERNSTEIN: Okay. Then we have
11 new improperly notarized documents authorizing
12 the trust to operate, and they sent me
13 incomplete documents which are unsigned on
14 every page of the trust agreement, so they're
15 telling me and I've asked them three times if
16 they have signed copies and three times they've
17 sent me unsigned copies.

18 THE COURT: Okay, but what bills today --

19 MR. ELIOT BERNSTEIN: All of them.

20 THE COURT: What bills are unpaid as
21 overdo today?

In Re_ The Estate of Shirley Bernstein.txt

22 MR. ELIOT BERNSTEIN: Health insurance is
23 one.
24 THE COURT: What's overdue today?
25 MR. ELIOT BERNSTEIN: Health insurance is

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1 one.
2 THE COURT: All right, name the health
3 insurance company.
4 MR. ELIOT BERNSTEIN: It's COBRA.
5 THE COURT: COBRA is not a company.
6 MR. ELIOT BERNSTEIN: Blue Cross.
7 THE COURT: Blue Cross, okay. How much is
8 overdue to Blue Cross today?
9 MR. ELIOT BERNSTEIN: \$2,000 or so.
10 THE COURT: It's not \$2,000 a day.
11 MR. ELIOT BERNSTEIN: A month.
12 THE COURT: \$2,000 a month is the health
13 insurance bill?
14 MR. ELIOT BERNSTEIN: Correct.
15 THE COURT: When was that bill due?
16 MR. ELIOT BERNSTEIN: Well, this is the
17 problem. All of the bills are going to them
18 and they don't share with me any of that.
19 THE COURT: So how do you know that you
20 don't have health insurance coverage?
21 MR. ELIOT BERNSTEIN: Only because it's
22 paid by them on that date. Usually on the
23 first.
24 THE COURT: September 1st?
25 MR. ELIOT BERNSTEIN: Yes. As of

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1 September 1st I don't believe they have --
2 THE COURT: Is the coverage in effect
3 today?
4 MR. ELIOT BERNSTEIN: I don't know.
5 THE COURT: If you don't know, how do you
6 know that it's an emergency?
7 MR. ELIOT BERNSTEIN: I just know they
8 haven't paid it.
9 THE COURT: Okay, so --
10 MR. ELIOT BERNSTEIN: I don't have --
11 THE COURT: So you have coverage you said
12 as of August 31st you had coverage?
13 MR. ELIOT BERNSTEIN: We don't know. We
14 don't have an accounting if she stated that,
15 I'm sorry.

In Re_ The Estate of Shirley Bernstein.txt

16 THE COURT: Okay, so you may be covered,
17 you may not be covered?
18 MR. ELIOT BERNSTEIN: Correct.
19 THE COURT: What other bill is unpaid as
20 of today.
21 MR. ELIOT BERNSTEIN: And that's my wife
22 and my children too.
23 THE COURT: Okay.
24 MR. ELIOT BERNSTEIN: Again, they have all
25 the bills, so when they're due, like the

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1 electric was due on the 28th, then they usually
2 pay it. I don't even get the bills. So the
3 bills are going straight to Oppenheimer.
4 THE COURT: How do you know
5 authoritatively that they're not being paid?
6 Ma'am, you can't speak. You're not a
7 lawyer, right?
8 MRS. BERNSTEIN: No.
9 THE COURT: Up, move to the back.
10 MR. ELIOT BERNSTEIN: You want her to go
11 back?
12 THE COURT: Yes, because she's disruptive.
13 I can't speak to you and hear her.
14 MR. ELIOT BERNSTEIN: Okay.
15 THE COURT: So stay there in absolute
16 silence. You could write something if you
17 want, is that agreed?
18 MRS. BERNSTEIN: Yes.
19 THE COURT: Okay, go ahead. How do you
20 know these monthly bills are not being paid?
21 How do you know the way you know today is
22 Friday, you know what your name is, know
23 meaning indisputable knowledge.
24 MR. ELIOT BERNSTEIN: I can't say for
25 certainty since I don't receive it and manage

♀

00016

1 and pay the bills.
2 THE COURT: Well then how is it an
3 emergency if you don't know?
4 MR. ELIOT BERNSTEIN: Well, because we
5 know that within this next month if electricity
6 isn't paid and there's no money to pay it and
7 he doesn't reimburse the trusts that all those
8 bills on whatever date they were due were
9 lapsing in the next few hours.

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10 THE COURT: From today?
11 MR. ELIOT BERNSTEIN: From the 28th.
12 THE COURT: The 28th of August?
13 MR. ELIOT BERNSTEIN: Correct, sir.
14 THE COURT: All right. So you don't know
15 if they've been paid or not. You still have
16 your electric on?
17 MR. ELIOT BERNSTEIN: Yes.
18 THE COURT: Are any services shut off?
19 MR. ELIOT BERNSTEIN: No.
20 MR. ROTHMAN: Maybe like things like lawn
21 and stuff, the lawn guys have been coming, said
22 we owe them money, which we've never heard that
23 from this guy knocking on the door.
24 THE COURT: All right. Is the lawn an
25 emergency situation?

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1 MR. ELIOT BERNSTEIN: No. You just asked
2 if any bills --
3 THE COURT: These are not emergencies
4 then.
5 MR. ELIOT BERNSTEIN: Okay.
6 THE COURT: Remember, you filed a motion
7 that stopped the courthouse from working.
8 MR. ELIOT BERNSTEIN: I'm very sorry.
9 THE COURT: We thought you were ready to
10 die on the day you filed the motion.
11 MR. ELIOT BERNSTEIN: I'm very sorry.
12 THE COURT: Okay.
13 MR. ELIOT BERNSTEIN: I believed it was an
14 emergency. The minor children are in there.
15 THE COURT: Let me ask, how old are you?
16 MR. ELIOT BERNSTEIN: I'm 50.
17 THE COURT: Can you pay an electric bill?
18 MR. ELIOT BERNSTEIN: No.
19 THE COURT: Why not?
20 MR. ELIOT BERNSTEIN: I don't have any
21 employment.
22 THE COURT: Why not? If there's an
23 emergency and you're not eating and you have
24 children --
25 MR. ELIOT BERNSTEIN: It's very

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1 complicated, but --
2 THE COURT: Well, could you work to pay
3 your electric bill? If that made a difference?

In Re_ The Estate of Shirley Bernstein.txt

4 MR. ELIOT BERNSTEIN: No, I haven't been
5 able to gain employment due to
6 Ricco-related-type crimes that have been
7 committed against me and my family.

8 THE COURT: So your kids are without food,
9 you would have them starve rather than go over
10 to Burger King or Dunkin Donuts and get a job
11 doing --

12 MR. ELIOT BERNSTEIN: I've tried all those
13 things.

14 THE COURT: And they won't hire you?

15 MR. ELIOT BERNSTEIN: Let me explain.

16 THE COURT: Will they hire you to make
17 enough money?

18 MR. ELIOT BERNSTEIN: No. And that's why
19 my father and mother had set aside these funds
20 to pay those bills because they understood the
21 gravity --

22 THE COURT: So here's what we'll do, we're
23 going to have a hearing, tell me if you're
24 comfortable, whether there's any employment you
25 could get, so I'm going to bring the people

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1 from Florida State Employment who tell me
2 there's hundreds of jobs today that you could
3 work.

4 MR. ELIOT BERNSTEIN: Okay.

5 THE COURT: You could start today as a
6 laborer right outside this courthouse. Why
7 don't you do that?

8 MR. ELIOT BERNSTEIN: Well, because if I
9 do that I have tax liens that are --

10 THE COURT: Who cares? You want to feed
11 your children. They're going to pay you money
12 to feed your children.

13 MR. ELIOT BERNSTEIN: Okay, I'll explain.
14 I have tax liens which are under investigation
15 by the inspector general of the tax
16 administration department, currently ongoing,
17 that were put on me as part of the efforts in a
18 Ricco-related lawsuit that I'm involved in.
19 These are just the facts, I'm just telling
20 you --

21 THE COURT: What's to stop you from
22 working as a laborer?

23 MR. ELIOT BERNSTEIN: Because they then
24 attach my wages --

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THE COURT: They don't even know that

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1 you're working, and you have an emergency, you
2 could feed your children.

3 MR. ELIOT BERNSTEIN: They know I'm
4 working.

5 THE COURT: How do they know you're
6 working?

7 MR. ELIOT BERNSTEIN: Well, actually, if
8 you read the last articles I put in the
9 petition six or five, one of those two, I put
10 in the articles that have been released in the
11 press that say that they were misusing joint
12 terrorism task force funds and resources to
13 monitor and violate our rights through the
14 Patriot Act violations, and that they have done
15 that to me in the related cases in the federal
16 court.

17 THE COURT: All right, whatever you say.
18 I don't think you want -- if you want a hearing
19 on whether you could go to work today,
20 physically go to work and pay, I'll give you
21 that hearing right now and I'll get someone
22 from Florida Employment. Here's the deal, you
23 lose all your motions as soon as they tell you
24 that you could go outside and work.

25 Do you want that hearing or not? You

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1 could physically earn enough money to pay for
2 food for your children today, you tell me you
3 can't do -- that someone is going to tackle you
4 and stop you from working outside as a laborer
5 to get enough money to feed your children?
6 That's the emergency, your children are
7 starving. You're a parent. You're going to
8 tell me you're going to let your children
9 starve and not work to earn enough money to
10 feed them, that's what you're telling me,
11 correct?

12 MR. ELIOT BERNSTEIN: No. Well, I won't
13 tell you that because, I guess, if you say
14 there's some job that you could get me I'll get
15 it.

16 THE COURT: There's tons of jobs.

17 MR. ELIOT BERNSTEIN: I know, I've applied
18 for so many over the years --

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19 THE COURT: I mean maybe not as a CEO of a
20 company. \$10, \$9.00 an hour jobs --

21 MR. ELIOT BERNSTEIN: I've applied for
22 minimum wage and had trouble, believe me.

23 THE COURT: I'm talking about getting work
24 today -- if you tell me you can't work today
25 I'll have a hearing on that.

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1 MR. ELIOT BERNSTEIN: I can work today.

2 THE COURT: Well, then you could feed your
3 children today.

4 MR. ELIOT BERNSTEIN: Okay, if I could get
5 a job --

6 THE COURT: That's not an emergency. You
7 might have a hearing on it down the line, but
8 it's not an emergency.

9 MR. ELIOT BERNSTEIN: Okay.

10 THE COURT: An emergency means my kids are
11 starving, they haven't eaten, there's no food,
12 and I can't legally get them food because I
13 can't work. I have people who are blind, who
14 have no arms and legs, and they can't work.

15 MR. ELIOT BERNSTEIN: Okay.

16 THE COURT: That's different, that's not
17 you.

18 MR. ELIOT BERNSTEIN: Okay.

19 THE COURT: Okay. Can't work and don't
20 want to work, think they're reasons not to work
21 are two different things.

22 MR. ELIOT BERNSTEIN: Okay.

23 THE COURT: Okay. What's your position on
24 the emergency before we go to some of these
25 others issues which concern me about what he

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00023

1 said.

2 MR. MANCERI: Good afternoon, your Honor.
3 As I stated in my opening, I represent Robert
4 Spallina and Mr. Tescher. I would like to
5 apologize --

6 THE COURT: So their roles are what in
7 this case?

8 MR. MANCERI: They were counsel or are
9 counsel for the estate of Shirley Bernstein, as
10 well as counsel for the estate of Simon
11 Bernstein, who is in front of Judge French.

12 THE COURT: Okay.

13 MR. MANCERI: But before I make my
14 presentation, I would just like to apologize
15 for Mr. Tescher's absence. He's out of town
16 for the holiday.

17 THE COURT: Okay. Who are the PR's that
18 you represent?

19 MR. MANCERI: Well, Shirley Bernstein
20 there is no technically any PR because we had
21 the estate closed.

22 THE COURT: Okay.

23 MR. MANCERI: And what emanated from
24 Mr. Bernstein's 57-page filing, which falls
25 lawfully short, of any emergency, was a petition

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1 to reopen the estate, so technically nobody has
2 letters right now.

3 Simon Bernstein, your Honor, who died a
4 year ago today as you heard, survived his wife,
5 Shirley Bernstein, who died December 10, 2010.
6 Simon Bernstein was the PR of his wife's
7 estate.

8 As a result of his passing, and in attempt
9 to reopen the estate we're looking to have the
10 estate reopened. So nobody has letters right
11 now, Judge. The estate was closed.

12 THE COURT: So you agree that in Shirley's
13 estate it was closed January of this year,
14 there was an order of discharge, I see that.
15 Is that true?

16 MR. ELIOT BERNSTEIN: I don't know.

17 THE COURT: Do you know that that's true?

18 MR. ELIOT BERNSTEIN: Yes, I believe.

19 THE COURT: So final disposition and the
20 order got entered that Simon, your father --

21 MR. ELIOT BERNSTEIN: Yes, sir.

22 THE COURT: -- he came to court and said I
23 want to be discharged, my wife's estate is
24 closed and fully administered.

25 MR. ELIOT BERNSTEIN: No. I think it

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1 happened after --

2 THE COURT: No, I'm looking at it.

3 MR. ELIOT BERNSTEIN: What date did that
4 happen?

5 THE COURT: January 3, 2013.

6 MR. ELIOT BERNSTEIN: He was dead.

In Re_ The Estate of Shirley Bernstein.txt

7 MR. MANCERI: That's when the order was
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually
13 filed it and signed the paperwork. November.
14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's
16 hard to get through. He does a lot of things
17 when he's dead.

18 THE COURT: I have all of these waivers by
19 Simon in November. He tells me Simon was dead
20 at the time.

21 MR. MANCERI: Simon was dead at the time,
22 your Honor. The waivers that you're talking
23 about are waivers from the beneficiaries, I
24 believe.

25 THE COURT: No, it's waivers of

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1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of
4 discharge by Simon, Simon asked that he not
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date
10 of death.

11 THE COURT: Well, how could that happen
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened
17 was is the documents were submitted with the
18 waivers originally, and this goes to
19 Mr. Bernstein's fraud allegation. As you know,
20 your Honor, you have a rule that you have to
21 have your waivers notarized. And the original
22 waivers that were submitted were not notarized,
23 so they were kicked back by the clerk. They
24 were then notarized by a staff person from
25 Tescher and Spallina admittedly in error. They

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1 should not have been notarized in the absentia
2 of the people who purportedly signed them. And
3 I'll give you the names of the other siblings,
4 that would be Pamela, Lisa, Jill, and Ted
5 Bernstein.

6 THE COURT: So let me tell you because I'm
7 going to stop all of you folks because I think
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda
10 warnings?

11 THE COURT: Everyone of you might have to
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a
15 formal document filed here April 9, 2012,
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and
19 notarized on that same date by Kimberly. It's
20 a waiver and it's not filed with The Court
21 until November 19th, so the filing of it, and
22 it says to The Court on November 19th, the
23 undersigned, Simon Bernstein, does this, this,
24 and this. Signed and notarized on April 9,
25 2012. The notary said that she witnessed Simon

♀
00028

1 sign it then, and then for some reason it's not
2 filed with The Court until after his date of
3 death with no notice that he was dead at the
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's
7 enough to give you Miranda warnings. Not you
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the
14 transaction?

15 MR. SPALLINA: I was involved as the
16 lawyer for the estate, yes. It did not come to
17 my attention until Kimberly Moran came to me
18 after she received a letter from the Governor's
19 Office stating that they were investigating
20 some fraudulent signatures on some waivers that
21 were signed in connection with the closing of

In Re_ The Estate of Shirley Bernstein.txt
22 the estate.

23 THE COURT: What about the fact, counsel,
24 let me see who signed this. Okay, they're all
25 the same as to -- so let me ask this, I have a

♀

00029

1 document where Eliot, you're Eliot, right?

2 MR. ELIOT BERNSTEIN: Yes, sir.

3 THE COURT: Where you purportedly waived
4 accounting, agreed to a petition to discharge
5 on May 15th, and you signed that. Do you
6 remember doing that? Do you remember that or
7 not? I'm looking at it.

8 MR. ELIOT BERNSTEIN: I remember signing
9 it and sending it with a disclaimer that I was
10 signing it because my father was under duress
11 and only to relieve this stress that he was
12 being --

13 THE COURT: Well, I don't care -- I'm not
14 asking you why you signed it.

15 MR. ELIOT BERNSTEIN: I also signed it
16 with the expressed -- when I signed it I was
17 coned by Mr. Spallina that he was going to send
18 me all the documents of the estate to review.
19 I would have never lied on this form when I
20 signed it. It's saying that I saw and I never
21 saw --

22 THE COURT: Let me ask you --

23 MR. ELIOT BERNSTEIN: I lied.

24 THE COURT: Did you have your signature
25 notarized?

♀

00030

1 MR. ELIOT BERNSTEIN: No.

2 THE COURT: Kimberly Moran never signed or
3 notarized his signature?

4 MR. MANCERI: Yes, your Honor, and that's
5 been addressed with the Governor's office.

6 THE COURT: You need to address this with
7 me.

8 MR. MANCERI: I am going to address it
9 with you.

10 THE COURT: Here's what I don't understand
11 because this is part of the problem here, is
12 that Shirley has an estate that's being
13 administered by Simon.

14 MR. MANCERI: Correct.

15 THE COURT: There comes a time where they

16 think it's time to close out the estate.
17 MR. MANCERI: Correct.
18 THE COURT: Waivers are sent out, that's
19 kind of SOP, and people sign off on that.
20 MR. MANCERI: Right.
21 THE COURT: And why are they held up for
22 six months, and when they're filed it's after
23 Simon is already deceased?
24 MR. MANCERI: They were originally filed
25 away, your Honor, under the signature of the

♀
00031

1 people.
2 THE COURT: No, they weren't filed, that's
3 the whole thing. I'm looking at the file date,
4 filed with The Court.
5 MR. MANCERI: No, they were returned by
6 the clerk because they didn't have
7 notarization. We have affidavits from all
8 those people, Judge.
9 THE COURT: Well you may have that they
10 got sent up here.
11 MR. MANCERI: We have affidavits from all
12 of those people.
13 MR. ELIOT BERNSTEIN: Including Simon?
14 THE COURT: Slow down. You know how we
15 know something is filed? We see a stamp.
16 MR. MANCERI: It's on the docket sheet, I
17 understand.
18 THE COURT: So it's stamped in as filed in
19 November. The clerk doesn't have -- now, they
20 may have rejected it because it wasn't
21 notarized, and that's perhaps what happened,
22 but if in the meantime waiting cured the
23 deficiency of the document, two things happen
24 you're telling me, one, Simon dies.
25 MR. MANCERI: Correct.

♀
00032

1 THE COURT: And when those documents are
2 filed with the clerk eventually in November
3 they're filed and one of the documents says, I,
4 Simon, in the present.
5 MR. MANCERI: Of Ms. Moran.
6 THE COURT: No, not physically present, I
7 Simon, I would read this in November Simon
8 saying I waive -- I ask that I not have to have
9 an accounting and I want to discharge, that

In Re_ The Estate of Shirley Bernstein.txt
request is being made in November.

MR. MANCERI: Okay.

THE COURT: He's dead.

MR. MANCERI: I agree, your Honor.

THE COURT: Who filed that document?

MR. MANCERI: Robert, do you know who
filed that document in your office?

MR. SPALLINA: I would assume Kimberly
did.

MR. MANCERI: Ms. Moran.

THE COURT: Who is she?

MR. MANCERI: She's a staff person at
Tescher and Spallina.

THE COURT: When she filed these, and one
would think when she filed these the person who
purports to be the requesting party is at least

♀

00033

1 alive.

2 MR. MANCERI: Understood, Judge.

3 THE COURT: Not alive. So, well -- we're
4 going to come back to the notary problem in a
5 second.

6 MR. MANCERI: Okay.

7 THE COURT: In the meantime, based upon
8 all that I discharge the estate, it's closed.

9 Here's what I don't understand on your
10 side, you're representing yourself, but the
11 rules still apply. You then file, Eliot
12 Bernstein, emergency petitions in this closed
13 estate, it's closed.

14 MR. ELIOT BERNSTEIN: You reopened it.

15 THE COURT: When did I reopen it?

16 MR. MANCERI: No, it hasn't been reopened,
17 your Honor.

18 THE COURT: There's an order that I
19 entered in May of 2013 denying an emergency
20 petition to freeze assets. You filed this one
21 in May. Do you remember doing that?

22 MR. ELIOT BERNSTEIN: I believe so.

23 THE COURT: And what you said was there's
24 an emergency in May, you want to freeze the
25 estate assets appointing you PR, investigate

♀

00034

1 the fraud documents, and do a whole host of
2 other things, and the estate had been closed.
3 The reason why it was denied among other

In Re_ The Estate of Shirley Bernstein.txt

4 things, one, it may not have been an emergency,
5 but, two, the case was not reopened. There's
6 no reopen order.

7 MR. ELIOT BERNSTEIN: I paid \$50 to
8 someone.

9 THE COURT: You may have paid to file what
10 you filed, but there's no order reopening the
11 estate.

12 MR. ELIOT BERNSTEIN: Okay, that's my
13 mistake.

14 THE COURT: It's closed, the PR is
15 discharged, they all went home.

16 MR. ELIOT BERNSTEIN: And I filed to
17 reopen because we discovered the fraudulent
18 documents.

19 THE COURT: But then you still had to ask
20 to reopen --

21 MR. ELIOT BERNSTEIN: And notice, your
22 Honor, that they haven't come to you in all of
23 that time, he said he just got notified from
24 the governor the other day about this fraud, I
25 put it in your court and served him months ago

♀

00035

1 and he never came to me or you or anybody else
2 to know that the police are calling him, the
3 sheriff and the governor's Office.

4 THE COURT: Then you filed another
5 emergency similarly, served you folks, Tescher
6 and Spallina. I denied it because it wasn't an
7 emergency because nothing was happening I
8 thought had to happen on the day or two after.

9 MR. ELIOT BERNSTEIN: Well, now that I
10 understand emergency --

11 THE COURT: The estate wasn't open and it
12 really wasn't an emergency at the time. And
13 then you filed a motion in the ordinary course
14 to have things heard, and a motion to -- bunch
15 of other motions, to remove PR.

16 MR. ELIOT BERNSTEIN: Well, with each
17 successive crime we found -- by the way, that's
18 kind of why this is an emergency because with
19 the use of these fraudulent documents a bunch
20 of other crimes are taking place.

21 THE COURT: Okay. Representing yourself
22 is probably not the easiest thing.

23 MR. ELIOT BERNSTEIN: I had counsel, your
24 Honor, but Mr. Spallina abused her so much and

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she ran up a \$10,000 bill.

25
♀
00036

1 THE COURT: Doesn't help me.
2 MR. ELIOT BERNSTEIN: Doesn't help you,
3 okay.
4 THE COURT: Then in August you started
5 again, September you started again, and at
6 least I set the hearing because it's kind of
7 hard when I read your allegations I couldn't
8 figure it out. Now I think, okay -- so now let
9 me ask you this, counsel.
10 MR. MANCERI: Yes, sir.
11 THE COURT: So the pleadings get filed,
12 the estate gets closed.
13 MR. MANCERI: Correct.
14 THE COURT: Simon dies. So what happened
15 with Shirley's estate?
16 MR. MANCERI: Shirley's estate is closed,
17 as you said.
18 THE COURT: I know the administration is
19 closed. What happened with her estate? Where
20 did that go? Did she have a will?
21 MR. MANCERI: Her assets went into trusts,
22 and her husband had a power of appointment
23 which he exercised in favor of Mr. Bernstein's
24 children.
25 THE COURT: Okay.

♀
00037

1 MR. MANCERI: And that leads to the trust
2 that he mentioned at Oppenheimer which he
3 mislead The Court as to what's happening with
4 that.
5 THE COURT: Let me slow you down.
6 MR. MANCERI: Okay.
7 THE COURT: So her estate assets went into
8 a trust?
9 MR. MANCERI: Correct.
10 THE COURT: And that trust is --
11 MR. MANCERI: And Ted Bernstein, I
12 believe, is the trustee of that trust.
13 THE COURT: And you're brothers?
14 MR. THEODORE BERNSTEIN: That's correct.
15 THE COURT: All right. So then -- so
16 Simon really wasn't alive long when he died as
17 trustee?
18 MR. MANCERI: Not terribly long.

In Re_ The Estate of Shirley Bernstein.txt

19 THE COURT: All right. So he was a
20 trustee. Was she a trustee as well?
21 MR. MANCERI: He died, your Honor. Again
22 she died December 10, 2010. He died September
23 of 2012.
24 THE COURT: Right, but was he a trustee
25 also of Shirley's trust?

♀

00038

1 MR. MANCERI: Yes.
2 THE COURT: So she dies, the estate is
3 closed, her assets are in a trust. Simon then
4 dies. What happened with his estate? Judge
5 French is hearing it, but tell me what
6 happened.
7 MR. MANCERI: My understanding is that
8 money went into a trust for the grandchildren.
9 THE COURT: Grandchildren of Eliot?
10 MR. MANCERI: Well there's actually ten of
11 them, ten grandchildren, which he has three.
12 THE COURT: So the beneficiary level for
13 Simon was he skipped over his children and gave
14 everything to the grandchildren?
15 MR. MANCERI: That's correct.
16 MR. ELIOT BERNSTEIN: No.
17 THE COURT: That's not what happened with
18 your father's estate?
19 MR. ELIOT BERNSTEIN: No.
20 THE COURT: That's not what the rule says
21 to do?
22 MR. ELIOT BERNSTEIN: No.
23 THE COURT: What does the rule say to do?
24 MR. ELIOT BERNSTEIN: The rule is not
25 properly notarized. He didn't appear --

♀

00039

1 THE COURT: What did the will say that The
2 Court used?
3 MR. ELIOT BERNSTEIN: The Court filed a
4 will and amended trust, both improperly
5 notarized.
6 THE COURT: You didn't answer my question,
7 so stop speaking.
8 MR. ELIOT BERNSTEIN: Okay.
9 THE COURT: If you don't answer me you
10 give up your right to participate. Stop, don't
11 speak, all right, because you waived your right
12 because you refused to answer my question,

In Re_ The Estate of Shirley Bernstein.txt
13 okay. So I'll let you answer it.

14 MR. MANCERI: If I can, your Honor.

15 THE COURT: Go ahead.

16 MR. MANCERI: The ten grandchildren shares
17 -- and I want to be clear on this, this
18 gentleman is only a tangible personal property
19 beneficiary. He and his own proper person.
20 And the mother. That's all he's entitled to.
21 No cash request, nothing directly to him,
22 because of his financial problems among other
23 issues.

24 THE COURT: Okay.

25 MR. MANCERI: He has been asked to

♀

00040

1 establish accounts for the benefit of his
2 children and he refused to do it.

3 THE COURT: I'm not interested in that,
4 here's what I'm interested in.

5 MR. MANCERI: All right.

6 THE COURT: So before this latest realm of
7 pleadings were filed, both parents are
8 deceased?

9 MR. MANCERI: Yes.

10 THE COURT: They both have trusts?

11 MR. MANCERI: Right.

12 THE COURT: Simon's trusts are for the
13 benefit of the grandchildren?

14 MR. MANCERI: Correct.

15 THE COURT: And Shirley's trust is for the
16 benefit of who?

17 MR. MANCERI: The grandchildren now
18 because Simon died.

19 THE COURT: So children-level, Eliot, Ted
20 were skipped over as beneficiaries?

21 MR. MANCERI: That's correct, your Honor.

22 THE COURT: Now, tell me the best you can
23 the way Eliot described that there was some
24 deal that had been in effect with Shirley and
25 Simon while they were alive that kept on going

♀

00041

1 after Shirley died to help support his
2 children.

3 MR. MANCERI: That I can't comment on
4 personally, your Honor, because I never met
5 either one of them.

6 THE COURT: Do you know anything about

7 that?

8 MR. MANCERI: He was the draftsman. His
9 firm was the draftsman.

10 THE COURT: So did Shirley and --

11 MR. ELIOT BERNSTEIN: They didn't draft --

12 THE COURT: Stop. Next time you speak out
13 of turn you will be held in contempt of court.

14 MR. ELIOT BERNSTEIN: Sorry.

15 THE COURT: Why get yourself in trouble?
16 You're being rude.

17 MR. ELIOT BERNSTEIN: Sorry.

18 THE COURT: So is it true that when they
19 were alive they were helping to support Eliot's
20 family?

21 MR. SPALLINA: To the best of my
22 knowledge, yes, sir.

23 THE COURT: So after Shirley died, did
24 that continue?

25 MR. SPALLINA: Yes, I assume so, that Si

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00042.

1 was paying bills.

2 THE COURT: And when he died in September
3 of last year, what happened, if anything?

4 MR. SPALLINA: There was an account that
5 we set up in the name of Bernstein Family
6 Realty. That was owned by three old trusts
7 not that we created, but were created by
8 Mr. Bernstein in 2006 that owned the house that
9 the family lives in, so there was an LLC that
10 was set up, Bernstein Family Realty, LLC,
11 there's the three children's trust that own the
12 membership interest in that, and there was a
13 bank account at Legacy Bank that had a small
14 amount of money that Si's assistant Rachel had
15 been paying the bills out of on behalf of the
16 trusts.

17 When Mr. Bernstein died, Oppenheimer, as
18 trustee of the three trusts and in control of
19 the operations of that entity, assigned
20 themselves as manager, had the account moved
21 from Legacy to Oppenheimer, and continued to
22 pay the bills they could with the small amount
23 of money that was in the Legacy account.

24 At this time, the Legacy account was
25 terminated because there were no funds left,

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00043

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1 they started using the funds inside the three
2 trusts at Oppenheimer to pay for health,
3 education, maintenance and support --

4 THE COURT: Of the grandchildren?

5 MR. SPALLINA: Of the grandchildren. And
6 it was probably at the time that Mr. Bernstein
7 died about \$80,000 in each of those trusts last
8 September.

9 THE COURT: Okay, so then what happened?

10 MR. SPALLINA: So over the course of the
11 last year -- the kids go to private school,
12 that's an expensive bill that they pay, think
13 it's approximately \$65,000. There were other
14 expenses throughout the year. The trust assets
15 as of this week I spoke to Janet Craig, have
16 depleted down collectively across the three
17 trusts for about \$25,000.

18 THE COURT: Total left?

19 MR. SPALLINA: Total left in the three
20 trusts.

21 THE COURT: Any other trusts?

22 MR. SPALLINA: Again, this is not part of
23 the estate right now, so let's leave the estate
24 of Shirley and Si completely separate. Just
25 trying to get to the issue that Mr. Bernstein

♀
00044

1 spoke about first.

2 THE COURT: Right.

3 MR. ELIOT BERNSTEIN: Oppenheimer called
4 me and said that the trusts are coming to the
5 end of their useful life, it doesn't pay to
6 administer them anymore. They're going to make
7 final distribution to Mr. Bernstein and his
8 wife as the guardians of their children.

9 They sent out standard waivers and
10 releases for him to sign in exchange for the
11 remaining money that was there. There was a
12 disagreement that ensued and I have the e-mail
13 correspondence between Eliot and Janet Craig at
14 Oppenheimer that this is extortion and that
15 Mr. Spallina and you have devised a plan not to
16 give us the rest of the money. That's not the
17 case at all. In fact, we told them to
18 distribute the rest of the money, there's been
19 \$12,000 in bills submitted to them that they
20 are either paying today or on Monday, and the
21 \$14,000 or some-odd dollars that would be left

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22 are in securities that they have to liquidate,
23 supposedly they would have good funds today,
24 but there was some threats of litigation and so
25 they said that it might be prudent to hold onto

♀

00045

1 this. There's also some expenses outstanding
2 on accounting fees and tax preparation fees.

3 THE COURT: Let me ask you this, what's
4 the other part of the estate planning that
5 Shirley or Simon had, another trust?

6 MR. SPALLINA: Both of their estates say
7 that at the death of the second of us to die,
8 pursuant to Si's exercise over his wife's
9 assets, that all of those assets would go down
10 to ten grandchildren's trust created under
11 their dockets.

12 Mr. Bernstein was on a call while his
13 father was alive with his other four siblings
14 where he had called me and said, Robert, I
15 think we need to do a phone call with my
16 children to explain to them that I'm going to
17 give this to the ten grandchildren.

18 THE COURT: And that happened?

19 MR. SPALLINA: And that happened.

20 THE COURT: So right now the status,
21 there's a trust that deals with that, or more
22 than one trust.

23 MR. SPALLINA: There's both Si's estates
24 and Shirley's estates basically say after and
25 again there is some litigation.

♀

00046

1 THE COURT: And that's different than this
2 \$14,000 --

3 MR. SPALLINA: Yeah, those are three
4 trusts that were just designed to hold.

5 THE COURT: Who's administering those
6 trusts?

7 MR. SPALLINA: Those trusts, Ted Bernstein
8 is the trustee of his mother's trust and holds
9 three assets.

10 THE COURT: Who is the trustee of the
11 father's trust?

12 MR. SPALLINA: Don Tescher and myself.

13 THE COURT: And what are those trusts
14 doing with trust assets?

15 MR. SPALLINA: On the estate side there

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16 was a claim filed by a former employee of
17 Mr. Bernstein for \$2.5 million-plus, so there's
18 litigation that's been pending in the estate
19 now for basically since this date, and those
20 funds are just sitting in a partnership account
21 at JP Morgan with no distributions that have
22 been made at all.

23 THE COURT: So what's the total corpus of
24 the what I'll call the ten grandchildren's
25 trust of both grandparents?

♀

00047

1 MR. SPALLINA: Not taking into account the
2 litigation?

3 THE COURT: Well, no, you haven't paid
4 anything out yet.

5 MR. SPALLINA: I would say it's
6 approximately \$4 million.

7 THE COURT: So there's litigation going on
8 in Simon's --

9 MR. SPALLINA: Estate.

10 THE COURT: And at some point when that
11 claim is resolved the trust will then be
12 administered by your firm and...

13 MR. SPALLINA: No, that's not the case.
14 Each of the adult children for their own
15 children are designated to serve as trustee of
16 their children's trust.

17 THE COURT: So a distribution takes place
18 then once the money gets to the trust age?

19 MR. SPALLINA: Correct, and today again
20 the Shirley Bernstein trust does have liquid
21 assets in it. There was two properties, real
22 estate properties, the residential home and a
23 condo on the beach. The condo on the beach
24 sold back in April or May. There were funds
25 that came into the account at that time. Ted

♀

00048

1 was going to make partial distribution. He
2 sent out an e-mail with tax I.D. numbers and
3 the naming of the trust to the five children
4 for the purposes of them opening up the
5 accounts.

6 THE COURT: Okay, what happened?

7 MR. SPALLINA: Seven of ten accounts were
8 opened and were actually funded this week with
9 \$80,000.

In Re_ The Estate of Shirley Bernstein.txt

10 THE COURT: Total or each?
11 MR. SPALLINA: Each.
12 THE COURT: Three of Eliot's --
13 MR. SPALLINA: Are not open. And we've
14 asked multiple --
15 THE COURT: And he executed documents to
16 open \$240,000 immediately or very quickly go
17 into those accounts?
18 MR. SPALLINA: Yes, sir.
19 THE COURT: Go ahead.
20 MR. SPALLINA: Now, there was a question
21 from our client as trustee of his mother's
22 trust because he has apprehension as do the
23 other siblings as to whether or not
24 Mr. Bernstein is the proper trustee for that
25 trust.

♀

00049

1 THE COURT: Okay, all right.
2 MR. SPALLINA: We had discussions about
3 possibly making emergency distributions to pay
4 the expenses, but not necessarily --
5 THE COURT: Not giving the money directly
6 to him.
7 MR. SPALLINA: Not necessarily put in all
8 \$80,000 in all three of those trusts.
9 THE COURT: Does the trust pay expenses
10 directly or give money to the parent who pays
11 the expenses? Do you pay the electric bill or
12 do you give money to Eliot to pay the electric
13 bill?
14 MR. SPALLINA: Today?
15 THE COURT: Now, how does that work with
16 the others kids?
17 MR. SPALLINA: They were just funded, but
18 normally the trustee of the trust would pay for
19 expenses on behalf of the beneficiary if
20 they're minor children. Some of the children
21 here are adults. So to the extent they're
22 adults they would make distribution.
23 THE COURT: So what's the resolution of
24 the notary problem? Has that been resolved?
25 MR. SPALLINA: I can speak to it.

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00050

1 MR. MANCERI: Please, Robert, go ahead.
2 The Judge is addressing you, be my guest.
3 MR. SPALLINA: In April of last year we

In Re_ The Estate of Shirley Bernstein.txt
4 met with Mr. Bernstein in April of 2012 to
5 close his wife's estate.

6 THE COURT: No, I know that part.

7 MR. SPALLINA: Okay.

8 THE COURT: I mean everyone can see he
9 signed these not notarized. When they were
10 sent back to be notarized, the notary notarized
11 them without him re-signing it, is that what
12 happened?

13 MR. SPALLINA: Yes, sir.

14 THE COURT: So whatever issues arose with
15 that, where are they today?

16 MR. SPALLINA: Today we have a signed
17 affidavit from each of the children other than
18 Mr. Bernstein that the original documents that
19 were filed with The Court were in fact their
20 original signatures which you have in the file
21 attached as Exhibit A was the original document
22 that was signed by them.

23 THE COURT: It was wrong for Moran to
24 notarize -- so whatever Moran did, the
25 documents that she notarized, everyone but

♀
00051

1 Eliot's side of the case have admitted that
2 those are still the original signatures of
3 either themselves or their father?

4 MR. SPALLINA: Yes, sir.

5 THE COURT: I got it.

6 MR. MANCERI: And we can file those
7 affidavits, Judge, at any time.

8 THE COURT: So now I'm trying to deal with
9 the oral argument for today.

10 So I only have in front of me Shirley's
11 estate. Shirley's estate is closed.

12 MR. MANCERI: Your Honor, could I bring
13 you up to speed on one thing maybe you're not
14 seeing on your docket.

15 THE COURT: Yes.

16 MR. MANCERI: We actually filed a motion
17 to actually reopen the estate when we learned
18 about the deficiency in the affidavit issue.

19 THE COURT: Okay.

20 MR. MANCERI: And that was signed
21 August 28th of this year. Do you have a copy
22 of that, Judge, can I approach?

23 THE COURT: Hold on, it should be here,
24 but let's see. Because I have an August 28th

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file, I have that.

25

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00052

1 MR. MANCERI: You have that.
2 THE COURT: Motion to reopen the estate.
3 MR. MANCERI: Right, your Honor. We set
4 it for an evidentiary hearing.
5 THE COURT: When is it set?
6 MR. MANCERI: It's set for October 28th,
7 your Honor, for an hour at 11:00 a.m.
8 THE COURT: I'm going to decide on
9 Shirley's case whether to open it and how to
10 deal with whatever issues pertain to this, but,
11 Eliot, on your side you have an emergency
12 motion to freeze assets of the estate, so I
13 would say to you with a closed estate where the
14 PR, Simon, has been already discharged, and a
15 petition for discharge approved, what assets
16 are there in a closed estate where the estate
17 assets have already been distributed that I can
18 now in your motion freeze?
19 MR. ELIOT BERNSTEIN: The petition --
20 THE COURT: Listen to my question. It's
21 artful. What assets now that the estate's been
22 closed, that the estate's been fully
23 administered, and the estate has been
24 discharged, can I freeze that I could identify
25 still belong to Shirley's estate?

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00053

1 MR. ELIOT BERNSTEIN: I can't tell you
2 because I never got a document regarding the
3 assets.
4 THE COURT: But when you say it's an
5 emergency hearing --
6 MR. ELIOT BERNSTEIN: But I was supposed
7 to get those documents, correct?
8 THE COURT: Well, I don't know what
9 documents --
10 MR. ELIOT BERNSTEIN: I was a beneficiary,
11 unlike they said, me, my brother was cut out of
12 my mother's estate and my older sister.
13 THE COURT: They said you were a
14 beneficiary of personal property.
15 MR. ELIOT BERNSTEIN: No, I was the third
16 beneficiary to the entire estate.
17 THE COURT: All right, I don't know.
18 MR. SPALLINA: At one point he was.

In Re_ The Estate of Shirley Bernstein.txt

19 MR. MANCERI: Early on, your Honor.
20 THE COURT: But on the will that was
21 probated?
22 MR. MANCERI: No.
23 THE COURT: Okay, so maybe you don't know
24 then, your mother changed her will, they say.
25 MR. ELIOT BERNSTEIN: Did my mother change

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00054

1 her will?
2 MR. SPALLINA: You know that your father
3 did.
4 MR. ELIOT BERNSTEIN: No, he asked if my
5 mother did.
6 MR. SPALLINA: Oh, yes.
7 THE COURT: Okay, all right --
8 MR. ELIOT BERNSTEIN: After she was dead
9 using alleged --
10 THE COURT: Not after she was dead.
11 MR. ELIOT BERNSTEIN: No, your Honor, my
12 father went back into my mother's estate and
13 made changes after we believe he was dead using
14 documents that are signed forged, by the way
15 those documents you're looking at --
16 THE COURT: Here's the thing.
17 MR. ELIOT BERNSTEIN: Yes.
18 THE COURT: You want me to freeze assets
19 of an estate that's already been fully
20 probated. I can't freeze something that
21 doesn't exist.
22 MR. ELIOT BERNSTEIN: Can you reopen it
23 because it was closed on fraudulent documents?
24 THE COURT: They asked for the estate to
25 be reopened. They want to have a hearing on

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00055

1 that.
2 MR. ELIOT BERNSTEIN: Okay.
3 THE COURT: Do you have responses to your
4 motion?
5 MR. MANCERI: Mr. Spallina filed it, but I
6 don't believe so yet, your Honor.
7 THE COURT: So we know one person wants to
8 reopen it, Eliot, correct? Who did you notice
9 of that motion?
10 MR. MANCERI: This motion was served on
11 Ted Bernstein, Pamela --
12 THE COURT: Ted, do you want the estate

In Re_ The Estate of Shirley Bernstein.txt

13 reopened, Shirley's estate reopened?

14 MR. THEODORE BERNSTEIN: I think you're
15 asking me a legal question, your Honor.

16 THE COURT: Does anyone represent you?

17 MR. MANCERI: Not at the moment, your
18 Honor. I may depending on how far this goes.

19 THE COURT: All right, well, what I'm
20 getting at is, is anyone opposing the reopening
21 of the estate?

22 MR. MANCERI: No, your Honor. We want to
23 open it to cure what his allegation is.

24 THE COURT: First step, one, is reopen.

25 MR. MANCERI: Correct.

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00056

1 THE COURT: So why do we have to wait
2 until the end of October to reopen the estate
3 when we could do that in mid-September?

4 MR. MANCERI: No reason, your Honor.

5 THE COURT: Any reason why we need to
6 wait?

7 MR. ELIOT BERNSTEIN: No.

8 THE COURT: All right, so...

9 MR. MANCERI: You haven't heard any
10 objections to this from anybody else, have you
11 Robert?

12 MR. SPALLINA: No.

13 THE COURT: All right, so get me up an
14 agreed order that I could open up the estate.

15 MR. MANCERI: Okay, you'll take care of
16 that, Robert?

17 MR. SPALLINA: Uh-Huh.

18 MR. MANCERI: We'll take the October
19 hearing off your docket.

20 THE COURT: You don't need an evidentiary
21 hearing to prove it, I'm going to do it, and
22 under these circumstances that makes sense.

23 Okay, so I'm going to have it reopen the
24 estate. So now the question is --

25 MR. MANCERI: Your Honor, just so I'm

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1 clear.

2 THE COURT: Yes, Shirley's estate.

3 MR. MANCERI: The reason we asked to
4 reopen it is to cure or address this alleged
5 fraud.

6 THE COURT: But all I'm physically doing

In Re_ The Estate of Shirley Bernstein.txt
7 is saying, Rich, reopen.

8 MR. MANCERI: Agreed. I just wanted to be
9 clear.

10 THE COURT: I don't want you to get rid of
11 the hearing.

12 MR. MANCERI: Oh, you don't, okay.

13 THE COURT: So at the hearing whatever it
14 is in relief that you want now that the estate
15 is open, I'll hear that.

16 MR. MANCERI: Okay.

17 THE COURT: And, Mr. Bernstein, whatever
18 you want relief-wise to happen with respect to
19 Shirley's estate, not Shirley's trust, but
20 Shirley's estate, you could have a hearing on
21 that. I'll combine everyone who has an
22 interest in getting some relief.

23 MR. MANCERI: Only thing I was going to
24 say, your Honor, after this was noticed I got
25 into this matter. I have a conflict on the

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00058

1 28th at that hour. If we could move it to the
2 afternoon I'd appreciate it.

3 THE COURT: I'll get my book and see.
4 Maybe I can, I don't know.

5 MR. MANCERI: That's my only issue on the
6 28th.

7 THE COURT: I don't know, I'll look.
8 So let me try to make some progress, all
9 right.

10 So today is whether in Shirley's estate
11 there's an emergency, here is my order, no.
12 Okay?

13 MR. MANCERI: Okay.

14 THE COURT: Next, whether -- what type of
15 evidentiary hearing, if any, needs to be held.
16 For Shirley's estate purposes I guess I have to
17 figure out the following: It appears that
18 there could be some problem in the documents
19 that took place to lead Shirley's estate to be
20 closed and distributed as it took place, okay
21 because --

22 MR. MANCERI: Right.

23 THE COURT: It took place pursuant to
24 documents that may have been improperly
25 notarized. Now. That doesn't mean that

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00059

1 anything happened, it just means the documents
2 may have a taint to them themselves.

3 MR. MANCERI: Right.

4 THE COURT: But I'll take a look at it and
5 see whether there's anything that has to happen
6 differently than what already happened with
7 respect to that.

8 MR. MANCERI: Judge, in furtherance in
9 making that determination, would you like us to
10 submit these to you?

11 THE COURT: What are those?

12 MR. MANCERI: These are the original
13 affidavits. I haven't made copies.

14 THE COURT: File them.

15 MR. MANCERI: Just file them, okay. Very
16 good, we'll file them and serve them.

17 THE COURT: Mr. Bernstein, I want you to
18 understand something. Let's say you prove what
19 seems perhaps to be easy, that Moran notarized
20 your signature, your father's signature, other
21 people's signatures after you signed it, and
22 you signed it without the notary there and they
23 signed it afterwards. That may be a wrongdoing
24 on her part as far as her notary republic
25 ability, but the question is, unless someone

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00060

1 claims and proves forgery, okay, forgery,
2 proves forgery, the document will purport to be
3 the document of the person who signs it, and
4 then the question is, will something different
5 happen in Shirley's estate then what was
6 originally intended? Originally intended they
7 say, the other side, was for Simon to close out
8 the estate. The estate they say was small.
9 The estate gave everything to the trust and
10 that's what it did, and that was the end of the
11 estate.

12 Remember, this is not everything about
13 your parents and their estate planning. This
14 is one small component, Shirley's estate alone,
15 not her trust, and nothing to do with what
16 happened with Simon, okay, because that's not
17 before me. Simon's case is before Judge
18 French.

19 Having said that, one of the other reasons
20 why I have to consider whether your matter is
21 an emergency, even if there was something that

In Re_ The Estate of Shirley Bernstein.txt

22 I could enter an order on or have a hearing on
23 immediately that could free up money from
24 Shirley that you personally would be entitled
25 to, you tell me you don't even know that you

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00061

1 were not a beneficiary of the estate, so
2 certainly you're not doing your groundwork to
3 tell me if it's an emergency or not because it
4 could be an emergency if you were a beneficiary
5 of her will that was probated, but you don't
6 even know one way or the other. So you could
7 be a stranger to the estate. She may have
8 disinherited you from the estate. She may have
9 chosen to only give you personal property. So
10 if you're not entitled to anything, you don't
11 have an emergency. You're not entitled to
12 anything. Go ahead.

13 MR. ELIOT BERNSTEIN: I never was
14 noticed --

15 THE COURT: It doesn't matter.

16 MR. ELIOT BERNSTEIN: -- by the estate
17 planner when she died.

18 THE COURT: Okay.

19 MR. ELIOT BERNSTEIN: So he's supposed to
20 notify the beneficiaries.

21 THE COURT: Who?

22 MR. ELIOT BERNSTEIN: Mr. Spallina.

23 THE COURT: Of what?

24 MR. ELIOT BERNSTEIN: That there are
25 beneficiaries of the estate.

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00062

1 THE COURT: But what if you weren't a
2 beneficiary?

3 MR. ELIOT BERNSTEIN: I was at that time.
4 My dad doesn't change that until a
5 year-and-a-half later. Are you following?

6 THE COURT: This may be about it; but
7 you're interested in some financial relief. If
8 you don't want to go out and get a laborer job
9 today to feed your children that's your choice.

10 MR. ELIOT BERNSTEIN: I didn't say that.

11 THE COURT: I'm not in charge of feeding
12 your children or paying your electric bills,
13 you are. You have to do what a parent does to
14 take care of their children. It doesn't sound
15 like you're doing everything that you can, but

16 that's technically not before me.
17 But in the meantime not knowing a whole
18 lot about this case, it's my first time I'm
19 really having this type of dialogue. I heard
20 some voice that said there's cash to feed your
21 children that could become readily in your
22 pocket or in someone's pocket to pay bills that
23 could help your children. I heard that. They
24 say the stumbling block to your children
25 getting the benefit of that money is you. I

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00063

1 don't know whether that's true or not, but if
2 you want your children to imminently get money
3 and they have imminent money to give your
4 children, maybe you want to sit with Ted and
5 that other side and see if there's some money
6 that could come to your children.

7 MR. ELIOT BERNSTEIN: Excuse me.

8 THE COURT: Sure.

9 MR. ELIOT BERNSTEIN: That's like asking
10 me to participate in what I allege is a fraud.

11 THE COURT: No, it doesn't --

12 MR. ELIOT BERNSTEIN: Listen, if the money
13 comes to my children and it was supposed to
14 have gone to me, and these documents that are
15 all shady and unsigned wills with --
16 un-notarized wills and trusts don't stand. The
17 money comes to me personally, Eliot Bernstein.

18 MR. MANCERI: Your Honor --

19 THE COURT: Let me just say this to you.
20 Maybe two, three years from now as a result of
21 the same trust litigation you'll be right, but
22 in the meantime according to you there's money
23 that could feed your children that you don't
24 want to touch because you think the money
25 should go to you instead of your children that

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00064

1 they're willing to --

2 MR. ELIOT BERNSTEIN: Well, I think there
3 are other beneficiaries.

4 THE COURT: -- put in accounts to go for
5 the benefit of your children.

6 MR. ELIOT BERNSTEIN: I think there are
7 other beneficiaries that are also --

8 THE COURT: They signed off.

9 MR. ELIOT BERNSTEIN: No, just their

10 parents have. The children don't even know.
11 They're not even represented.

12 THE COURT: Well, the parent's represent
13 the child.

14 MR. ELIOT BERNSTEIN: No, but they have
15 conflicting interests.

16 THE COURT: Well, you say that --

17 MR. ELIOT BERNSTEIN: Our attorney wrote a
18 subpoena and said it. I had to get two lawyers
19 because my attorney couldn't represent both
20 sides of this.

21 MR. MANCERI: I'm very concerned about
22 something Mr. Bernstein just told The Court.
23 He's the one objecting they're in conflict,
24 he's stating from what I'm piecing together
25 that he believes that his children are getting

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1 money that the parents really was supposed to
2 go to him personally. He's got the inherent
3 conflict with that mindset.

4 MR. ELIOT BERNSTEIN: I'm not saying I
5 don't.

6 THE COURT: Okay, here's the point, if
7 you're at a point where you're asking The Court
8 for an emergency because you can't feed
9 children, and there's someone around the corner
10 that's holding out a \$20 bill and says you
11 could have it to feed your children, and you
12 go, you know, I'm not going to take that to
13 feed my children because I want to have a court
14 determine that it really was mine, then I don't
15 know that you're treating this as an emergency.
16 Emergencies mean you figure out a way of
17 getting the money to your children sooner than
18 later, and they say it's happening imminently,
19 cash that could pay bills for your children.
20 That's what they say. If it's an emergency and
21 your kids are starving, and you as the parent
22 say that might be my money and not my kids', so
23 I want to wait for two or three years and let
24 the money stay in a bank account until I could
25 figure it out, and not feed my children, I

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00066

1 think you need to reflect upon some of your
2 decisions.

3 MR. MANCERI: Your Honor --

In Re_ The Estate of Shirley Bernstein.txt

4 THE COURT: What?
5 MR. MANCERI: I'm not saying we're going
6 to do this, Judge, but this sounds like this
7 may need an ad litem for these kids.
8 THE COURT: Well, I don't know, let's not
9 add fuel to the fire.
10 MR. MANCERI: Because I'm troubled by what
11 he's saying.
12 THE COURT: All right, so --
13 MR. ELIOT BERNSTEIN: Here's why I have
14 not taken that money.
15 THE COURT: Why?
16 MR. ELIOT BERNSTEIN: Because if you told
17 me, your Honor, that you just murdered him, and
18 here's \$20 from his pocket to feed your kids
19 from the crime --
20 THE COURT: If they were starving I would
21 take the \$20.
22 MR. ELIOT BERNSTEIN: On that advice, I'll
23 take the money.
24 THE COURT: If they were starving --
25 MR. ELIOT BERNSTEIN: On that advice --

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00067

1 THE COURT: Your kids are starving. I'm
2 not giving you advice.
3 MR. ELIOT BERNSTEIN: On that advice, I
4 will --
5 THE COURT: The \$20 didn't murder anybody,
6 did it? Did the \$20-bill murder someone?
7 MR. ELIOT BERNSTEIN: It's stealing money
8 from people.
9 THE COURT: They're not -- this isn't
10 stolen money. This is your parents' money.
11 MR. ELIOT BERNSTEIN: If I take that money
12 and put it in my kids' accounts, it's actually
13 taking money from what we believe are the true
14 and proper beneficiaries --
15 THE COURT: Which is you.
16 MR. ELIOT BERNSTEIN: No, through -- one
17 of, through --
18 THE COURT: So meanwhile if your kids are
19 starving and you don't take the money, all I
20 could say to you, there's obviously -- if you
21 look at the documents I mean you're not going
22 to confess to killing Kennedy as part of
23 receiving the money, but if they want to give
24 you money for your children and you don't want

In Re_ The Estate of Shirley Bernstein.txt
to take it because you think it's yours, and

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you want to wait years --

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MR. ELIOT BERNSTEIN: That's not why I
want to dispute it.

3

4

THE COURT: You think that there's some --

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MR. ELIOT BERNSTEIN: I think that it's
part of a fraud that forged documents were used
to --

6

7

THE COURT: But it's still your parents
money --

8

9

MR. ELIOT BERNSTEIN: -- convert estate
assets to the wrong beneficiary.

10

11

THE COURT: But they want to now get it to
you.

12

13

MR. ELIOT BERNSTEIN: No, not me.

14

THE COURT: To your children.

15

16

MR. ELIOT BERNSTEIN: Listen, I'll take
the money without explanation on it. I agree.
Listen, the only reason I didn't want to take
the money was so I wouldn't be part of a fraud.

17

18

19

THE COURT: You're not, obviously no one
is accusing you of fraud. If they give you
money to care for --

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22

MR. ELIOT BERNSTEIN: But then I could
accuse them of fraud if I'm participating.

23

24

THE COURT: I mean all you're doing is

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signing a receipt. You don't know where the
money came from. You're not signing off --
you're not saying that you make a declaration
that the money came from them, the other side
to you in only legal means. You're just
signing a receipt.

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MR. MANCERI: But he is signing off on
that he's going to honor the terms of the
trust. If he is signing off to that --

8

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10

THE COURT: If it comes to you as trustee
for your children, you are -- you have a duty
to only use it for the children, not yourself.
Not you. You still have to work for you. Now,
you don't have to work for your children,
maybe. You still have to support yourself.

11

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MR. ELIOT BERNSTEIN: Yeah.

17

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THE COURT: The money has to get spent on
your children if that's how you get it.

In Re_ The Estate of Shirley Bernstein.txt

19 MR. ELIOT BERNSTEIN: Right.
20 THE COURT: That's all we're talking about
21 is money to feed your children.
22 MR. ELIOT BERNSTEIN: You see, if the
23 money came to me, it's also for me and my wife
24 and feeds our children.
25 THE COURT: That's not what they said. It

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1 does not go to support you and your wife.
2 MR. ELIOT BERNSTEIN: If the money comes
3 to me as a beneficiary, it does. If all these
4 nonsense documents that are forged and --
5 THE COURT: If they want to give it to you
6 only under their condition this is because
7 their version is it belongs to your children.
8 MR. ELIOT BERNSTEIN: Right.
9 THE COURT: Don't accept it, you don't get
10 it. If you accept it, it goes to your
11 children. You may not like that, but it only
12 could be used for your children, because that's
13 the deal that they make. You take that deal
14 because you don't want your kids to starve.
15 You may not like it, you want to be
16 supported too, but they don't want to support
17 you. They don't think it's your money, they
18 think it's your children's money. So why turn
19 that -- maybe you're entitled to it, but why
20 turn down money that could help support your
21 children in the meantime.
22 MR. ELIOT BERNSTEIN: If your logic is
23 correct, your Honor, I agree.
24 THE COURT: Well, I don't know if my logic
25 is correct.

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1 MR. ELIOT BERNSTEIN: Here's the legal
2 problem --
3 THE COURT: Stop, no, the hearing is over.
4 I'm not giving more legal advice. Your hearing
5 goes on, okay, see you.
6 MR. MANCERI: Your Honor, any chance of
7 resetting it?
8 THE COURT: I'm going to ask my office to
9 flip it around to the afternoon. I'll take
10 care of that.
11 MR. MANCERI: Thank you, your Honor.
12 We'll submit an order to your Honor.

In Re_ The Estate of Shirley Bernstein.txt

13 THE COURT: Okay, clear it with him and
14 see if you could actually get something that
15 makes sense. It's really narrow.
16 MR. MANCERI: It's very narrow. We've got
17 the transcript, Judge.
18 THE COURT: It's only really that there's
19 no emergency here. Everything everyone raises
20 on the 28th.
21 MR. MANCERI: Very good, Judge. Do you
22 think we can do it in an hour, Judge?
23 THE COURT: We'll try.
24 MR. MANCERI: Okay.
25 MR. ELIOT BERNSTEIN: I'm sorry, your

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00072

1 Honor, for calling an emergency.
2 THE COURT: All right. Just there's a lot
3 of work when you call something an emergency.
4 MR. ELIOT BERNSTEIN: I didn't understand
5 what you go through.
6 THE COURT: Okay, bye.
7 MR. MANCERI: It's an evidentiary, Judge,
8 we're going to call witnesses.
9 THE COURT: Witnesses and evidence.
10 MR. MANCERI: Very good.

11 - - -
12 (The proceeding was concluded at 2:15 p.m.)
13
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1 CERTIFICATE OF REPORTER
2
3 STATE OF FLORIDA)
4 COUNTY OF PALM BEACH)
5
6 I, Jessica Thibault, a Court Reporter,

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION

SHIRLEY BERNSTEIN File No.
502011CP000653XXXXSB

Deceased.

AFFIDAVIT OF LISA S. FRIEDSTEIN

Before me, the undersigned Notary, personally appeared LISA S. FRIEDSTEIN, who, after being duly sworn under oath, deposes and states:

1. I am an adult daughter of Shirley Bernstein and reside at 2142 Churchill Lane, Highland Park, Illinois.
2. My father, Simon Bernstein, was the Personal Representative of the estate and the sole devisee under the will as the sole probate assets consisted of tangible personal property specifically devised to him.
3. On or about May 12, 2012 and again on or about August 1, 2012 I received from the offices of Tescher & Spallina, P.A. a Waiver of Accounting and Portions of Petition For Discharge; Waiver of Service of Petition For Discharge; and Receipt of Beneficiary and Consent to Discharge (the "Waiver"), a copy of which is attached as Exhibit "A" to this Affidavit.
4. I freely and voluntarily signed the Waiver on August 21, 2012 and returned it to the offices of Tescher & Spallina, P.A. for filing in connection with the completion of my mother's probate.
5. It is my understanding that the Waivers filed on behalf of myself and others were rejected by the Court because of the lack of a notarization.
6. It is my understanding that the subsequently filed Waivers were not personally signed by me or the other heirs.
7. In order to permit my mother's estate to be closed without any question of the validity of my Waiver, I hereby state under oath that the attached Exhibit "A" is my free and voluntary act as if the Waiver had been originally executed in conformity with the requirements of the Court.

Signed on this 11 day of September, 2013.


LISA S. FRIEDSTEIN, Affiant



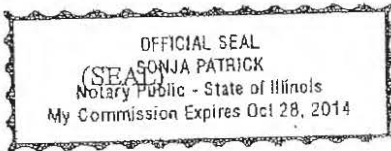
Page 2
Estate of Shirley Bernstein
Affidavit of Lisa S. Friedstein
File No. 502011CP000653XXXXSB


STATE OF ILLINOIS

COUNTY OF Lake

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, appeared **LISA S. FRIEDSTEIN**, personally known to me or provided the following identification drivers license to be the person described in and who executed the foregoing Affidavit, and she acknowledged under oath before me that she executed the same for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid, this 11 day of September 2013.





NOTARY PUBLIC

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased. Division

2012 OCT 24 PM 1:31
SHARON A. T. COLEMAN
PALM BEACH COUNTY FL
SOUTH CITY JUDGE FILED

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

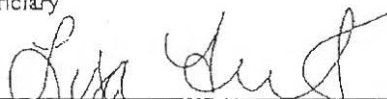
The undersigned, Lisa S. Friedstein, whose address is 2142 Churchill Lane, Highland Park, IL 60035,
and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on August 21, 2012.

Beneficiary

By:



LISA S. FRIEDSTEIN

EXHIBIT

A

08

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION

SHIRLEY BERNSTEIN File No.
502011CP000653XXXXSB

Deceased.

AFFIDAVIT OF JILL IANTONI

Before me, the undersigned Notary, personally appeared JILL IANTONI, who, after being duly sworn under oath, deposes and states:

1. I am an adult daughter of Shirley Bernstein and reside at 2101 Magnolia Lane, Highland Park, Illinois.

2. My father, Simon Bernstein, was the Personal Representative of the estate and the sole devisee under the will as the sole probate assets consisted of tangible personal property specifically devised to him.

3. On or about May 12, 2012 and again on or about August 1, 2012 I received from the offices of Tescher & Spallina, P.A. a Waiver of Accounting and Portions of Petition For Discharge; Waiver of Service of Petition For Discharge; and Receipt of Beneficiary and Consent to Discharge (the "Waiver"), a copy of which is attached as Exhibit "A" to this Affidavit.

4. I freely and voluntarily signed the Waiver on October 1, 2012 and returned it to the offices of Tescher & Spallina, P.A. for filing in connection with the completion of my mother's probate.

5. It is my understanding that the Waivers filed on behalf of myself and others were rejected by the Court because of the lack of a notarization.

6. It is my understanding that the subsequently filed Waivers were not personally signed by me or the other heirs.

7. In order to permit my mother's estate to be closed without any question of the validity of my Waiver, I hereby state under oath that the attached Exhibit "A" is my free and voluntary act as if the Waiver had been originally executed in conformity with the requirements of the Court.

Signed on this 11 day of September, 2013.


JILL IANTONI, Affiant

Page 2
Estate of Shirley Bernstein
Affidavit of Jill Iantoni
File No. 502011CP000653XXXXSB

STATE OF ILLINOIS

COUNTY OF Lake

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, appeared **JILL IANTONI**, personally known to me or _____ provided the following identification DL, to be the person described in and who executed the foregoing Affidavit, and she acknowledged under oath before me that she executed the same for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid, this 12 day of Sept, 2013.

(SEAL)


NOTARY PUBLIC



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased. Division

2012 OCT 24 PM 1:31
SHARON L. HARRIS, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY SQUARE BLDG. FILED

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

The undersigned, Jill Iantoni, whose address is 2101 Magnolia Lane, Highland Park, IL 60035, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on OCTOBER 1st, 2012.

Beneficiary

By: Jill Iantoni
JILL IANTONI

EXHIBIT A

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION

SHIRLEY BERNSTEIN File No.
502011 CP000653XXXXSB

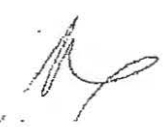
Deceased.

AFFIDAVIT OF PAMELA B. SIMON

Before me, the undersigned Notary, personally appeared PAMELA B. SIMON, who, after being duly sworn under oath, deposes and states:

1. I am an adult daughter of Shirley Bernstein and reside at 950 North Michigan Avenue, Suite 2603, Chicago, Illinois.
2. My father, Simon Bernstein, was the Personal Representative of the estate and the sole devisee under the will as the sole probate assets consisted of tangible personal property specifically devised to him.
3. On or about May 12, 2012 and again on or about August 1, 2012 I received from the offices of Tescher & Spallina, P.A. a Waiver of Accounting and Portions of Petition For Discharge; Waiver of Service of Petition For Discharge; and Receipt of Beneficiary and Consent to Discharge (the "Waiver"), a copy of which is attached as Exhibit "A" to this Affidavit.
4. I freely and voluntarily signed the Waiver on August 8, 2012 and returned it to the offices of Tescher & Spallina, P.A. for filing in connection with the completion of my mother's probate.
5. It is my understanding that the Waivers filed on behalf of myself and others were rejected by the Court because of the lack of a notarization.
6. It is my understanding that the subsequently filed Waivers were not personally signed by me or the other heirs.
7. In order to permit my mother's estate to be closed without any question of the validity of my Waiver, I hereby state under oath that the attached Exhibit "A" is my free and voluntary act as if the Waiver had been originally executed in conformity with the requirements of the Court.

Signed on this 12th day of September, 2013.



PAMELA B. SIMON, Affiant

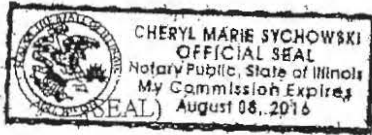
Page 2
Estate of Shirley Bernstein
Affidavit of Pamela B. Simon
File No. 502011CP000653XXXXSB

STATE OF ILLINOIS

COUNTY OF Cook

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, appeared PAMELA B. SIMON, personally known to me or X X provided the following identification X X X X X X, to be the person described in and who executed the foregoing Affidavit, and she acknowledged under oath before me that she executed the same for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid, this 12th day of September, 2013.



Cheryl Marie Sychowski
NOTARY PUBLIC

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXXSE
SHIRLEY BERNSTEIN, Probate Division
Deceased. Division

2012 OCT 24 PM 1:31
SHARON A. BUCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY SQUARE FILED

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

The undersigned, Pamela B. Simon, whose address is 950 North Michigan Avenue, Suite 2603, Chicago, IL 60606, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 8/8, 2012.

Beneficiary

By: 
PAMELA B. SIMON

EXHIBIT ^{RE} A ^{END}

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION

SHIRLEY BERNSTEIN File No.
502011CF000653XXXXSB

Deceased.

AFFIDAVIT OF TED S. BERNSTEIN

Before me, the undersigned Notary, personally appeared TED S. BERNSTEIN, who, after being duly sworn under oath, deposes and states:

1. I am an adult son of Shirley Bernstein and reside at 880 Berkeley Street, Boca Raton, FL 33487.

2. My father, Simon Bernstein, was the Personal Representative of the estate and the sole devisee under the will as the sole probate assets consisted of tangible personal property specifically devised to him.

3. On or about May 12, 2012 and again on or about August 1, 2012 I received from the offices of Tescher & Spallina, P.A. a Waiver of Accounting and Portions of Petition For Discharge; Waiver of Service of Petition For Discharge; and Receipt of Beneficiary and Consent to Discharge (the "Waiver"), a copy of which is attached as Exhibit "A" to this Affidavit.

4. I freely and voluntarily signed the Waiver on August 1, 2012 and returned it to the offices of Tescher & Spallina, P.A. for filing in connection with the completion of my mother's probate.

5. It is my understanding that the Waivers filed on behalf of myself and others were rejected by the Court because of the lack of a notarization.

6. It is my understanding that the subsequently filed Waivers were not personally signed by me or the other heirs.

7. In order to permit my mother's estate to be closed without any question of the validity of my Waiver, I hereby state under oath that the attached Exhibit "A" is my free and voluntary act as if the Waiver had been originally executed in conformity with the requirements of the Court.

Signed on this 12 day of September, 2013.


TED S. BERNSTEIN, Affiant

Page 2
Estate of Shirley Bernstein
Affidavit of Ted S. Bernstein
File No. 502011CP000653XXXXSB

STATE OF FLORIDA

COUNTY OF PALM BEACH

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, appeared **TED S. BERNSTEIN**, personally known to me or _____ provided the following identification _____, to be the person described in and who executed the foregoing Affidavit, and he acknowledged under oath before me that he executed the same for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid, this 12 day of September 2013.

(SEAL)


NOTARY PUBLIC

NOTARY PUBLIC-STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF File No. 502011CP000653XXXXSB
SHIRLEY BERNSTEIN, Probate Division
Deceased. Division

2012 OCT 24 PM 1:31
SHIRLEY BERNSTEIN ESTATE
PALM BEACH COUNTY FL
SOUTH CIVIL DIVISION FILED

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

The undersigned, Ted S. Bernstein, whose address is 880 Berkeley Street, Boca Raton, Florida 33487, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 8/1/12, 2012.

Beneficiary
By: Ted Bernstein
TED BERNSTEIN

EXHIBIT ^{AS} A ⁶⁶

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

CASE NO. 502012CP004391XXXXSB
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE OF THE SIMON L.
BERNSTEIN TRUST, MOTION FOR INSTRUCTIONS

Ted S. Bernstein, as Successor Trustee of the Simon L. Bernstein Trust (the "Trustee"), files this Motion for Instructions to the Curator as to one of the significant assets of the Estate, a note and second mortgage held on certain real property, and states:

1. Ted S. Bernstein is the Successor Trustee of the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 (the "Trustee"). The Trustee is the sole beneficiary of the estate, which pours-over into the Trust for the benefit of Simon's grandchildren.

2. At the time of his death, Simon held a Note and a Second Mortgage (collectively the Second Mortgage, "Exhibit "A") on real property located at 2753 N.W. 34th Street, Boca Raton, FL 33434 (the "Property").

3. The Property was purchased in June 2008 by Simon for \$360,000 and fully renovated by him. Title to the Property is held by an entity known as Bernstein Family Realty, LLC ("BFR"). The Property was renovated to make it suitable as the home for Eliot Bernstein and his family, who have resided in the Property ever since and to this day, apparently rent-free since Simon's death.



4. There is a purchase money first mortgage (the "Mortgage", attached as Exhibit "B") on the Property in the amount of \$110,000, held by Walter E. Sahn. That Mortgage was amended (Amendment, attached as Exhibit "C") in February 2012, to lower the interest rate to 3.5% and to extend the maturity until June 19, 2014. There currently is a total debt owed of approximately \$110,000.00 plus interest through June 19, 2014 of \$3,850.00.

5. Simon L. Bernstein holds the Second Mortgage on the Property, in the principal amount of \$365,000, plus accrued interest.

6. There also remain unpaid property taxes for 2013, in the amount of \$5,569.25, plus interest, for a total of \$6,114.68, according to the Property Appraisers and Tax Collectors websites (Exhibit "D"). It appears that the taxes for 2012 and prior years has been paid.

7. According to Zillow, the estimated value of the property is \$398,850. A listing on Zillow, attached, describes the property as follows: "Property backs up to Saint Andrews School. Completely gutted and remodeled in Florida pastel colors 2009, marble and bamboo floors, courtesy of Shirley Bernstein designs. Tiled backyard with swimming pool. Tiled drive. This home backs up to one of the nation's leading private schools, Saint Andrews School." (Exhibit "E")

8. Although it appears that the Estate's Second Mortgage is not fully secured, it appears to be highly likely that there is substantial value and equity in the Second Mortgage held by the Estate. Having conferred with the Curator, the Curator does not wish to actively be involved in administering this asset, and will comply with whatever the Court orders. The Trustee believes that the Curator or the Trustee needs to actively administer this asset to preserve any value for the Estate.

9. Regardless of the ultimate disposition of the Mortgage and the Note it secures, in order to preserve and/or maximize the value of this asset, it is the Trustee's business judgment that

the Estate needs to protect its interest by purchasing or otherwise satisfying the first Mortgage and being authorized to pay the outstanding taxes. The alternative would require Mr. Sahn, the holder of the first mortgage, to retain counsel and litigate against BFR and the current occupant of the property, Eliot Bernstein and his family. We would anticipate such litigation to be very costly to the Mortgage holder, and any attorneys' fees, plus interest, late fees, default interest, costs and expenses would only add to the debt and further diminish whatever equity value remains in the Second Mortgage.

WHEREFORE, the Trustee seeks instructions consistent with this motion authorizing and directing the Curator to transfer the Note and Second Mortgage to the Trust, and authorizing the Trustee to take appropriate actions as described above.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on the attached Service List, by U.S. Mail or Email only as indicated on the Service List, this 4th day of June, 2014.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone / (561) 655-5537 Facsimile
email: arose@mrachek-law.com
Attorneys for Successor Trustee, Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

— and —

PANKAUSKI LAW FIRM P.L.L.C.
John J. Pankauski
Florida Bar No. 0982032
120 South Olive Avenue, Suite 701
West Palm Beach, FL 33401
(561) 514-0906
email: courtfilings@pankauskilawfirm.com
Attorneys for Successor Trustee, Ted S. Bernstein

SERVICE LIST

VIA US MAIL ONLY

Ted S. Bernstein
880 Berkeley Street
Boca Raton, FL 33487

Pamela Beth Simon
950 N. Michigan Avenue
Apartment 2603
Chicago, IL 60611

Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035

Alexandra Bernstein
3000 Washington Blvd, Apt 424
Arlington, VA, 22201

Eric Bernstein
2231 Bloods Grove Circle
Delray Beach, FL 33445

Michael Bernstein
2231 Bloods Grove Circle
Delray Beach, FL 33445

Matt Logan
2231 Bloods Grove Circle
Delray Beach, FL 33445

Molly Simon
1731 N. Old Pueblo Drive
Tucson, AZ 85745

Daniel Bernstein, a Minor
c/o Eliot and Candice Bernstein,
His Parents and Natural Guardians
2753 NW 34th Street
Boca Raton, FL 33434

Jacob Bernstein, a Minor
c/o Eliot and Candice Bernstein,
His Parents and Natural Guardians
2753 NW 34th Street
Boca Raton, FL 33434

Joshua Bernstein, a Minor
c/o Eliot and Candice Bernstein,
His Parents and Natural Guardians
2753 NW 34th Street
Boca Raton, FL 33434

Julia Iantoni, a Minor
c/o Guy and Jill Iantoni,
Her Parents and Natural Guardians
2101 Magnolia Lane
Highland Park, IL 60035

Max Friedstein, a Minor
c/o Jeffrey and Lisa Friedstein,
His Parents and Natural Guardians
2142 Churchill Lane
Highland Park, IL 60035

Carley Friedstein, a Minor
c/o Jeffrey and Lisa Friedstein,
Her Parents and Natural Guardians
2142 Churchill Lane
Highland Park, IL 60035

VIA EMAIL ONLY

Eliot I. Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 West Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552 - Telephone
(561) 734-5554 - Facsimile
Email: pfeaman@feamanlaw.com;
service@feamanlaw.com;
mkoskey@feamanlaw.com
Counsel for William Stansbury

William H. Glasko, Esq.
Golden & Cowan, P.A.
17345 S. Dixie Highway
Palmetto Bay, FL 33157
(305) 856-5440 - Telephone
(305) 856-9388 - Facsimile
Email: eservice@palmettobaylaw.com;
bill@palmettobaylaw.com;
tmealy@gcprobatelaw.com
Counsel for Lisa Sue Friedstein, individually
and as trustee for her children, and as natural
guardian for M.F. and C.F., Minors; Jill Maria
Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a
minor

Robert Spallina, Esq.
Tescher & Spallina
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4855 Technology Way, Suite 720
Boca Raton, FL 33431
rspallina@tescherspallina.com

Donald Tescher, Esq.
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Boca Raton, FL 33431
dtescher@tescherspallina.com

Benjamin P. Brown, Esq.
Matwiczuk & Brown, LLP
625 North Flagler Drive, Suite 401
West Palm Beach, FL 33401
(561) 651-4004 - Telephone
(561) 651-4003 - Facsimile
Email: attorneys@matbrolaw.com
Curator for the Estate of Simon Bernstein

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0766 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra
Bernstein, Eric Bernstein, Michael Bernstein

EXHIBIT

"A"

PROMISSORY NOTE

\$365,000.00

Effective as of July 1, 2008
Asheville, North Carolina

For value received, the undersigned promises to pay to the order of SIMON L. BERNSTEIN the principal sum of Three Hundred Sixty Five Thousand (\$365,000.00) Dollars, together with all interest thereon from the date hereof, to be paid in lawful money of the United States of America. Interest payments under this Note shall be calculated using the long-term Applicable Federal Rate for July 2008 of four and 55/100 (4.55%) percent, compounded semi-annually, and payable on each anniversary of this Note. Interest payments shall commence one year from the date hereof and shall be paid annually on the same date each year thereafter. The entire principal balance, and all accrued but unpaid interest, shall be due on the earlier of fifteen (15) years from the date hereof, or the death of SIMON L. BERNSTEIN.

This Note may be prepaid in whole or in part at anytime without penalty; provided that any partial prepayment shall be applied first to accrued interest and then to principal. This Note is secured by a Second Mortgage of even date herewith. Upon a default in the payment of this Note of principal and/or interest or in the performance of any of the terms of said Mortgage, and if such default shall remain uncured for thirty (30) days after written notice thereof has been given to Maker, then, at the option of the holder, the entire principal sum remaining unpaid, together with accrued interest, shall become immediately due and payable without further notice. This Note, while in default, shall accrue interest at the highest lawful rate of interest permitted by law. This Note shall be governed by the laws of the State of Florida.

All makers, endorsers, and/or guarantors now or hereafter becoming parties hereto jointly and severally waive presentment, demand, protest, notices of nonpayment, dishonor, and protest and all notices of every kind, and jointly and severally agree that in the event of default in the payment of any principal or interest due hereunder, which shall continue for a period of fifteen (15) days, or upon the occurrence of any other event deemed a default hereunder or any instrument or document securing the payment of this Note, the unpaid indebtedness, together with all accrued interest, shall thereupon, at the option of the holder, become immediately due and payable.

All makers, endorsers and/or guarantors now or hereafter becoming parties hereto jointly and severally agree, if this Note becomes in default and is placed in the hands of an attorney for collection, to pay the costs of collection, including reasonable attorneys' and accountants' fees, and similar costs in the event of appellate review, whether by appeal, certiorari, or other appellate remedies.

No single or partial exercise of any power hereunder shall preclude other or further exercises thereof or the exercise of any other power. No delay or omission on the part of the holder hereof in exercising any right hereunder shall operate as a waiver of such right or of any right under this Note. The release of any party liable for this Note shall not operate to release any other party liable hereon.

IN WITNESS WHEREOF, the undersigned has caused these presents to be signed at Asheville, North Carolina, effective as of the day and year first above written.

BERNSTEIN FAMILY REALTY, LLC, a Florida
limited liability company

By: 
SIMON BERNSTEIN, Manager

CFN 20080327651
OR BK 22841 PG 1818
RECORDED 09/04/2008 14:10:25
Palm Beach County, Florida
AMT 365,000.00
Deed Doc 1,277.50
Sharon K. Beck, CLERK & COMPTROLLER
Pgs 1818 - 1820; (3pgs)

This Instrument prepared by:

Robert L. Spallina, Esq.
Teschler & Spallina, P.A.
2101 Corporate Boulevard, Suite 107
Boca Raton, FL 33431
(561) 998-7847

THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$365,000.00, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS SECOND MORTGAGE.

SECOND MORTGAGE

THIS SECOND MORTGAGE is made and executed the 8th day of July, 2008, by SIMON L. BERNSTEIN, whose address is 7020 Lions Head Lane, Boca Raton, Florida 33496, hereinafter referred to as the "Mortgagee" (which term shall include the Mortgagee's heirs, successors and assigns), to BERNSTEIN FAMILY REALTY, LLC, a Florida limited liability company whose post office address is 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, Florida 33487, hereinafter referred to as the "Mortgagor" (which term shall include the Mortgagor's heirs, successors and assigns).

WITNESSETH, for good and valuable considerations, and in consideration of the aggregate sum in that certain promissory note of even date herewith (hereinafter referred to as the "Note"), Mortgagor does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto Mortgagee, in fee simple, that certain property of which Mortgagor is now seized and possessed situate in Palm Beach County, State of Florida, legally described as follows, including all improvements now or hereafter placed thereon, which property and improvements are hereinafter referred to collectively as the "Property":

Lot 68, Block G, BOCA MADERA UNIT 2, according to the Plat thereof, recorded in Plat Book 32, Pages 59 and 60, of the Public Records of Palm Beach County, Florida.

TO HAVE AND TO HOLD the Property, together with the tenements, hereditaments and appurtenances thereof, unto Mortgagee in fee simple.

AND Mortgagor hereby covenants with Mortgagee that Mortgagor is indefeasibly seized of the Property in fee simple, that Mortgagor has full power and lawful right to convey the Property to Mortgagee in fee simple, that it shall be lawful for Mortgagee at all times peaceably and quietly to enter upon, hold, occupy and enjoy the Property, that the Property is free from all encumbrances, that Mortgagor will make such further assurance to perfect the fee simple title to the Property in Mortgagee as may reasonably be required, and that Mortgagor hereby fully warrants the title to the Property and will defend the same against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS, that if Mortgagor shall pay unto Mortgagee the Note, of which the following in words and figures is a true copy:

See Attached Exhibit "A"

and shall perform, comply with and abide by all of the conditions and covenants of the Note and of this Second Mortgage, then this Second Mortgage and the estate thereby created shall cease and be null and void.

AND Mortgagor hereby covenants and agrees as follows:

1. To pay all the principal and interest and other sums of money payable under the Note and this Second Mortgage, or either of them, promptly on the days the same severally become due and any other Note or Second Mortgage securing the property described herein.
2. To pay all the taxes, assessments, levies, liabilities, obligations, and encumbrances of every nature on the Property, and if the same be not promptly paid, Mortgagee may at any time pay the same without waiving or affecting the option to foreclose or any right hereunder, and every payment so made shall bear interest from the date thereof at the rate of eighteen (18%) percent per annum. Mortgagor shall pay the annual real estate taxes no later than November 30th of each year and shall send Mortgagee proof of payment no later than December 31st of said year.
3. To pay all and singular the costs, charges and expenses, including reasonable attorney's fees, incurred or paid at any time by Mortgagee because of the failure on the part of Mortgagor to perform each and every covenant of the Note and this Second Mortgage, or either of them, and every such payment shall bear interest from the date of payment by Mortgagee at the rate of eighteen (18%) percent per annum.
4. To keep the Property insured in a sum not less than the greater of (a) \$365,000 or (b) the maximum insurable value of the improvements thereon, in a company or companies to be approved by Mortgagee, which policy or policies shall be held by and shall be payable to Mortgagee, and in the event any sum of money becomes payable under such policy or policies, Mortgagee shall have the option to receive and apply the same on account of the indebtedness hereby secured or to permit the Mortgagor to receive and use it or any part thereof for other purposes, without thereby waiving or impairing any equity, lien or right under or by virtue of this Second Mortgage, and may place and pay for such insurance or any part thereof without waiving or affecting the option to foreclose or any right hereunder, and each and every such payment shall bear interest from the date of payment by Mortgagee at the rate of ten (10%) percent per annum.
5. To permit, commit or suffer no waste, impairment or deterioration of the Property or any part thereof.
6. To perform, comply with, and abide by each and every condition and covenant set forth in the Note and in this Second Mortgage.
7. If any of said sums of money herein referred to be not promptly and fully paid within ten (10) days after the same severally become due and payable, or if each and every one of the conditions

and covenants of the Note and this Second Mortgage, or either of them, are not fully performed, the aggregate sum due under the Note shall become due and payable forthwith or thereafter at the option of the Mortgagee, as fully and completely as if the said aggregate sum of \$365,000 were originally stipulated to be paid on such day, anything in the Note or this Second Mortgage to the contrary notwithstanding. In addition to the above provisions, any payments made more than fifteen (15) days after their due date shall be subject to an automatic late charge of ten (10%) percent of the amount of said payment.

8. If all or any part of the described property or any legal or equitable interest therein is sold, transferred or encumbered by Mortgagor, excluding a transfer by devise, descent or by operation of law upon the death of Mortgagor, Mortgagee may, at Mortgagee's sole option, declare all the sums secured by this Second Mortgage to be immediately due and payable.

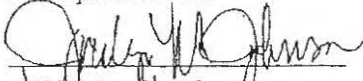
9. In the event Mortgagee finds it necessary to bring suit against Mortgagor due to an alleged default by Mortgagor hereunder, and Mortgagee prevails in said litigation, Mortgagee shall be entitled to recover from Mortgagor any and all costs and reasonable attorney's fees incurred by Mortgagee in said litigation.

IN WITNESS WHEREOF, the Mortgagor has caused these presents to be executed in its name, by its proper officers thereunto duly authorized, the day and year first above written.

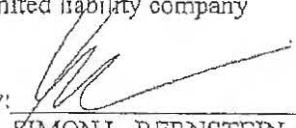
Signed, Sealed & Delivered

BERNSTEIN FAMILY REALTY, LLC a Florida limited liability company


in the presence of:



Jocelyn Johnson
(Print Name)

By: 

SIMON L. BERNSTEIN, Manager

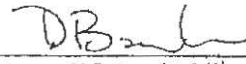


Juliana Goldman
(Print Name)

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 8th day of July, 2008, by SIMON L. BERNSTEIN, Manager for BERNSTEIN FAMILY REALTY, LLC.

NOTARY PUBLIC-STATE OF FLORIDA
Diana Banks
Commission # DD770917
Expires: MAY 11, 2012
BONDED THRU ATLANTIC BONDING CO, INC



Signature of Notary Public

(Print, type or Stamp Commissioned Name of Notary Public)

Personally Known or Produced Identification _____

Type of Identification Produced _____

EXHIBIT
"B"



CFN 20080241511
 OR BK 22723 PG 0691
 RECORDED 06/26/2008 09:06:17
 Palm Beach County, Florida
 AMT 110,000.00
 Deed Doc 385.00
 Intang 220.00
 Sharon R. Bock, CLERK & COMPTROLLER
 Pgs 0691 - 694; (4pgs)

Prepared by and return to:
 John M. Cappeller, Jr.
 Florida Title & Closing Co.
 350 Camino Gardens Blvd. Suite 303
 Boca Raton, FL 33432
 561-392-3636
 File Number ET08-087 Will Call No.: 159

[Space Above This Line For Recording Data]

THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$110,000.00, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.

MORTGAGE

This Indenture, Made this June 20, 2008 by and between Bernstein Family Realty, LLC, a Florida limited liability company whose address is 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, FL 33431, hereinafter called the Mortgagor, and Walter E. Sahn and Patricia Sahn, his wife whose address is 8230 SE 177th Winterthru Loop, The Villages, FL 32162, hereinafter called the Mortgagee:

The terms "Mortgagor" and "Mortgagee" shall include heirs, personal representatives, successors, legal representatives and assigns, and shall denote the singular and/or the plural, and the masculine and/or the feminine and natural and/or artificial persons, whenever and wherever the context so admits or requires.

Witnesseth, that the said Mortgagor, for and in consideration of the aggregate sum named in the promissory note, a copy of which is attached hereto and made a part hereof, the receipt of which is hereby acknowledged, does grant, bargain and sell to the said Mortgagee, his successors and assigns, in fee simple, the following described land, situate, lying and being in Palm Beach County, Florida, to-wit:

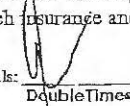
Lot 68, Block G, BOCA MADERA UNIT 2, according to the Plat thereof, recorded in Plat Book 32, Pages 59 AND 60, of the Public Records of Palm Beach County, Florida.

And the said Mortgagor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

Provided always, that if said Mortgagor, his successors or assigns, shall pay unto the said Mortgagee, his successors or assigns, that certain promissory note, of which a true and correct copy is attached, and Mortgagor shall perform, comply with and abide by each and every stipulation, agreement, condition and covenant of said promissory note and of this mortgage, and shall duly pay all taxes, all insurance premiums reasonably required, all costs and expenses including reasonable attorneys fees that Mortgagee may incur in collecting money secured by this mortgage, and also in enforcing this mortgage by suit or otherwise, then this mortgage and the estate hereby created shall cease and be null and void.

Mortgagor hereby covenants and agrees:

1. To pay the principal and interest and other sums of money payable by virtue of said promissory note and this mortgage, or either, promptly on the days respectively the same severally come due.
2. To keep the buildings now or hereafter on the land insured for fire and extended coverage in a sum at least equal to the amount owed on the above described promissory note, and name the Mortgagee as loss payees, and to furnish Mortgagee with a copy of all current policies. If Mortgagor does not provide Mortgagee with copies of the policies showing Mortgagee as loss payees after 14 days written demand by Mortgagee, then Mortgagee may purchase such insurance and

Initials: 
 Double Times

shall add any payments made for such policy to the principal balance owed on the mortgage, and such payments shall accrue interest at the maximum rate of interest allowed by law. In the event any sum of money becomes payable under such policy, Mortgagee, his legal representatives or assigns, shall have the option to receive and apply the same on account of the indebtedness hereby secured or to permit Mortgagor to receive and use it or any part thereof for repair or replacement, without hereby waiving or impairing any equity, lien or right under or by virtue of this mortgage. In the event of loss Mortgagor shall give immediate notice to Mortgagee.

3. To permit, commit or suffer no waste, impairment or deterioration of the property, or any part thereof.
4. To permit no other lien or mortgage to be placed ahead of this mortgage.
5. Mortgagor shall provide proof of payment of annual real estate taxes by March 15, for the preceding years taxes. In the event that Mortgagor does not pay the taxes by such date, the Mortgagee may pay the taxes and the full amount of such payment by Mortgagee shall be added to the principal balance owed on the mortgage, and shall accrue interest at the maximum rate allowed by law.
6. The Mortgagee may at any time pending a suit upon this mortgage, apply to the court having jurisdiction thereof for the appointment of a receiver and such court shall forthwith appoint a receiver, and such receiver shall have all the broad and effective functions and powers in anywise entrusted by a court to a receiver, and such appointment shall be made by such court as an admitted equity and a matter of absolute right to said Mortgagee. The rents, profits, income, issues, and revenues shall be applied by such receiver according to the lien of this mortgage.
7. If any of the sums of money due and owing to Mortgagee under the terms of the promissory note and this mortgage, including but not limited to any advance made by Mortgagee for the payment of insurance or taxes, are not paid within 15 days after the same become due and payable, or if each of the stipulations, agreements, conditions and covenants of the promissory note and this mortgage, or either, are not fully performed or complied with the aggregate sum owed on the promissory note shall become due and payable forthwith or thereafter at the option of Mortgagee, his successors, legal representatives, or assigns.

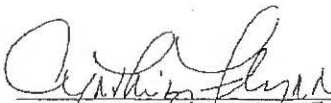
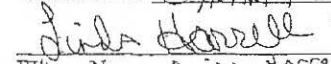
This mortgage and the note hereby secured shall be construed and enforced according to the laws of the State of Florida.

The principal sum secured hereby, along with any interest to be paid in accordance with the terms of the note secured hereby, shall immediately become due and payable without notice, if a transfer of title to the premises by sale or otherwise is made without the Mortgagee's written consent, while this mortgage remains a lien thereon, at the option of Mortgagee, his successors, legal representatives, or assigns.

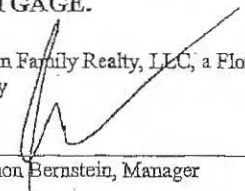
Executed at Palm Beach County, Florida on the date written above.

Signed, sealed and delivered in the presence of:

THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$110,000.00, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.


Witness Name: CYNTHIA FLYNN

Witness Name: LINDA HOWELL

Bernstein Family Realty, LLC, a Florida limited liability company

By: 
Simon Bernstein, Manager

State of Florida
County of Palm Beach

The foregoing instrument was acknowledged before me this 20th day of June, 2008 by Simon Bernstein of Bernstein Family Realty, LLC on behalf of the corporation. He/she is personally known to me or has produced a driver's license as identification.

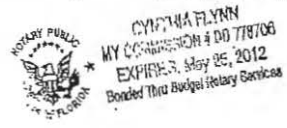
[Notary Seal]

Cynthia Flynn

Notary Public

Printed Name: CYNTHIA FLYNN

My Commission Expires: _____



This is not a certified copy

COPY

PROMISSORY NOTE

\$110,000.00

June 20, 2008
Boca Raton, Palm Beach County, Florida

FOR VALUE RECEIVED, the undersigned promise to pay to the order of Walter E. Sahm and Patricia Sahm, his wife at 8230 SE 177th Winterthru Loop, The Villages, FL 32162 or at such other address as may be indicated in writing, in the manner hereinafter specified, the principal sum of One Hundred Ten Thousand and 00/100 Dollars (\$110,000.00) with interest from the date hereof, at the rate of Six and One Half percent (6.5%) per annum on the balance from time to time remaining unpaid. The said principal and interest shall be payable in lawful money of the United States of America, on the date and in the following manner:

The sum of \$1,150.00 representing a payment of interest only shall be due and payable on June 19, 2009, and on June 19, 2010, and on June 19, 2011 at which time all unpaid principal and accrued but unpaid interest shall be due and payable in full.

All payments shall be first applied to late charges, if any, then to the payment of accrued interest, and the balance remaining, if any, shall be applied to the payment of the principal sum.

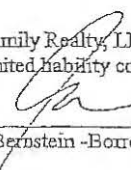
This note may be prepaid, in whole or in part, without penalty, at any time prior to maturity.

This note with interest is secured by a purchase money mortgage, of even date herewith, the terms of which are incorporated herein by reference, made by the makers hereof in favor of the said payee, is given as part of the purchase price of the real property described in the mortgage, and shall be construed and enforced according to the laws of the State of Florida.

If default be made in the payment of any installment under this note, and if such default is not made good within 15 days, the entire principal sum and accrued interest shall at once become due and payable without notice at the option of the holder of this Note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at a later time for the same default or for any subsequent default. Any payment not received within 10 days of the due date shall include a late charge of 5% of the payment due. In the event of default in the payment of this note, interest shall accrue at the highest rate permitted by law, and if the same is placed in the hands of any attorney for collection, the undersigned hereby agree to pay all costs of collection, including a reasonable attorney's fee.

Makers waive demand, presentment for payment, protest, and notice of nonpayment and dishonor.

Bernstein Family Realty, LLC,
a Florida limited liability company

By: 
Simon Bernstein - Borrower, Manager

(Corporate Seal)

The state documentary tax due on this Note has been paid on the Mortgage securing this indebtedness.

DoubleTimes

EXHIBIT

"C"

NC 159



CFN 20120143493
OR BK 25132 PG 1051
RECORDED 04/12/2012 09:21:00
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1051 - 1054; (4pgs)

Prepared by and return to:

John M. Cappeller, Jr.
Cappeller Law
John M. Cappeller, Jr.
350 Camino Gardens Blvd., Suite 303
Boca Raton, FL 33432

AMENDMENT TO MORTGAGE AND PROMISSORY NOTE

This AMENDMENT TO MORTGAGE AND PROMISSORY NOTE (this "Amendment") is entered into effective the 15 day of February, 2012, among BERNSTEIN FAMILY REALTY, LLC, a Florida limited liability company, having an address at 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, FL 33487 (the "Mortgagor"), and WALTER E. SAHM and PATRICIA SAHM, having an address at 8230 SE 177th Winterthru Loop, The Villages, FL 32162 (the "Mortgagee").

WITNESSETH

WHEREAS, Mortgagee granted Mortgagor a purchase money mortgage in the amount of \$110,000.00, evidenced by that certain Promissory Note dated June 20, 2008, (the "Promissory Note"); and

WHEREAS, the Promissory Note is secured, *inter alia*, by that certain Mortgage dated June 20, 2008 from Mortgagor in favor of Mortgagee, recorded on June 26, 2008 in Official Records Book 22723, Page 691, of the Public Records of Palm Beach County, Florida (the "Mortgage"); and

WHEREAS, Mortgagor has asked Mortgagee to extend the term of the Mortgage and the Promissory Note (the "Amendment"); and

WHEREAS, to document the Amendment, Mortgagor is executing and delivering to Mortgagee this Amendment to Mortgage and Promissory Note;

DOCUMENTARY STAMP TAXES AND INTANGIBLE TAXES ON THE ORIGINAL INDEBTEDNESS OF \$110,000.00 WERE PAID IN FULL UPON THE RECORDING OF THE MORTGAGE AND SECURITY AGREEMENT DATED JUNE 20, 2008 AND RECORDED ON JUNE 26, 2008 IN OFFICIAL RECORDS BOOK 22723 PAGE 691, IN THE PUBLIC RECORDS OF PALM BEACH, FLORIDA.

NOW THEREFORE, in consideration of the foregoing premises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Amendment to Mortgage and Promissory Note. Effective June 19, 2011, the parties hereto amend the Mortgage and Promissory Note to provide that by agreement the date on which all principal is due and payable is hereby extended to June 19, 2014. Annual payments of interest only at the rate of 3.5% per annum shall continue to be due on the anniversary date of the Promissory Note until June 19, 2014 when all unpaid principal and accrued interest shall be due and payable in full.

2. Confirmation and Ratification. Mortgagor hereby ratifies and confirms all its obligations set forth in the Mortgage and Promissory Note. Mortgagor hereby certifies to Mortgagee that no event of default has occurred under such documents, nor any event which, with the giving of notice or the passage of time or both, would constitute such an event of default. Mortgagor hereby represents and warrants to Mortgagee that Mortgagor has no defense or offsets against the payment of any amounts due, or the performance of any obligations required by, the Loan Documents.

3. Miscellaneous.

(a) Except as expressly amended herein, the Mortgage and Promissory Note remain in full force and effect.

(b) This Amendment may be executed in multiple counterparts each of which, when taken together, shall constitute one and the same instrument.

(c) In the event of any inconsistency between the terms contained herein, and the provisions of Mortgage and Promissory Note, the terms of this Amendment shall govern.

(d) The individual executing this document hereby certifies that he has authority to engage in and execute this Amendment to Mortgage and Promissory Note.

SEE EXECUTION BLOCK ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

Signed, sealed and delivered in the presence of:

WITNESSES:

MORTGAGOR:

BERNSTEIN FAMILY REALTY, LLC, a Florida limited liability company

D Banks
Print Name: Diana Banks

By: [Signature]
Simon Bernstein, Manager

Shari Dunham
Print Name: Shari Dunham

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 15th day of February, 2012, by Simon Bernstein, as Manager of Bernstein Family Realty, LLC, a Florida limited liability company. He is personally known to me or has produced a driver's license as identification.

(Seal)

[Signature]
Notary Public, State of Florida
Name: Kelly Michele Buchanan
Commission Expires: 7-1-2015
Commission No.: EE 86156



WITNESSES:

[Signature]
 Print Name: Angela Lawrence

[Signature]
 Print Name: Krista Deanne Spert

MORTGAGEE:

[Signature]
 Walter E. Sahn

[Signature]
 Patricia Sahn

STATE OF FLORIDA
COUNTY OF SUMPTER

The foregoing instrument was acknowledged before me this 31 day of March, 2014, by Walter E. Sahn and Patricia Sahn. They are personally known to me or have produced driver's licenses as identification.

(Seal)

[Signature]
 Notary Public, State of Florida
 Name: Angela Lawrence
 Commission Expires: April 3, 2014
 Commission No.: 100977258



Original Copy

EXHIBIT
"D"

Location: City, State, or ZIP

Florida Boca Raton 33434 2753 NW 34th St

Views: 172

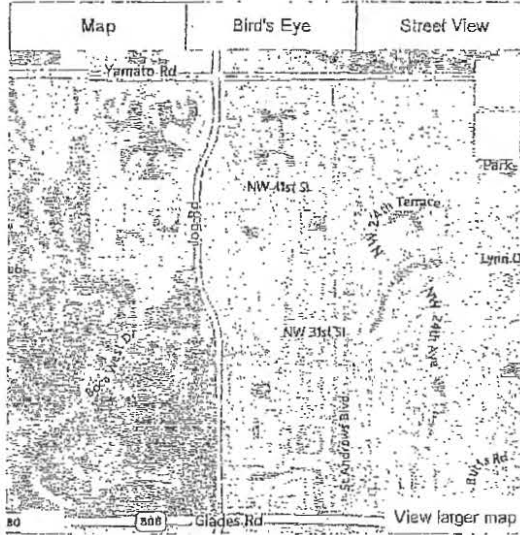
2753 NW 34th St, Boca Raton, FL 33434

Off Market

Zestimate: \$398,850
Rent Zestimate: \$2,665/mo
Est. Ref Payment: \$1,536/mc

See current rates on Zillow
SPECIAL OFFER: AT&T U-verse TV + Internet

Bedrooms: Contact for details
Bathrooms: 3 baths
Single Family: 2,301 sq ft
Lot: 9,147 sqft
Year Built: 1978
Last Sold: Jun 2008 for \$360,000
Heating Type: Forced air



Correct home facts Save Hide Get updates Email more

Description

Property backs up to Saint Andrews School. Completely Gutted and Remodeled in Florida Pastel colors 2009, marble and bamboo floors, courtesy Shidey Bernstein Designs. Tiled backyard with swimming pool. Tiled drive. Neighborhood Description This home backs up to one of the nation's leading Private Schools, Saint Andrews School. <http://www.saintandrews.net>

Cooling Central Parking Unknown Basement Type Unknown

5 homes for sale nearby. [View photos](#)

Home Values

Add owner estimate

Zestimate

\$398,850

+\$9,569 Last 30 days

\$379K \$419K

Zestimate range

Rent Zestimate

\$2,665/mo

+\$73 Last 30 days

\$2.1K \$3.4K

Zestimate range

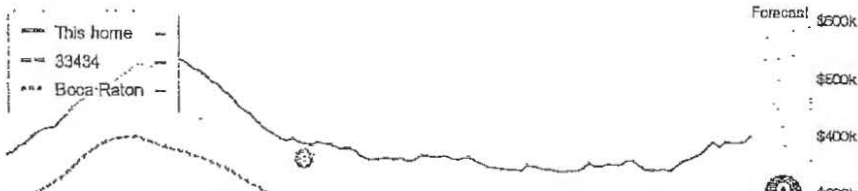
Zestimate forecast

To see Zestimate forecast
Create a free account

One year

Zestimate | Rent Zestimate | more

1 year | 5 years | 10 years



Get a professional estimate

Claire Sheres (4)
23 Recent sales
(561) 414-2792

Maria & Kevin Ferreira (12)
17 Recent sales
(561) 935-5804

Julieta Renteria (2)
(754) 200-2520

Your Name

Phone

Email

I own this home and would like a professional estimate at 2753 NW 34th St, Boca Raton, FL 33434.

Contact Agent

Learn how to appear as the agent above

Hubzu The Easy Way to Buy & Sell Homes Online. Start to Finish.
241224 1th Lane
Palm Beach Gardens, FL 33418
(2 bdr/ 2.0 ba)
\$165,000
[View Details](#)

Similar Homes for Sale

3421 NW 25th Ter, Bgc...
For Sale: \$399,000
Beds: Studio Sqft: 2214
Baths: 2.0 Lot: 8,276

3028 NW 27th Ter, Boc...
For Sale: \$418,000
Beds: 4 Sqft: 2141
Baths: 2.5 Lot: 10,019

3376 NW 25th Ter, Boc...
For Sale: \$379,900
Beds: 3 Sqft: 2137
Baths: 2.0 Lot: 8,712

See listings near 2753 NW 34th St

EXHIBIT
"E"



ANNE M. GANNON
 CONSTITUTIONAL TAX COLLECTOR
 Serving Palm Beach County
 Serving YOU.

Anne M. Gannon
 Constitutional Tax Collector
 Serving Palm Beach County
 P.O. Box 3353
 West Palm Beach, FL 33402-3353

Account Information		
Property Control Number	Property Type	Last Update
06-42-47-10-02-007-0680	Real Property	6/4/2014 9:53:28 AM
Mailing Address: BERNSTEIN FAMILY REALTY LLC 950 PENINSULA CORPORATE CIR STE 3010 BOCA RATON, FL 33487-1387		Property Address: 2753 NW 34TH ST BOCA RATON FL 33434
Owner of Record BERNSTEIN FAMILY REALTY LLC		Deed Number: 0
Legal Description		
BOCA MADERA UNIT 2 LT 68 BLK G		

Notice to Tax Payer

Print A Duplicate Tax Bill or View Tax Payment

To print a duplicate tax bill or view a tax payment, click on the Bill Year in the Tax Bills section below. Click the Print Tax Bill tab on the top of the next screen to print a duplicate tax bill. Note that the entire page may be printed by clicking the "Print this Page" tab.

Tax Bills Section

The "Original Tax Bill" is the annual property tax bill mailed in November. Annual property tax bills (Original Tax Bill) are payable November 1 - March 31. Discounts are provided for early payment.

"Certificate" under the bill type column denotes the purchase of a tax certificate for delinquent property taxes.

"Tax Deed App" indicates a Tax Deed Application (TDA) has been submitted to our office. The Tax Deed Application is a legal document that initiates the process of the property being sold at public auction (Tax Deed Sale) conducted by the Clerk and Comptroller.

If the AMOUNT DUE column below displays \$0.00, taxes are paid for that bill year. This statement is true even if there is a delinquent tax icon displayed (taxes paid after delinquency). Click on the Bill Year to view the Tax Payment section on the Bill Detail screen.

Delinquent Tax Information

Delinquent Taxes: If you see duplicate Tax Years below along with this icon **A**, it indicates delinquent taxes. If the icon is displayed and the "Amount Due" column shows \$0.00 (no amounts due), the **taxes were paid after they became delinquent.** Click on the Bill Year to view the "Payment History" section.

If the Bill Number begins with a year (i.e. 2012:001234), a tax certificate was sold for delinquent property taxes. In the example (2012:001234), the year denotes the year in which the tax certificate was sold. The 2012 Tax Certificate Sale was held June 7, 2012 for delinquent 2011 property taxes.

The amount due will display in the Tax Installment section under the Total Due column (Bill Detail screen). **An additional collection fee of \$6.25 must be added to the total amount due for each delinquent tax year once a tax certificate has been sold.** Please note delinquent taxes cannot be paid online.

Tax Bills							
Bill Year	Bill Type	Bill Number	Gross Tax	Penalty/Fees	Interest	Discount	Amount Due
2013	Original Tax Bill	101304074	\$5,569.25	\$294.81	\$250.62	\$0.00	\$6,114.68
2012	Original Tax Bill	101305382	\$5,578.13	\$0.00	\$0.00	\$0.00	\$0.00

6/4/2014

Account Detail

2011	Original Tax Bill	101305875	\$5,567.64	\$0.00	\$0.00	\$0.00	\$0.00
2010	Original Tax Bill	101306727	\$5,224.63	\$0.00	\$0.00	\$0.00	\$0.00
2009	Original Tax Bill	272180820	\$5,530.77	\$0.00	\$0.00	\$0.00	\$0.00
2008	Original Tax Bill	272263360	\$2,586.68	\$0.00	\$0.00	\$0.00	\$0.00
2007	Original Tax Bill	271374490	\$2,715.92	\$0.00	\$0.00	\$0.00	\$0.00
2006	Original Tax Bill	269598520	\$2,853.31	\$0.00	\$0.00	\$0.00	\$0.00
2005	Original Tax Bill	266929290	\$2,832.62	\$0.00	\$0.00	\$0.00	\$0.00
2004	Original Tax Bill	265655520	\$2,776.47	\$0.00	\$0.00	\$0.00	\$0.00
2003	Original Tax Bill	265003960	\$2,759.54	\$0.00	\$0.00	\$0.00	\$0.00
2002	Original Tax Bill	264042810	\$2,695.10	\$0.00	\$0.00	\$0.00	\$0.00
2001	Original Tax Bill	261202320	\$2,690.11	\$0.00	\$0.00	\$0.00	\$0.00
2000	Original Tax Bill	244536760	\$2,591.80	\$0.00	\$0.00	\$0.00	\$0.00
	Original Tax Bill	258940560	\$2,441.94	\$0.00	\$0.00	\$0.00	\$0.00
1999							
1998	Original Tax Bill	257654180	\$2,369.95	\$0.00	\$0.00	\$0.00	\$0.00

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO: 50 2012 CA 013933 MB AA

v.

TED S. BERNSTEIN; DONALD TESCHER and
ROBERT SPALLINA, as co-personal representatives
of the ESTATE OF SIMON L. BERNSTEIN and
as co-trustees of the SHIRLEY BERNSTEIN TRUST AGREEMENT
dated May 20, 2008; LIC HOLDINGS, INC.;
ARBITRAGE INTERNATIONAL MANAGEMENT, LLC,
f/k/a ARBITRAGE INTERNATIONAL
HOLDINGS, LLC; BERNSTEIN FAMILY
REALTY, LLC,
Defendants.

**ORDER OF DISMISSAL WITH PREJUDICE
OF CERTAIN PARTIES AND CLAIMS**

THIS CAUSE came before this Honorable Court upon the agreement of Plaintiff William E. Stansbury and Defendants Ted S. Bernstein, individually, LIC Holdings, Inc., Arbitrage International Management, LLC, f/k/a Arbitrage International Holdings, LLC and the Shirley Bernstein Trust Agreement dated May 20, 2008, and the Court having reviewed the file and being otherwise duly advised in the premises, it is hereby

ORDERED and ADJUDGED that:

1. The Plaintiff has filed a Notice dropping Ted S. Bernstein as a party and dismissing all claims against him with prejudice. Accordingly, the Plaintiff's claims against Ted S. Bernstein, individually, are dismissed with prejudice and he is dropped as a party to this action, with each party identified in this ¶1 to bear its own attorney fees and costs as to these claims and parties.

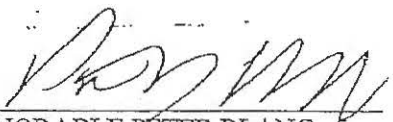


2. The Plaintiff has filed a Notice dropping The Shirley Bernstein Trust Agreement dated May 20, 2008 (the "Shirley Trust") and dismissing all claims against it with prejudice. Accordingly, the Plaintiff's claims against the Shirley Trust are dismissed with prejudice and it is dropped as a party to this action, with each party identified in this ¶2 to bear its own attorney fees and costs as to these claims and parties.

3. The Plaintiff and Defendants, LIC Holdings, Inc. ("LIC") and Arbitrage International Management, LLC, f/k/a Arbitrage International Holdings, LLC ("Arbitrage"), have filed a Stipulation for Dropping Parties and Dismissal With Prejudice of Certain Claims and Counterclaims. Accordingly, all claims by Plaintiff against LIC and Arbitrage are dismissed with prejudice, and Arbitrage's counterclaims against Plaintiff are dismissed with prejudice, with each party identified in this ¶3 to bear its own attorney fees and costs as to these claims and parties.

4. This Order shall have no effect on the Plaintiff's claims against the remaining parties, Estate of Simon Bernstein ("Simon's Estate") and Bernstein Family Realty, LLC ("BFR"). Plaintiff has expressly reserved all such claims against Simon's Estate and BFR and such claims are not dismissed by this Order.

DONE and ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida on this 23 day of June, 2014.


HONORABLE PETER BLANC
Circuit Judge

Copies to:

Alan Rose, Esq., Page Mrachek, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401;

e-mail: arose@pm-law.com;

Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3695 W. Boynton Beach Blvd., Suite #9, Boynton Beach, FL; e-mail: pfeaman@feamanlaw.com;

Benjamin Brown, Esq., Matwiczuk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401; e-mail: bbrown@matbrolaw.com;

Steven Lessne, Esq., GRAY ROBINSON, P.A., 225 N.E. Mizner Boulevard, Suite 500, Boca Raton, FL 33432; e-mail: steven.lessne@gray-robinson.com.

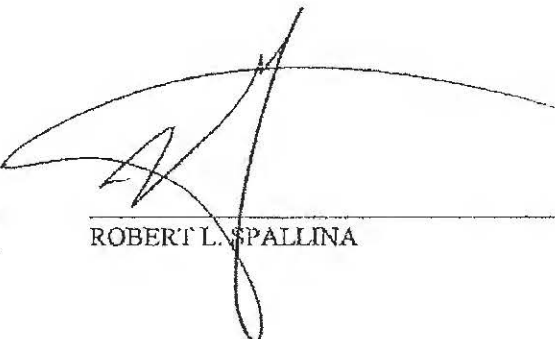
RESIGNATION OF CO-TRUSTEE

I, ROBERT L. SPALLINA, pursuant to Subparagraph B. of Article IV of the SIMON L. BERNSTEIN TRUST dated September 13, 2012 ("*Trust Agreement*"), do hereby resign as co-Trustee of the Trust Agreement, effective immediately.

IN WITNESS WHEREOF, I have hereunto executed this Resignation of Co-Trustee on this 21 day of January, 2014.

*Signed, Sealed & Delivered
in the presence of:*

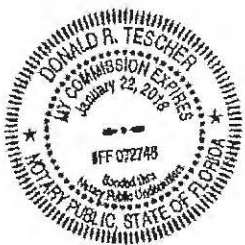

Print Name: LAUREN CIAVANI

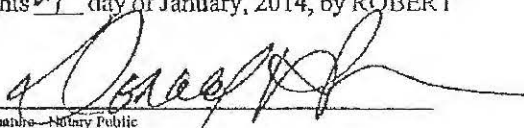

ROBERT L. SPALLINA

Kimberly Moran
Print Name: Kimberly Moran

STATE OF FLORIDA SS
COUNTY OF PALM BEACH

THE FOREGOING was acknowledged before me this 21 day of January, 2014, by ROBERT L. SPALLINA.




Signature - Notary Public

Print, type or stamp name of Notary Public

- Personally Known
- Produced Identification/Type of Identification Produced _____

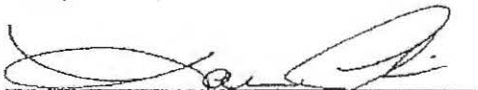
PLAINTIFF'S
EXHIBIT
31


RESIGNATION OF TRUSTEE

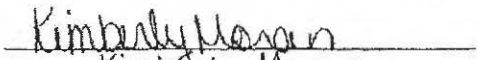
I, DONALD R. TESCHER, pursuant to Subparagraph B. of Article IV of the SIMON L. BERNSTEIN TRUST dated September 13, 2012 ("Trust Agreement"), do hereby resign as Trustee of the Trust Agreement, effective immediately upon TED S. BERNSTEIN accepting his appointment as successor Trustee.

IN WITNESS WHEREOF, I have hereunto executed this Resignation of Trustee on this 22 day of January, 2014.

Signed, Sealed & Delivered
in the presence of:


Print Name: LAUREN GAUXANI

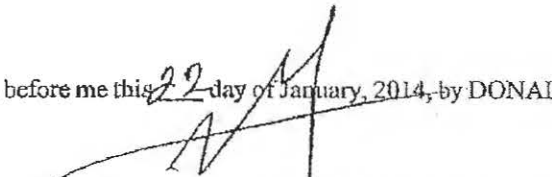

DONALD R. TESCHER


Print Name: Kimberly Moran

STATE OF FLORIDA SS
COUNTY OF PALM BEACH

THE FOREGOING was acknowledged before me this 22 day of January, 2014, by DONALD R. TESCHER.





Signature - Notary Public

Print, type or stamp name of Notary Public

- Personally Known
- Produced Identification/Type of Identification Produced _____

ACCEPTANCE BY SUCCESSOR TRUSTEE

THE UNDERSIGNED successor Trustee hereby accepts his designation as successor Trustee of the SIMON L. BERNSTEIN TRUST dated September 13, 2012, and hereby agrees to administer said Trust in accordance with the terms contained therein, effective immediately.

IN WITNESS WHEREOF, the undersigned has hereunto executed this Acceptance by Successor Trustee on this 3 day of FEBRUARY, 2014.

Signed, Sealed & Delivered in the presence of:

Matthew Logan
Print Name: MATHEW S. LOGAN

Ted S. Bernstein
TED S. BERNSTEIN

Print Name:

STATE OF FLORIDA
SS
COUNTY OF PALM BEACH

THE FOREGOING was acknowledged before me this 3 day of FEBRUARY, 2014, by TED S. BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

Lindsay Baxley
Signature - Notary Public
Lindsay Baxley
Print, type or stamp name of Notary Public

Personalty Known
Produced Identification/Type of Identification Produced

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

CASE NO. 502012CP004391XXXXSB
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,
_____ /

AFFIDAVIT OF DONALD R. TESCHER

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared Donald R. Tescher, upon being duly sworn, deposes and says:

1. I am over the age of eighteen years, sui juris, and have personal knowledge of the facts set forth herein.
2. Tescher & Spallina, P.A. ("Firm") were counsel to Shirley Bernstein and Simon L. Bernstein while they were alive. They had five children borne of their long-time marriage, Ted Bernstein, Pamela Simon, Eliot Bernstein, Lisa Friedstein and Jill Iantoni. Simon was the natural father and Shirley was the natural mother of each of these children. Simon and Shirley also had ten living grandchildren, each of whom was a direct and natural descendant of one of the children. Thus, Simon and Shirley had fifteen lineal descendants.
3. After consultations with Robert L. Spallina and myself or solely with Robert L. Spallina, a Will and Trust was created for each of Simon and Shirley, as amended. I am aware of the final estate plan of each, as expressed in their final testamentary documents, specifically:



- a. Will of Shirley Bernstein dated May 20, 2008 (Exhibit A);
- b. Shirley Bernstein Trust Agreement dated May 20, 2008 (Exhibit B), as Amended on November 18, 2008 (Exhibit C);
- c. Will of Simon L. Bernstein dated July 25, 2012 (Exhibit D); and
- d. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2013 (Exhibit E).

4. The attached five documents are the final documents signed by each of Shirley and Simon, respectively, during their lives. The originals of the Wills were retained in our Firm's safe deposit box (or "vault") until the times of their deaths.

5. It is my understanding and belief that, during their lifetimes, neither Shirley nor Simon shared copies of their testamentary documents with their children. None of the five children were involved in the estate planning process, nor did any of them attend any meetings with myself as counsel.

6. When Shirley died on December 8, 2010, her testamentary documents provided that Simon be given any tangible personal property in her name, other than anything disposed of in a separate written memorandum. The residue of her estate was devised to the Shirley Trust. After her death, the beneficiary of the Shirley Trust was Simon during his life, with the assets disposed of after his death through a limited power of appointment, empowering Simon to transfer the assets to or for the benefit of one or more of their lineal descendants and their spouses.¹

7. Our Firm prepared the July 2012 Amended and Restated Trust Agreement and the Will for Simon Bernstein. Those are the final documents that our Firm prepared and the final documents I am aware of Simon having signed prior to his death in September, 2013. Our Firm

¹ There is an alternate disposition of the assets upon the death of Simon if he did not exercise his power of appointment, but in my view that is irrelevant.

retained the originals of those documents in our safe deposit box until Simon's death. There are no later executed testamentary documents for Simon L. Bernstein.

8. Simon exercised his limited power of appointment in Article II of the July 2012 Will, which specifically references Shirley's Trust and the power given to him under subparagraph E.1 of Article II of Shirley's Trust. Pursuant to that power of appointment, Simon directed Shirley's Trustee to divide the remaining trust assets into equal shares for his then living grandchildren to be added to trusts established for the ten grandchildren under Simon's Trust. Because Simon exercised his power of appointment, the assets in the Shirley Trust were distributed according to Simon's direction, and did not pass under the Shirley Trust to Shirley's default beneficiaries.

9. Under these testamentary documents, neither Ted, Pam, Eliot, Lisa or Jill is a beneficiary of any of their Trusts and Estates. With the sole exception of possibly some specific items of tangible personal property not relevant to the estate and trust administration, Shirley and Simon effectively disinherited all five of their children, and none of them take anything from either of their Trusts or Wills.

10. While he was alive, Simon was the Personal Representative of the Estate of Shirley Bernstein and was the Trustee of the Shirley Bernstein Trust. After Simon's death, under the terms of the Will and Trust, Ted S. Bernstein became the Successor Personal Representative and Successor Trustee. Prior to that time, Ted had not been involved in the administration of Shirley's Estate or Trust. As far as I am aware, Ted was not aware that he would be the successor to Simon until after Simon's death.

11. Upon Ted assuming his fiduciary role as Successor Personal Representative and Successor Trustee, Ted retained our Firm to represent him as a fiduciary. From that point in time until our withdrawal from representing Ted, which was approved by the Court in February 2014, Ted was a responsive client who listened to and followed my advice. At no time did Ted take any action which I advised him would be improper or a breach of his fiduciary duty. In my view, at all times Ted acted as a fiduciary based upon the facts and circumstances and information available to him at that time.

12. At some point after Simon died, a significant asset of Shirley's Trust (a condominium) was sold, and the decision was made to make a partial interim distribution to all of the beneficiaries of the Shirley Trust. In connection with the decision to make an interim distribution, I participated in consulting with Ted and his siblings (other than Eliot) as his counsel. I engaged in a call with various members of the family (other than Eliot). Among those children who participated in the phone call, there was a general consensus that it was appropriate to make an interim partial distribution. I assisted in the mechanics of making these distributions, including providing tax identification numbers and instructions to open a bank account for each of the grandchildren's trusts.

13. At no time did I advise Ted that it would be a violation of his fiduciary duty to make the interim distribution to the trusts for the ten living grandchildren of Simon. I did not advise Ted at any time that there was any question concerning the proper beneficiaries of the Trust, nor was Ted aware of any issue concerning the effectiveness of the exercise of the power of appointment until I advised him and others of that fact in mid-January, 2014.


14. In my view, during the time I was counsel for Ted as fiduciary, it is my opinion that he fulfilled his fiduciary duties and acted in a reasonable and appropriate manner. I am aware of

no facts that would give a court cause to be concerned about whether Ted could continue to fulfill his fiduciary duty in those capacities, or serve as Personal Representative of Simon's Estate.

15. Upon my resignation as Trustee of the Simon Trust, I concluded that the appointment of Ted as Successor Trustee would be consistent with Simon's wishes and would be in the best interest of the family. Under the terms of Simon's Trust, he gave the power to appoint a successor trustee to the last resigning trustee. In this case, for a variety of reasons I concluded that Ted was the logical choice for Successor Trustee, including the following: Ted's knowledge of the facts and of these estate matters; his current service in similar capacities in Shirley's Trust and Estate; his knowledge of the pending litigation with a creditor, William Stansbury; the fact that he is not a beneficiary of or seeking monies from any of the Trusts or Estates; and the fact that I believe him to be a reasonable and competent business person capable of fulfilling his fiduciary duties. Accordingly, after Robert Spallina resigned, I exercised the power given to me by Simon to appoint Ted S. Bernstein as Successor Trustee of the Simon Bernstein Trust.

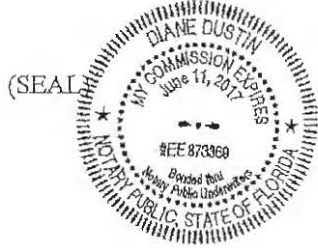
16. The last person Simon would want to serve in any fiduciary capacity is Eliot. Simon did not want Eliot to have any role in any of these matters.

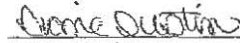
FURTHER AFFLIANT SAYETH NAUGHT.



DONALD R. TESCHER

Sworn to and subscribed before me this 4 day of March, 2014, by Donald R. Tescher, who is personally known to me and who did take an oath.





Notary Public
My commission expires:

To avoid duplication:

**See Tabs 1 - 5 for Exhibits "A" - "E" to
Affidavit of Donald R. Tescher**

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

CASE NO. 502012CP004391XXXXSB
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,
_____ /

AFFIDAVIT OF ROBERT SPALLINA

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared Robert Spallina, upon being duly sworn, deposes and says:

1. I am over the age of eighteen years, sui juris, and have personal knowledge of the facts set forth herein.

2. Tescher & Spallina, P.A. ("Firm") were counsel to Shirley Bernstein and Simon L. Bernstein while they were alive. They had five children borne of their long-time marriage, Ted Bernstein, Pamela Simon, Eliot Bernstein, Lisa Friedstein and Jill Iantoni. Simon was the natural father and Shirley was the natural mother of each of these children. Simon and Shirley also had ten living grandchildren, each of whom was a direct and natural descendant of one of the children. Thus, Simon and Shirley had fifteen lineal descendants.

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¹ There is an alternate disposition of the assets upon the death of Simon if he did not exercise his power of appointment, but in my view that is irrelevant.

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11. Upon Ted assuming his fiduciary role as Successor Personal Representative and Successor Trustee, Ted retained our Firm to represent him as a fiduciary. From that point in time until our withdrawal from representing Ted, which was approved by the Court in February 2014, Ted was a responsive client who listened to and followed my advice. At no time did Ted take any action which I advised him would be improper or a breach of his fiduciary duty. In my view, at all times Ted acted as a fiduciary based upon the facts and circumstances and information available to him at that time.

12. At some point after Simon died, a significant asset of Shirley's Trust (a condominium) was sold, and the decision was made to make a partial interim distribution to all of the beneficiaries of the Shirley Trust. In connection with the decision to make an interim distribution, I participated in consulting with Ted and his siblings (other than Eliot) as his counsel. I engaged in a call with various members of the family (other than Eliot). Among those children who participated in the phone call, there was a general consensus that it was appropriate to make an interim partial distribution. Our Firm assisted in the mechanics of making these distributions, including providing tax identification numbers and instructions to open a bank account for each of the grandchildren's trusts.

13. At no time did I advise Ted that it would be a violation of his fiduciary duty to make the interim distribution to the trusts for the ten living grandchildren of Simon. I did not advise Ted at any time that there was any question concerning the proper beneficiaries of the Trust, nor was Ted aware of any issue concerning the effectiveness of the exercise of the power of appointment at the time that he made the interim distribution.

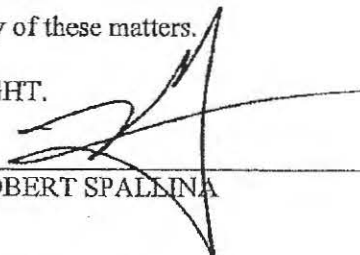
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15. Upon my resignation as Trustee of the Simon Trust, Don Tescher concluded that the appointment of Ted as Successor Trustee would be consistent with Simon's wishes and would be in the best interest of the family. Under the terms of Simon's Trust, he gave the power to appoint a successor trustee to the last resigning trustee. In this case, for a variety of reasons I concluded that Ted was the logical choice for Successor Trustee, including the following: Ted's knowledge of the facts and of these estate matters; his current service in similar capacities in Shirley's Trust and Estate; his knowledge of the pending litigation with a creditor, William Stansbury; the fact that he is not a beneficiary of or seeking monies from any of the Trusts or Estates; and the fact that I believe him to be a reasonable and competent business person capable of fulfilling his fiduciary duties. Accordingly, after I resigned, Don Tescher exercised the power given to him by Simon to appoint Ted S. Bernstein as Successor Trustee of the Simon Bernstein Trust.

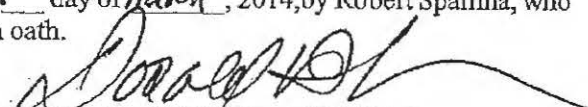
16. The last person Simon would want to serve in any fiduciary capacity is Eliot. Simon did not want Eliot to have any role in any of these matters.

FURTHER AFFIANT SAYETH NAUGHT.



ROBERT SPALLINA

Sworn to and subscribed before me this 10th day of March, 2014, by Robert Spallina, who is personally known to me and who did take an oath.



Notary Public
My commission expires:

(SEAL)



To avoid duplication:

**See Tabs 1 - 5 for Exhibits "A" - "E" to
Affidavit of Robert Spallina**

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

CASE NO. 502012CP004391XXXXSB
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

**TED S. BERNSTEIN, SUCCESSOR TRUSTEE OF THE SIMON L. BERNSTEIN
TRUST, AMENDED DESIGNATIONS OF THE DEPOSITION OF DONALD TESCHER**

Ted S. Bernstein, Successor Trustee of the Simon L. Bernstein Trust, hereby makes amended designations of portions of the deposition of Donald Tescher taken on July 9, 2014.

Page/Line Numbers
13/1-10
14/1-19/2
19/3-21/13
21/14-22/8
22/13-29/13
33/16-34/9
34/12-35/17
37/21-38/22
101/5-102/20



CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: Facsimile **and** U.S. Mail; U.S. Mail; E-mail Electronic Transmission; FedEx; Hand Delivery this 22nd day of September, 2014.

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505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone / (561) 655-5537 Facsimile
email: arose@mrachek-law.com
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

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(561) 833-0867 - Facsimile
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\(john@jmorrisseylaw.com\)](mailto:John.P.Morrissey@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

William H. Glasko, Esq.
Golden & Cowan, P.A.
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(305) 856-9388 - Facsimile
Email: wglasko@palmettobaylaw.com;
Counsel for Lisa Sue Friedstein, individually and
as trustee for her children, and as natural guardian
for M.F. and C.F., Minors; Jill Marla Iantoni,
individually and as trustee for her children, and as
natural guardian for J.I. a minor

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Matwiczuk & Brown, LLP
625 North Flagler Drive, Suite 401
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(561) 651-4004 - Telephone
(561) 651-4003 - Facsimile
Email: attomeys@matbrolaw.com

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mkoskey@feamanlaw.com
Counsel for William Stansbury

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Email: ijb@ijblegal.com
Counsel for Tescher & Spallina

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Donald Tescher, Esq.
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Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
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(561) 832-5900 - Telephone
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jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

1

VOLUME: I
 PAGES: 1-165
 EXHIBITS: 1-15, A

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

IN RE:)
 ESTATE OF SIMON L. BERNSTEIN)

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

3

1 APPEARANCES: (CONT'D)
 2
 3 (Via Telephone)
 4 Irwin J. Block, Esq.
 5 700 South Federal Highway
 6 Suite 200
 7 Boca Raton, FL 33432
 8 561 910-3071
 9 Ijb@ijblegal.com
 10 For the Deponent
 11
 12 (Via Telephone)
 13 John P. Morrissey, Esq.
 14 330 Clematis Street
 15 Suite 213
 16 West Palm Beach, FL 33401
 17 561 833-0766
 18 John@jmorrisseylaw.com
 19 For Molly Simon, Alexandra
 20 Bernstein, Eric Bernstein,
 21 Michael Bernstein
 22
 23
 24
 25

2

1 APPEARANCES:
 2
 3 (Via Telephone)
 4 PETER M. FEAMAN, P.A.
 5 BY: Peter M. Feaman, Esq.
 6 3695 West Boynton Beach Blvd.
 7 Boynton Beach, FL 33436
 8 561 734-5552
 9 Pfeaman@feamanlaw.com
 10 For William Stansbury
 11
 12
 13 (Via Telephone)
 14 MRACHEK, FITZGERALD, ROSE,
 15 KONOPKA, THOMAS & WEISS, P.A.
 16 BY: Alan B. Rose, Esq.
 17 505 South Flagler Drive
 18 Suite 600
 19 West Palm Beach, FL 33401
 20 561 655-2250
 21 Arose@mrachek-law.com
 22 For Ted S. Bernstein
 23
 24
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1 APPEARANCES: (CONT'D)
 2
 3 ALSO PRESENT:
 4
 5 (Via Telephone)
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 21
 22 Jill Iantoni
 23 Mimi McAndrews
 24 Eliot Bernstein
 25 Lisa Friedstein

13

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

3 A. Donald R. Tescher.

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

7 A. Yes; and yes.

8 Q. Where are you physically located today?

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

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

13 A. Yes.

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

16 A. No.

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

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

21 Q. Is your --

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

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

25 A. Yes, sir.

14

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

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

5 MR. ROSE: I'd like to mark that as
6 Exhibit I to your deposition.
7 (Discussion off the record.)
8 (Tescher A, Affidavit of Donald R.
9 Tescher.)

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

12 A. Yes, sir.

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

15 A. Yes.

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

17 A. Yes.

18 Q. Have you reviewed the affidavit recently?

19 A. Yes.

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

23 A. Yes, I did.

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

15

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

3 A. I believe so.

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

7 A. Yes, sir.

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

9 A. Yes, I do.

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

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

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

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

20 A. That is correct.

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

23 Are you familiar with that document?

24 A. Yes, sir.

25 Q. Was your law firm responsible for drafting

16

1 the will and the trust for Shirley Bernstein?

2 A. Yes, it was.

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

6 Are you familiar with that document?

7 A. Yes, sir.

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

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

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

20 A. Yes.

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

25 A. No.

17

1 MR. FEAMAN: Objection to the form.
2 Q. I'll ask a different question: As far as
3 you know, are Exhibits A, B, and C, the will, and
4 the trust, and the amendment and -- the only
5 amendment that you're aware of to the Shirley
6 Bernstein Trust?
7 A. Yes.
8 Q. Now, Exhibit D is the will of Simon
9 Bernstein.
10 Do you see that?
11 A. Yes, sir.
12 Q. And this is a -- not original document,
13 but it appears to be dated on July 25, 2012.
14 A. It appears to be a conformed copy of a
15 will that was executed, apparently, on that date.
16 Q. And this will would have been held in your
17 safe deposit box in the original files with the
18 court upon Mr. Bernstein's death?
19 A. Yes, sir.
20 Q. And as far as you know, is this the last
21 will of Simon L. Bernstein?
22 A. Yes, sir.
23 Q. The last exhibit, Exhibit E, is the Simon
24 L. Bernstein Amended and Restated Trust Agreement,
25 which is dated July 25, 2012.

18

1 Are you familiar with this document?
2 A. Yes.
3 Q. As far as you know, is this the final
4 version of a -- or the last version of any trust
5 document that Simon Bernstein signed prior to his
6 death?
7 A. Yes, sir.
8 Q. Are you familiar with the prior versions
9 of Simon's will and trust from 2008?
10 A. Generally.
11 Q. In the 2012 document, were you and Robert
12 Spallina designated as the successor cotrustees
13 upon the death of Simon Bernstein?
14 A. Yes, we were.
15 Q. And do you recall who had been listed as a
16 successor cotrustee in the 2008 version?
17 A. My -- my recollection -- and I don't
18 specifically recall -- that it might have been Mr.
19 Stansbury.
20 Q. And are you aware of a decision by Simon
21 Bernstein to remove Mr. Stansbury as a successor
22 trustee under his 2012 trust?
23 A. Yes, indirectly.
24 Q. Did you have any discussions with Simon
25 about that decision?

19

1 A. I did not have discussions directly with
2 Simon regarding that decision.
3 Q. Upon Mr. Spallina's resignation as
4 trustee, at some point in time you were the sole
5 remaining trustee of the Simon L. Bernstein Amended
6 and Restated Trust Agreement; is that correct?
7 A. Yes, sir, for one day.
8 Q. And did the trust document give you any
9 powers with regard to deciding who would be your
10 successor?
11 A. The provision of the trust document
12 provides first that if there is none named, that
13 the last surviving trustee can designate the
14 successor trustee.
15 Q. And did you make a decision in your
16 position who should be the successor to you?
17 A. Yes, I did.
18 Q. And who did you select?
19 A. I selected Theodore.
20 Q. And could you tell the court why you
21 selected Mr. Bernstein -- Mr. Ted Bernstein?
22 A. I concluded that he was the logical choice
23 for a variety of reasons, including the fact that
24 he -- among all of the children, probably had the
25 most knowledge of his -- his mother and father's

20

1 matters. He was then serving as successor --
2 personal representative and successor trustee for
3 Shirley after Simon had died. He had, you know,
4 direct knowledge of the litigation that was ongoing
5 with William Stansbury. He's not a beneficiary
6 under any of those documents, other than dividing
7 up tangible personal property; and I believe him to
8 be a competent person and a competent businessman.
9 Q. Did you give any consideration to
10 selecting Eliot Bernstein for that role?
11 A. Not at all.
12 Q. Do you think that Simon Bernstein would
13 want Eliot Bernstein to have any fiduciary role in
14 connection with his will or his trust?
15 A. I do not.
16 Q. And can you tell us why?
17 A. There has been --
18 MR. FEAMAN: Objection to the form.
19 Q. You can answer, sir.
20 A. Over -- over the years it was made
21 apparent to us by members of the Bernstein family
22 that Eliot -- Eliot suffers from certain
23 impediments and impairments that would affect his
24 judgment and ability to act in an impartial fashion
25 and to handle the affairs that would be necessary

21

1 to be handled.

2 Eliot and his family -- particularly his

3 siblings -- did not enjoy a -- a wonderful

4 relationship. It's my understanding that he, at

5 times, threatened -- I'm not sure if he actually

6 sued -- but he certainly threatened to sue certain

7 members of the family.

8 In fact, my recollection is that there is

9 an agreement that Si Bernstein had Eliot and his

10 wife execute regarding his ceasing that activity,

11 in exchange for which -- I believe that there were

12 payments to be made to Eliot Bernstein in

13 connection with helping to support him.

14 Q. Now, do you recall Mr. Stansbury also

15 being named as the successor personal

16 representative under Simon's 2008 document?

17 A. I don't specifically recall, but I think

18 that was the case.

19 Q. And in the documents that were signed July

20 25th, Mr. Stansbury is not named in any capacity;

21 is that correct?

22 A. That is correct.

23 Q. Do you know what happened between or

24 around July of 2012 that would have caused Simon

25 Bernstein to want to remove William Stansbury from

22

1 having any role or say in his affairs?

2 MR. FEAMAN: Objection to the form.

3 A. Well, I -- I believe -- although I'm not a

4 hundred percent certain -- that litigation had

5 already commenced by Mr. Stansbury against Mr.

6 Bernstein -- Simon Bernstein -- as well as the Life

7 Insurance Concepts and other entities around that

8 time.

9 Q. Did you have personal knowledge of Simon's

10 reaction to being sued by William Stansbury?

11 A. Unfortunately, no, I do not.

12 Q. Okay. That's fine.

13 Now, in connection with the estate

14 planning, did Simon take any extra precautions or

15 special arraignments in dealing with assets that

16 were being provided to or set aside for Eliot

17 Bernstein?

18 A. Yeah. And, again, this was not -- this

19 was not a matter that our firm was involved in

20 creating or structuring.

21 Simon Bernstein had trusts created for

22 Eliot Bernstein's three children. He had those

23 trusts become the members -- sole members of a

24 limited liability company. He provided the

25 financing and the monies to acquire their current

23

1 residence, which is owned in that limited liability

2 company; and, in essence, owned by those three

3 trusts for Eliot Bernstein's children.

4 Q. And were those elaborate estate plans

5 designed and created so that Eliot would not have

6 any assets in his individual name or control?

7 A. I believe that that was part of the

8 rationale.

9 Q. Prior to the time that you resigned, Ted

10 was not playing any role in the Simon estate or the

11 Simon trust; is that accurate?

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

13 Q. Ted was not involved --

14 A. Ted?

15 Q. -- in a fiduciary capacity for the Simon

16 estate or for the Simon trust prior to your

17 resignation; is that accurate?

18 A. That is correct.

19 MR. FEAMAN: Objection to form.

20 MR. ROSE: What's the objection?

21 MR. FEAMAN: No predicate. Overly broad.

22 Q. Now, was Ted at that same time serving in

23 a fiduciary capacity as the successor trustee of

24 the Shirley Bernstein Trust and the successor PR of

25 the Shirley Bernstein estate?

24

1 A. Yes, sir.

2 Q. And was your law firm representing him in

3 his capacity as a fiduciary on the Shirley side?

4 A. Yes, we were.

5 Q. During the time that Ted was being

6 represented by you, did there come -- from time to

7 time -- situations where you would give advice of

8 what -- what action should be taken in a given

9 circumstance?

10 A. Our firm did; yes.

11 Q. Did Ted generally follow your advice?

12 A. Yes.

13 Q. Were there any times when Ted specifically

14 refused to follow your advice?

15 A. No.

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

17 side --

18 A. Well, I take that --

19 Q. -- not especially relevant, but it relates

20 to Ted's ability and capacity to serve as a

21 fiduciary on the Simon side -- but was there a time

22 when there was a sale of a large asset on the

23 Shirley side?

24 A. Yes. One of the --

25 MR. FEAMAN: Objection.

25

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

2 Q. And were there discussions concerning

3 whether to make an interim distribution at that

4 time?

5 A. Yes, there were.

6 Q. And at the end of the -- at the end of the

7 day, after whatever discussions occurred, did your

8 firm ever advise Ted that it would be improper for

9 him, as trustee, to make an interim distribution?

10 A. We never advised him that it was improper.

11 We advised him to be cautious about making

12 distributions, because at that time the Shirley

13 trust was a named defendant in the Stansbury

14 litigation.

15 Q. And with respect to that -- so long as

16 there was sufficient funds left over to cover

17 whatever claim there was, there would be no problem

18 with an interim distribution; is that accurate?

19 A. Assumedly.

20 MR. FEAMAN: Objection to form.

21 Q. Now, Stansbury's claim has been against

22 the estate of Shirley Bernstein or the Shirley

23 Bernstein Trust have been dismissed with prejudice;

24 are you aware of that?

25 A. Yes.

26

1 Q. Back at the time when an interim

2 distribution was being considered, what were your

3 thoughts as to the merits of the lawsuit by Mr.

4 Stansbury against the Shirley Bernstein estate or

5 the Shirley Bernstein Trust?

6 MR. FEAMAN: Objection to the form.

7 A. I thought it was ludicrous, frankly.

8 They continued to keep naming Mr. Spallina

9 and myself as the trustees of that trust, which we

10 never were in -- in all of the pleadings.

11 That trust had -- Shirley never owned any

12 interest in the business. And I could see no

13 reason why Mr. Stansbury was attempting to reach

14 into that trust, other than the fact that it had

15 some assets.

16 Q. Now, there is an issue -- there is an

17 issue on the Shirley side about whether the

18 distribution should have been made to all 10

19 grandchildren or to only six.

20 Were you aware at the time of the interim

21 distribution that there was a question about

22 distributions to six versus 10?

23 A. Not at that time; no.

24 Q. As far as you know, was Ted aware of the

25 issue of six versus 10?

27

1 MR. FEAMAN: Objection to the form.

2 A. To the best of my knowledge, I don't think

3 he was at that time.

4 Q. One second, please.

5 Do you recall when the Shirley Bernstein

6 Trust sold the condominium that, among the contents

7 of the condominium would be property that would

8 have then been owned by the estate of Simon

9 Bernstein?

10 A. Well, under -- under Shirley's documents,

11 all the tangible personal property passed to Simon.

12 Q. I thought -- at the time that Shirley's

13 condo was sold, whatever contents were in it would

14 have been owned by Simon's estate.

15 A. Correct.

16 Q. At the time you were the personal

17 representative or copersonal representative of

18 Simon's estate; is that correct?

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

20 Q. Did you and the other copersonal

21 representative agree that the -- that the property

22 should be sold with the condominium; and that if

23 there was ever a time in the future when there

24 needed to be some allocation, it could be handled

25 in the future, rather than either interfering with

28

1 the sale of the condo, or requiring the furniture

2 to be removed from the condo?

3 MR. FEAMAN: Objection to the form.

4 A. I don't recall if I was directly involved

5 in that discussion.

6 Q. Does it make sense to you that if the

7 beneficiaries of the Shirley trust are the same as

8 the beneficiaries of the Simon estate should not

9 undergo an expense to move furniture or undertake

10 an allocation if the money is going to the same

11 people?

12 A. Correct.

13 Q. And if at some later point in time it

14 makes a difference, couldn't somebody then go back

15 and allocate some portion of the purchase price

16 from the Shirley condo and give the money to the

17 Simon estate for the value of the -- of his

18 personal property that was included in the sale?

19 A. Yes, it could true up.

20 Q. Does that make more sense to you, that an

21 estate with limited resources -- to true it up at

22 the end, if it matters, rather than undertake that

23 expense at the time of the sale?

24 MR. FEAMAN: Form.

25 A. From a practical standpoint, given the

<p style="text-align: right;">33</p> <p>1 resignation form?</p> <p>2 A. I believe it exists; and I believe it's</p> <p>3 included somewhere in all the discovery that, you</p> <p>4 know, you all have from our files.</p> <p>5 Q. So then you do have it in your files at</p> <p>6 some point?</p> <p>7 A. I believe that we do. I know it exists.</p> <p>8 I saw it.</p> <p>9 Q. Did you excise -- or excuse me -- execute</p> <p>10 a resignation?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Do you recall the date of your</p> <p>13 resignation?</p> <p>14 A. No. I do not, other than to reference it</p> <p>15 the day after Mr. Spallina's resignation.</p> <p>16 Q. All right. Now, in your exercise of what</p> <p>17 you term your "appointment of a successor trustee,"</p> <p>18 what form did that exercise take?</p> <p>19 Did you write a letter? Or what did you</p> <p>20 do?</p> <p>21 A. It's a written form. It's "Resignation as</p> <p>22 Successor Trustee and Appointment of Successor," I</p> <p>23 believe.</p> <p>24 Again, I don't have the benefit of having</p> <p>25 the document in front of me, sir, so I'm at a</p>	<p style="text-align: right;">35</p> <p>1 A. Not for purposes of paragraph 3(b) -- not</p> <p>2 for purposes of paragraph 3(a).</p> <p>3 For purposes of paragraph 3(b), he would</p> <p>4 be.</p> <p>5 Q. And where does 3(a) start?</p> <p>6 A. "The remaining trustees, if any."</p> <p>7 Q. All right. And did you not tell me that</p> <p>8 you exercised your power of appointment pursuant to</p> <p>9 the sentence that is actually two lines above that?</p> <p>10 A. Well, you probably didn't -- what I said</p> <p>11 to you was that, if the remaining trustee is the</p> <p>12 one who's making the appointment, the "flush"</p> <p>13 language dealing with "related or subordinate</p> <p>14 party" is not material.</p> <p>15 It's only material if a beneficiary of the</p> <p>16 trust picks a related or subordinate person to</p> <p>17 serve as their trustee.</p> <p>18 Q. Let me draw your attention, if I could, to</p> <p>19 the definitional section of this document, which is</p> <p>20 -- I believe begins at page 5, paragraph E.</p> <p>21 A. Yes, sir.</p> <p>22 Q. Would you go there, please?</p> <p>23 A. Okay.</p> <p>24 Q. And this is the definitional section of</p> <p>25 the trust; is that correct?</p>
<p style="text-align: right;">34</p> <p>1 little bit of a loss.</p> <p>2 But it was a standard document that we</p> <p>3 would use in our office to have somebody resign and</p> <p>4 appoint a successor.</p> <p>5 Q. Okay, 'cause I have not seen such a</p> <p>6 document that you describe.</p> <p>7 MR. ROSE: I think they've been produced.</p> <p>8 If you want me to email you a copy, Peter, I'll be</p> <p>9 glad to do it.</p> <p>10 MR. FEAMAN: Sure. That will be fine.</p> <p>11 MR. ROSE: Okay.</p> <p>12 Q. All right. Now, the -- I'd like to draw</p> <p>13 your attention to the paragraph that you brought me</p> <p>14 to, which is paragraph 3 on page 16.</p> <p>15 A. Yes.</p> <p>16 Q. It says that -- it's the last paragraph of</p> <p>17 page 16 -- "A trustee appointed under this</p> <p>18 paragraph shall not be a related or subordinate</p> <p>19 party of the trust."</p> <p>20 Do you see that?</p> <p>21 A. Yeah, but I --</p> <p>22 Q. Okay.</p> <p>23 A. Go ahead. I'm sorry.</p> <p>24 Q. Is Mr. Bernstein -- Ted Bernstein -- a</p> <p>25 related or subordinate party of the trust?</p>	<p style="text-align: right;">36</p> <p>1 A. This is a definition provision.</p> <p>2 Q. All right. And under paragraph E, let me</p> <p>3 call your attention to paragraph 7, which appears</p> <p>4 on page 7.</p> <p>5 A. Correct.</p> <p>6 Q. It says "A related or subordinate party to</p> <p>7 a trust describes --" could you read that into the</p> <p>8 record?</p> <p>9 A. Yes, sir. 7: "Related or subordinate</p> <p>10 party: A related or subordinate party to a trust</p> <p>11 describes a beneficiary of the subject trust or a</p> <p>12 related or subordinate party to a beneficiary of</p> <p>13 the trust as the terms 'related or subordinate</p> <p>14 party' are defined under code section 672(c)."</p> <p>15 Q. And have you reviewed the code section</p> <p>16 referred to there as to how it's defined?</p> <p>17 A. I'm generally familiar with 672(c),</p> <p>18 although I don't have in front of me.</p> <p>19 Q. And does it define a related or</p> <p>20 subordinate party as a child or issue of a grantor?</p> <p>21 A. I would not want to comment without having</p> <p>22 the code provision in front of me.</p> <p>23 Q. Okay. So as you sit here today, you don't</p> <p>24 -- you don't know one way or the other whether a</p> <p>25 related party under that code section would include</p>

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1 a child of the grantor; is that correct?

2 A. They would be related to the grantor.

3 Q. Is the grantor in this case under this

4 trust Simon Bernstein?

5 A. He was the grantor. He died.

6 Q. And is it your understanding that Ted

7 Berustein is an issue of the grantor --

8 A. He certainly is.

9 Q. -- as used in the code section referred to

10 in your document 672?

11 A. Yes.

12 Q. I also want to direct your attention to --

13 under the definition section, (e)(1).

14 Do you see where it says "Children, Lineal

15 Decedents"?

16 A. Yes, sir.

17 Q. Okay. Now, that definition paragraph

18 bleeds over on the top of page 6.

19 Could you turn there?

20 A. Yes, sir.

21 Q. All right. Could you read the last

22 sentence of paragraph (e)(1), beginning with

23 "Notwithstanding."

24 A. "Notwithstanding the foregoing, for all

25 purposes of this trust and the dispositions made

38

1 hereunder, my children, Ted S. Bernstein, Pamela B.

2 Simon, Eliot Bernstein, Jill Iantoni, and Lisa S.

3 Friedstein shall be deemed to have predeceased me,

4 as I have adequately provided for them during my

5 lifetime."

6 Q. All right. Does -- does that provision

7 apply, in your opinion, to the appointment of a

8 successor trustee?

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

10 Q. Okay. Now, it says "Notwithstanding the

11 foregoing," it says "for all purposes of this

12 trust."

13 Are you limiting "for all purposes of this

14 trust" to answer that question?

15 A. Am I limiting the "Notwithstanding the

16 foregoing"?

17 Q. Yeah. What does "for all purposes of this

18 trust" mean if it doesn't also include the children

19 as eligible to be appointed as a successor trustee?

20 A. This definition is intended solely for

21 purposes of determining whether they are

22 beneficiaries under the trust.

23 Q. So when you said, "for all purposes of

24 this trust," you didn't really mean all purposes of

25 this trust; is that what you're saying?

39

1 A. I think you have to read it in context of

2 the entire document.

3 Q. And "for all purposes of this trust," you

4 wrote that the children of the grantor are

5 predeceased. So for all purposes of this trust, if

6 the children have predeceased, then wouldn't that

7 mean that Ted Bernstein, as one of the children,

8 would not then be eligible to be appointed by you

9 as a successor trustee?

10 A. One could make that tortured argument, if

11 you'd like.

12 Q. Okay. All right. Now, I wanted to ask

13 you a question about your affidavit.

14 A. Yes, sir.

15 Q. I want to draw your attention to paragraph

16 5.

17 A. Yes.

18 Q. You state in the second sentence of

19 paragraph 5, quote, "None of the five children were

20 involved in the estate planning process, nor did

21 any of them attend any meetings with myself as

22 counsel."

23 Did I read that correctly?

24 A. You read it correctly.

25 Q. When you refer to "estate planning

40

1 process," are you talking about the 2008 estate

2 planning process that you did for the Bernsteins or

3 the 2012 estate planning process that you allegedly

4 did for Simon Bernstein?

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

6 2008 process.

7 With regard to the subsequent process, I

8 did not attend any meetings as counsel in

9 connection with the 2012 planning.

10 Q. So you then have no personal knowledge as

11 to --

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

13 Q. -- the intent -- if I could finish my

14 question -- you then have no personal knowledge as

15 to the intent of Simon Bernstein when he allegedly

16 changed his trust and will in 2012; is that

17 correct?

18 A. I believe that I did not have direct

19 knowledge -- hearing it from his lips; that would

20 be correct.

21 Q. Now, I want to turn to some of the

22 exhibits that I sent to the court reporter in

23 advance.

24 A. Yes, sir.

25 MR. FEAMAN: Alan, I believe you have

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1 question, Peter, which is why you keep asking it.
 2 MR. ELIOT BERNSTEIN: I don't think it's
 3 improper at all.
 4 A. I am --
 5 Q. You are recommending, sir, Mr. Ted
 6 Bernstein, the PR, you're the previous PR. And
 7 since you're in the business of recommending, would
 8 you recommend to Ted Bernstein as successor
 9 personal representative to take assets -- to take
 10 steps necessary to try to get these insurance
 11 proceeds into the estate of Simon Bernstein, since
 12 the PR has a fiduciary obligation to all interested
 13 persons of an estate?
 14 A. I think that Mr. Bernstein -- Ted
 15 Bernstein -- should do what he should do based upon
 16 his standing as a fiduciary; and if that means not
 17 taking a position -- if that means taking a
 18 position on behalf of the estate, if that means
 19 standing silent and letting the chips fall where
 20 they may, those are decisions that he will have to
 21 make.
 22 Q. And what decision did you make as personal
 23 representative with regard to those estate assets?
 24 A. We felt that they belonged to the '95
 25 trust; that there was enough evidence around that

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1 the trust, in fact, existed; and that it ought to
 2 be reestablished if it could be.
 3 That was our determination. The family --
 4 Q. Were you aware of the 2000 trust?
 5 A. Yes, we were.
 6 Q. Okay. And is that trust -- can that trust
 7 be found?
 8 A. I think so, if I'm not mistaken.
 9 I'm not 100 percent certain about that,
 10 Peter.
 11 Q. And is that also a life insurance trust?
 12 A. I believe it is, in the sense that it was
 13 going to be the owner and beneficiary of the
 14 policy, I believe.
 15 Q. And the --
 16 A. The reason why -- let me just tell you.
 17 The reason why Si never wanted to put the
 18 ownership out of his control was for the very
 19 reason that he wanted to be able to control where
 20 that policy was ultimately going.
 21 Q. And the two other policies that were paid
 22 to the --
 23 A. Yes, sir.
 24 Q. -- estate --
 25 A. Yes, sir.

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1 Q. -- were they in a trust or owned by him
 2 personally?
 3 A. Well, they were paid --
 4 Q. Were they placed into a trust?
 5 A. No. They were owned by him personally,
 6 and they were payable to the estate.
 7 Q. Okay. Did Eliot Bernstein ever express to
 8 you his disagreement of -- regarding the estate --
 9 of Simon Bernstein's noninvolvement in the Illinois
 10 action?
 11 A. He might have. I don't recall.
 12 Q. You don't recall? And if he might have --
 13 A. He --
 14 Q. -- do you recall what you might have said?
 15 MR. BLOCK: I object to the form of that
 16 question.
 17 A. I don't know how to respond to that
 18 question.
 19 Q. Did your office have disagreements with
 20 Chicago counsel in emails about the filing of the
 21 action in Illinois?
 22 A. We -- we did not necessarily totally agree
 23 with what they wanted to do.
 24 Q. And were the -- some of the children of
 25 Mr. Simon Bernstein fearful that the claim of Mr.

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1 Stansbury would consume the insurance proceeds and,
 2 therefore, wanted to keep those insurance proceeds
 3 that are the subject of the litigation in Illinois
 4 out of the estate at all costs?
 5 MR. BLOCK: Peter, what does that have to
 6 do with the issue before the court? This is Block.
 7 You know, I'm trying to be quiet, but I think
 8 you're really going far afield here.
 9 MR. FEAMAN: Okay. Fair -- fair comment.
 10 Q. Let me ask one or two more questions: Did
 11 Ted Bernstein express to you -- either email or
 12 orally while you were personal representative --
 13 his desire to keep the insurance proceeds out of
 14 the estate of Simon Bernstein so that it would not
 15 be subject to the claim of Mr. Stansbury as a
 16 creditor?
 17 A: I don't recall. I mean, obviously we all
 18 knew that, if the proceeds were payable to the
 19 estate --
 20 MR. BLOCK: Don, did you hear my objection
 21 on privilege?
 22 THE WITNESS: Yes, sir.
 23 MR. BLOCK: If you want to answer it,
 24 that's up to you.
 25 MR. FEAMAN: Yeah. I'm asking that

Eliot I. Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
(561) 245-8588
Pro Se Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
_____ X

ELIOT I. BERNSTEIN, *et al.*,

Plaintiffs,

-against-

07-cv-11196 (SAS)

APPELLATE DIVISION, FIRST
DEPARTMENT DEPARTMENTAL
DISCIPLINARY COMMITTEE, *et al.*,

PLAINTIFF'S OPPOSITION
TO PROSKAUER
DEFENDANT'S MOTION
FOR SANCTIONS

Defendants.
_____ X

PRELIMINARY STATEMENT

Plaintiff Eliot I. Bernstein ("Bernstein"), respectfully submits this memorandum in opposition to the motion of Proskauer Rose LLP, Kenneth Rubenstein, Stephen C. Krane (deceased), and the Estate of Stephen R. Kaye (together "Proskauer"), pursuant to Rule 11 of the Federal Rules of Civil Procedure, and 28 U.S.C. § 1651 to impose sanctions, both monetary and injunctive, against Plaintiff Bernstein.



ARGUMENT

Proskauer replies for only limited defendants from Amended Complaint and Proskauer's Counsel Gregg Mashberg even fails to list himself as a Proskauer Defendant and Defendant in responding, while already having responded to various pleadings Pro Se acknowledging his acceptance of service as a Defendant. Many, most, of the Defendants have not responded to any pleadings and Proskauer's motion is only on behalf of a few "cherry picked" Proskauer Rose defendants from the Amended Complaint and therefore cannot be taken into consideration to sanction Bernstein.

Proskauer and Mashberg are conflicted and should not be Representing against their former client, or representing themselves where they will be called as witness, or representing themselves Pro Se and on behalf of others while defendants, or representing their law firm which is a defendant, as certainly their liability carrier would object as this court should, where they are the central RICO defendants complained of, all representations by Proskauer of Proskauer are violations of Attorney Conduct Codes and Law.

Proskauer also states all their contentions on behalf of New York Attorney General ("NYAG"), where such contentions should have been stated by NYAG and not by Proskauer. Proskauer has no grounds substantiated from its own side.

Proskauer refers to Lamont filings when there should be no rulings on Lamont other than to sanction him for he has no basis in the lawsuit, yet these Lamont pleadings and the rulings based upon them all seem staged to prejudice Plaintiff as if Lamont and this Court work for Proskauer too, as is commonplace in RICO conspiracies where the victims are targeted from all



sides. Also, evidence presented in the Motion to Rehear 3¹ shows that Judges are being illegally wiretapped and harassed to pervert and ILLEGALLY OBSTRUCT JUSTICE, by the very Officials in charge of Attorney at Law Conduct within the Courts. Yes, the heads of the Disciplinary Departments are accused of blocking due process against their "targets," including but not limited to, Anderson and the legally related cases, through MISUSE OF JOINT TERRORISM TASK FORCE FUNDS and VIOLATIONS OF THE PATRIOT ACT, to OBSTRUCT JUSTICE and these are claimed again by CREDIBLE EYEWITNESSES TO THE CRIMES. The crimes now alleged involve several of this RICO Lawsuits' defendants and wholly support Plaintiff's contentions of ABUSE OF PROCESS and RICO activity within state and federal agencies to Obstruct Due Process and Procedure in the courts and in prosecutorial offices, exactly as claimed in the Motions to Rehear 1², 2³ & 3. Perhaps this Court continues to attempt to Obstruct these material facts and motions because Officers of this Court and the Second Circuit Court have been accused therein of being key conspirators in aiding and abetting and failing to allow due process and obstruction that if heard might land them in jail. This CONFLICT OF INTEREST, ruling on matters in which one is the accused is beyond reproach,

¹ Motion to Rehear 3, included by reference in entirety herein can be found at <http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rhear%20and%20Rcopen%20Obstruction%20of%20Justice16555%20WITH%20EXHIBITS.pdf>

² Motion to Rehear 1, included by reference in entirety herein can be found at <http://www.iviewit.tv/20120727%20COURT%20STAMPED%20FINAL%20SIGNED%20Motion%20to%20Remand%20and%20Rehear%20Lawsuit%20after%20Investigations%20of%20the%20New%20York%20Attorney%20General%20415935.pdf>

³ Motion to Rehear 2 <http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130228%20FINAL%20SIGNED%20Motion%20to%20Rhear%20and%20Reopen%20AG%20Conflicts%20.pdf>



should force this Court to turn this lawsuit over to a non conflicted court or find non conflicted Court Officers to adjudicate and those members accused in Motions to Rehear 1, 2 and 3, should immediately cease any further rulings where they are accused of FELONY CRIMES therein. Finally, it has also come to Plaintiff Bernstein's attention that former Chairman of the New York Senate Judiciary Committee, Senator John Sampson, who was conducting hearings and investigations into the Court and Public Office Corruption alleged by Bernstein, Anderson and other related cases, has admitted that he was both THREATENED AND THEN TOOK A BRIBE to cover up the crimes alleged against public officials and court officers and again this has OBSTRUCTED JUSTICE IN THESE HEARINGS⁴.

Proskauer states the motion is clearly vexatious and frivolous yet cites not a single claim to support such allegation and defamatory claim in efforts to circumvent the substantive evidence in the Motion to Rehear 1, 2 and 3. The Motions to Rehear filed by Plaintiff are based partially on acceptance of a verified conflict admission by a Senior Ranking Officer of the Attorney General's office that precludes the New York Attorney General from representing themselves and any others and where the Attorney General has promised Plaintiff that they are seeking counsel and new counsel would get back to him several months ago, as clearly stated in the telephone conversation transcripts exhibited in the Motion to Rehear 1 and 2. None of the Motions to Rehear filed by Plaintiff are vexatious or frivolous, as all Motions to Rehear are

⁴ UPDATE - INDICTMENTS COMING : Iviewit Breaking News: NY Supreme Court Ethics Oversight Bosses Alleged MISUSE of Joint Terrorism Task Force Resources & Funds & Violations of Patriot Acts Against Civilian Targets for Personal Gain... US Senator John Sampson Threatened & Bribed to Cover Up NY & Federal Corruption!!
<http://www.free-press-release.com/news-iviewit-breaking-indictments-coming-us-senator-john-sampson-threatened-bribed-to-cover-up-ny-federal-corruption-1369140092.html>



strongly supported with valid evidence and testimony and statements from credible eyewitness experts skilled in the Art of Attorney Disciplinary complaints, all of which has not been considered by the Court, The Court's rulings appear to simply mimic and copy and paste whatever baseless and harassing claims of Proskauer in their motions as the facts, with no evidence to support their claims and thus the Motions to Rehear 1 and 2 been wrongly interpreted by the Court thereby further depriving Bernstein justice. In fact, the Court should not even allow submissions by those in absolute conflict with Plaintiff and this lawsuit, which consists of virtually all defense counsel, as they are tendered in conflict, violate Attorney Conduct Codes and State and Federal Law and act to deny due process through obstruction of these proceedings.

Proskauer claims August 08, 2008 Order to Dismiss was with Prejudice. This is absolutely incorrect and baseless without any valid proof of it. Again, trying to paint a picture based on false statements, further fraud on the court.

Proskauer falsely claims with scienter that the call with the AG was a one off call and that the James Rogers who was acting on behalf of the Chief of Staff who ADMITTED CONFLICT AND THE NEED FOR COUNSEL did not know who Bernstein was or why he was making the claims he made. This is absolutely incorrect, as the transcripts of the calls exhibited in Motion to Rehear 1 and 2 show, as New York Attorney General Chief of Staff under Cuomo, Steven M. Cohen, who Bernstein had been working with for several years on the Criminal Complaints against Cuomo, the AG, Eliot Spitzer and himself, to get them investigated by a non conflicted party was suddenly caught burying the complaints instead, again through a myriad of



conflicts and violations of law. Bernstein became aware that the complaints were being
CORRUPTION STALLED by Cohen and Cohen was caught attempting to bury the complaints
through a myriad of conflicts of interest and violations of public office and law, along with
Emily Cuomo Cole who was handling the complaints in conflict as ordered by Cohen. More
aptly Emily Cuomo Cole was mishandling the complaints, as the complaints were against
Andrew Cuomo and Cohen and where Emily and Andrew are believed to be related and Emily
was Cohen's assistant, the conflicts and obstructions were more than obvious. Cohen, as Chief
of Staff when Cuomo was AG, had gone to Governor's assistant when Cuomo became Governor
and had buried complaints filed with both offices while claiming they were being handled.
When Cohen got caught burying the complaints and when Emily Cole was exposed as a relative
of Cuomo, Cohen then referred Bernstein back to the AG's office to now investigate the
complaints and claimed he could no longer handle them, referring Bernstein to a one Harlan
Levy represented as the new Chief of Staff to Scheinderman, who Cohen claimed would know
all about what was going on prior to Bernstein's call as he was going to fully brief him, as clearly
evidenced in the transcripts.

The call to Levy was intercepted by James Rogers, claiming he was Special Counsel and
Senior Advisor to the Attorney General SCHEINDERMAN DIRECTLY who took the call and
claimed he was directed to handle the matters by Levy and was authorized to do so, obviously he
had been briefed on the LONG HISTORY of the CORRUPTION STALLED COMPLAINTS
AGAINST CUOMO AND COHEN prior to taking the call or he had accepted the call
unauthorized to derail the matters illegally. Either way, Roger's astutely and honestly identified



the problem for the AG all along was that their offices were in conflict with the complaints and this lawsuit and they would need to secure independent non conflicted counsel to represent them in both the complaints and lawsuits and they could not therefore continue representing other Defendants either or continue interfacing directly with Plaintiff. These CRIMINAL COMPLAINTS⁵ FILED AGAINST THE AG's OFFICE, COUMO AND COHEN, are central to enabling Due Process in this lawsuit, as they allege illegal activities of Cuomo and misuse of state resources in this lawsuit and several of the legally related lawsuits to Anderson and where these illegal actions have acted as key components to Obstructing Justice by denying due process to both the criminal complaints and this lawsuit since day one by Defendants in this lawsuit.

The Admission to the Conflicts of Interest that obstruct justice were clearly made for the right reasons on the day Roger's admitted and acknowledged them and were as valid on that day as the day when the case was filed. Therefore, the case should have NEVER proceeded from the start with the AG representing in conflict, or Proskauer and other Defense Counsel representing in conflict and none of them should have been allowed to illegally represent any defendants including themselves by this Court. The AG should not have been allowed to both personally and professionally represent Defendants in violation of public office rules and regulations and further ILLEGALLY MISUSE state funds to provide private defenses to state employees in so

⁵ Criminal Complaint Against AG can be found at the following URL and is hereby incorporated by reference in entirety herein at,

<http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20101120%20FINAL%20Andrew%20Cuomo%20Criminal%20Complaint%20New%20York%20Attorney%20General%20Cuomo%20Public%20Integrity%20Cover%20Letter%20Color.pdf>



doing. These claims against the AG were also made by Anderson in her motions⁶ to remove the AG for conflict and more. These ILLEGAL AND OBSTRUCTIONARY CONFLICT RIDDLED REPRESENTATIONS, severely prejudice Plaintiff in this lawsuit where Defendants personal counsel is not only paid for with ILLEGALLY OBTAINED state funds but also has the Attorney General representing them personally against Plaintiff, instead of independent counsel. Once the Amended Complaint was accepted by the Attorney General, where they were listed as Defendants, there was no way they should have continued to make illegal pleadings on anyone's behalf. Yet, even now they continue to file pleadings, despite admitted conflicts of interest that preclude them from making filings, including on behalf of themselves and yet this Court continues to not only allow these ILLEGAL pleadings constituting Fraud on the Court to continue but continues to make prejudicial rulings based upon them, despite the obvious violations of law and ethics codes. James Rogers in admitting Conflict and the need for counsel was right in his decision for the right reasons and did not make these claims because he was ignorant to what was going on, as Proskauer would have this Court believe based on their baseless and misleading claims in their Motion to Sanction. The AG's understanding and long history with Plaintiff prior to determining they were conflicted was described in the follow up letter to the AG written on May 20th 2011, titled "Admission & Acknowledgement of Conflicts of Interest By the New York Attorney General in Handling Criminal Complaints Against Andrew Cuomo and Steven M. Cohen, which can be found at

⁶ One of Anderson's Motion to Remove AG for Conflicts
<http://iviewit.tv/wordpress/?p=391>



[http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20110520%20FINAL%20NY%20AG%20ADMITTED%20CONFLICT%20OF%20INTEREST%20and%20CRIMINAL%20COMPLAINTS%20CUOMO%20and%20COHEN.p](http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20110520%20FINAL%20NY%20AG%20ADMITTED%20CONFLICT%20OF%20INTEREST%20and%20CRIMINAL%20COMPLAINTS%20CUOMO%20and%20COHEN.pdf)
df and hereby included in entirety by reference herein. That this Court cannot move forward without first waiting to see what the Attorney General's NEW counsel they have been seeking for over a year now, will now plead on their behalf as this will change the entire case and demand immediate rehearing free of the prejudice and illegal pleadings that have obstructed justice. This Court and the AG should already have moved for their removal from filing pleadings in the lawsuit and disqualified their prior filings and yet again, the Court attempts to turn a blind eye and bury the factual evidence presented in the Motion to Rehear 1, 2 and 3 against the New York Attorney General and others, instead furthering the Obstruction.

The Defendants and their conflicted counsel in this lawsuit, which is mostly the Defendants illegally representing themselves in most instances, violate Bernstein's rights to fair and impartial due process and thus these conflict riddled motions and responses filed by opposing counsel and ruled on by this Court are truly what are vexatious and in violation of law and ethics codes and this Court's own rules and therefore an utter waste of Bernstein's time and resources. These illegal proceedings however further Constitute FRAUD ON THE COURT by opposing conflicted counsel and further ABUSE OF PROCESS. Bernstein filed this lawsuit against Defendants illegally infringing upon his inventions and those who have stolen them and for the ongoing conversion of his royalties through a variety of racketeering activity by Defendants. There are thousands, millions and even billions of infringers of his technologies,



since anyone with a TV, an Internet Connection, who owns Digital Imaging or Video Software or Hardware and even a Cell Phone, are among the many daily infringers of the inventions and thus all can truly be deemed as Defendants on the infringement basis alone. There are thousands of companies worldwide infringing, many aided and abetted by Patent Pooling Schemes set up by Defendants to block Plaintiff from market illegally and Plaintiff has stated valid claims against all Defendants as defined in the Amended Complaint and RICO Statement and Bernstein can and will continue to file in the courts to protect his Intellectual Property and other rights. Further, every day royalties are converted by the Law Firm Defendants and their accomplices will be further cause for Federal Court Actions and constitute new and ongoing crimes, affording a new clock on the statutes of limitations daily as the long as the crimes continue.

Bernstein's 6th Amendment Rights to securing counsel have been blocked by those who Regulate Attorneys at Law as evidenced in the Motion to Rehear 3⁷ and this has severely prejudiced Plaintiff in this lawsuit.

This lawsuit and the legally related cases were conflict riddled from start because of various facts which are known to this court, including but not limited to, the defense counsel attorneys representing against former clients in conflict, the AG representing State Defendants and themselves illegally in conflict and further ILLEGALLY misusing state funds for personal representations of State Defendants, attorneys representing themselves when they will be called as witnesses in violation of conflict rules, etc. It should be noted that Proskauer claims that Bernstein is using some other case in this Court as a basis for his claims and the reason Bernstein

⁷ docket 142



is referencing the Anderson case as additional evidence in support of his claims, is that this Court has "LEGALLY RELATED" Anderson and this lawsuit, a fact this Court should make Proskauer who is trying to hide that fact clear on, as it is a highly relevant case and not just some random case Bernstein attempts to use against the Proskauer defendants as supporting evidence.

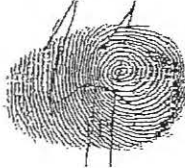
Not all defendants responded to the amended complaint or to the motions or orders or anything at all in this lawsuit as described eloquently and pled perfectly in the Motion for Rehearing 3⁸ and the Motion for Clarification⁹, which prejudices Plaintiff and Defendants and is wholly outside the rules of this Court or any court. Where instead of adjudicating the Motions fairly based on the evidence contained therein, we find the Motion to Rehear 1, 2 and 3 trying to be buried by Proskauer with favor from this Court without giving due process and procedure to Plaintiff Bernstein or any of the factual evidence presented and instead concocting this vile and macabre attempt to twist the Motions to Rehear, chalk full of evidence and eyewitness testimony supporting Bernstein's claims, including admissions of conflicts by opposing counsel, instead into reasons to sanction Bernstein and ignore the substantive facts and evidence contained in the pleadings. This abuse of process and twisting of facts to hide the evidence is layered with a barrage of insults and harassments of Plaintiff Bernstein and no material facts and stands as a further sham on the court.

⁸

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rehear%20and%20Reopen%20Obstruction%20of%20Justice16555%20WITH%20EXHIBITS.pdf>

⁹ Motion for Clarification does not appear on the docket of this Court but can be found at the following URL, hereby included in entirety by reference herein at

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130513%20FINAL%20Motion%20for%20Clarification%20of%20Order174604%20WITH%20NO%20EXHIBITS.pdf>



Bernstein seeks SANCTIONS AGAINST THE ILLEGAL CONDUCT OF ALL OFFICERS OF THIS COURT, INCLUDING BUT NOT LIMITED TO PROSKAUER DEFENDANTS AND THE DEFENDANT NEW YORK ATTORNEY GENERAL FOR VIOLATING ATTORNEY CONDUCT CODES, JUDICIAL CANNONS, PUBLIC OFFICE RULES AND REGULATIONS AND STATE AND FEDERAL LAW AND MAKE ILLEGAL PLEADINGS IN THESE MATTERS AND THIS COURT'S ALLOWING and AIDING AND ABETTING SUCH FRAUD ON THE COURT.

Bernstein does not apologize to the Court for the length of his filings as this case is precedent setting in the sheer number of federal, state and international crimes alleged committed by the defendants against Plaintiff, including but far from limited to, car bombings, possible murder of his father, fraudulent and now forged estate court filings by Defendants in Plaintiff's parents estates (as more fully defined in the Motion to Rehear 3), theft of IP, Fraud on the US Patent Office, Fraud on Courts, Obstructions, Threats on Federal Witnesses, Wiretapping Judges to Obstruct Justice, 24/7/365 illegal wiretapping and surveillance of Anderson to Obstruct Justice in her case and the legally related cases. It would be impossible to merely list the massive number of Defendants and crimes committed by them in under a few hundred pages. Perhaps the court needs to expand its page rules in light of the never ending crimes being committed by Defendants in this lawsuit and by those representing them, which again is mainly themselves, and which gives the appearance that the criminals are representing themselves in violation of virtually the entire rules and regulations of this Court, the entire Code of Conduct for Attorneys at Law and state and federal laws and running this Court.



Proskauer list the 5 rules under 11 but fails to prove even a single instance of Bernstein's violations, as there really are none and where Bernstein has provided this Court repeatedly evidence of Proskauer Defendants and the New York Attorney General violations of these same statutes again full of damning evidence and eyewitness testimony and admitted conflicts of interest.

Proskauer claims Bernstein is somehow waging a "campaign of harassment" without any proof of any harassment what so ever. It is just a false claim without any basis. In fact, the Motion to Rehear 3 shows a host of very real factual harassments of Plaintiff Bernstein through continued legal process abuse of now several other courts in a number of new lawsuits that attempt to extort and harass Plaintiff and rob him of inheritance as well.

Proskauer claims Bernstein has a "litigious history" again a claim without any basis in law or fact. Proskauer has not proved a litigious history of Bernstein and Bernstein has virtually no litigious history until meeting Proskauer and filing this lawsuit. However, Bernstein is notifying Proskauer and this Court that he will have a lifelong and generational long litigious history in pursuing his patent royalties, as litigation is the key to prosecuting patents over their useful life and will also have a litigious ongoing history in pursuing the crimes and criminals who are attempting to steal them, despite whether they are cleverly disguised as Attorneys at Law, Judges, Prosecutors, etc. and despite the ridiculous Orders trying to prevent him from his due process rights and rights to his properties.

Plaintiff claims and bolsters with evidence and eyewitnesses that the courts and disciplinary committees etc were all conflicted and rigged from the start and has proved this with



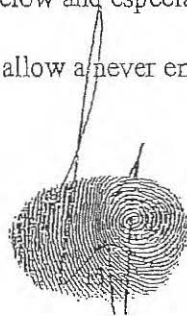
valid evidence and eyewitnesses and therefore the ORDERS of this COURT have been based on pleadings by Defense Counsel steeped in FRAUD ON THE COURT and thus Proskauer relying on these ill-gotten orders from this Court for defense and further illegally positing their knowingly false and baseless arguments in Court and finally this Court's own felonious responses and orders to these knowingly illegal representations is the problem Bernstein has had since the first day of filing this case, whereby all of these criminal obstructions block due process and are being committed by those involved in adjudicating the claims. If this Court and Officers of this Court continue down this path without resolving the CONFLICT SWAMP of the Defendants Counsel that Obstruct Justice, Plaintiff will be forced to seek Sanctions on this Court and it's Officer for their Contempt of the Court, Misprision of Felonies, Violations of Attorney Conduct Codes, Judicial Cannons, Public Office Rules and Regulations and State and Federal Law.

The Court's attempts to claim Plaintiff has not stated claims or has no Federal Rights or that State and Federal Employees are immune from FELONY MISCONDUCT and thus ABOVE THE LAW or that his Patent Claims have no Federal Relief are all part of this ongoing FRAUD ON THE COURT. This new attempt to stop Plaintiff Bernstein from filing Pleadings in the case in order to SUPPRESS EVIDENCE through illegally gained sanctions is further Abuse of Process, especially where all the pleadings and motions of Plaintiff Bernstein are based on NEW FACTUAL EVIDENCE and CREDIBLE EYEWITNESS EXPERTS IN ATTORNEY AT LAW CORRUPTION and show a PATTERN AND PRACTICE of Fraud on the Court and more. These acts to suppress Plaintiff and Evidence are obvious further attempts to silence Plaintiff



Bernstein and usurp his due process rights and are further harassment of him, constituting NEW CRIMES OF LEGAL PROCESS ABUSE, OBSTRUCTION and more, and thus must immediately cease. This Court's veiled attempt to claim that Bernstein's claims have no validity is wholly confounded as well by the fact that there are ongoing State and Federal and International investigations against the Defendants and that the Intellectual Properties have been suspended by the US Patent Office pending investigation of Proskauer and other defendants for FRAUD ON THE US Patent Office and more. That this Court should be aware that Defendant AT&T as listed in the Amended Complaint Defendants, is attempting to negotiate a SETTLEMENT of the Intellectual Property infringement and other claims against them as defined in the Amended Complaint, outside of this Court, as defined in the attached Exhibit 1 -- AT&T SETTLEMENT OFFER LETTER. This circumvented route to settlement is due to this Court failing to afford them a response to the complaint and opportunity within the court system to settle with Plaintiff as required by law and this Court has even illegally thwarted service of the Amended Complaint to them at all to tender any answer, along with all the thousands of defendants as described more fully in the Motion for Clarification. Had AT&T and others been afforded their right to respond to the claims in the Amended Complaint they might have admitted their infringement and settled, yet this court has Obstructed that process and Plaintiff's and Defendants rights in the case.

Plaintiff files Pro Se and thus his motions should not be dismissed for length of pleading or form, as per law and case laws cited below and especially where these nitpicking demands by this Court delay and obstruct justice and allow a never ending mass of crimes to continue to be



committed against Plaintiff while this Court counts page numbers and rules on illegal pleadings of defense counsel and more:

Judiciary Act of September 24, 1789, Section 342, FIRST CONGRESS, Sess. 1, ch.20, 1789 states that:

“Pleadings of the Plaintiff SHALL NOT BE dismissed for lack of form or failure of process. All the pleadings are as any reasonable man/woman would understand, and:

““And be it further enacted. That no summons, writ, declaration, return, process, judgment, or other proceedings in civil cases in any of the courts or the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects or want of form in such writ, declaration, or other pleading, returns process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any, time, permit either of the parties to amend any defect in the process of pleadings upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe (a)””

Court errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings. *Plaskey v. CIA*, 953 F.2d 25



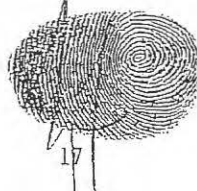
It is settled law that the allegations of such a complaint, "however inartfully pleaded" are held "to less stringent standards than formal pleadings drafted by lawyers, see *Haines v. Kerner*, 404 U.S. 519, 520 (1972). See also *Maclin v. Paulson*, 627 F.2d 83, 86 (CA7 1980); *French v. Heyne*, 547 F.2d 994, 996 (CA7 1976); *Estelle v. Gamble*, 429 U.S.97, 106 (1976). Such a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Haines*, supra, at 520-521. And, of course, the allegations of the complaint are generally taken as true for purposes of a motion to dismiss. *Cruz v. Beto*, 405 U.S. 319, 322 (1972).

Case laws referred by Proskauer are not completely in favor Proskauer:

In *Binghamton Masonic Temple, Inc. v. Bares*, 168 F.R.D. 121, 127 (N.D.N.Y. 1996) referred by Proskauer in its motion, the court states that under Fed. R. Civ. P. 11(b)(2) it is an improper purpose if a filing is submitted to harass, cause unnecessary delay, or increase the cost of litigation. Bernstein has not filed motions to harass, cause unnecessary delay, or increase the cost of litigation. In fact Bernstein has filed motions on the basis of evidence and new eyewitness testimony supporting his claims and factually admitted conflicts of interest by Defense Counsel.

In *id.*, 168 F.R.D. 121, 126 (N.D.N.Y. 1996), it has been clearly stated by court that Sanctions under Fed. R. Civ. P. 11 should be imposed with caution. See also *MacDraw Inc. v. Cit Group Equipment Financing Inc.*, 73 F.3d 1253, 1257 (2d Cir. 1996).

In *id.*, 168 F.R.D. 121, 126 (N.D.N.Y. 1996), the court states that "Fed. R. Civ. P. 11 states, in relevant part (b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an



attorney ... is certifying that to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances, -

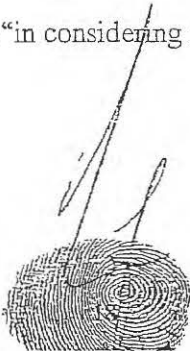
(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law, [and]; ... (3) the allegations and other factual contentions have evidentiary support...

Also see *Katzman v. Victoria's Secret Catalogue*, 167 F.R.D. 649, 1996 U.S. Dist. LEXIS 8979, 1996 WL 351228, *7 (S.D.N.Y.)

In the present case to the best of Bernstein's knowledge, information, and belief formed after an inquiry reasonable under the circumstances, the motion was not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, the claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for which was based on newly found evidence, and the allegations and other factual contentions have evidentiary support produced by Bernstein. Hence sanctions under Fed. R. Civ. P. 11 shall not be applicable.

Proskauer relies on *Safir v. US. Lines Inc.*, 792 F.2d 19, 24 (2d Cir. 1986) and on *Positano v. New York*, 12-CV-2288 (ADS) (AKT), 2013 U.S. Dist. LEXIS 32488, at *23-25 (E.D.N.Y. Mar. 7, 2013) and states that "in considering injunctive relief in the context of Rule

A handwritten signature in black ink is written over a circular fingerprint or stamp. The signature is cursive and appears to be "S. Bernstein". The fingerprint is a standard ten-print pattern, showing the ridges and valleys of the fingers.

11, the district court should consider the following factors to determine if a party like Bernstein should be enjoined:

(1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties. Ultimately, the question the court must answer is whether a litigant who has a history of vexatious litigation is likely to continue to abuse the judicial process and harass other parties.

Proskauer has merely taken the contention that Bernstein conduct meets all 5 factors. But this contention of Proskauer is absolutely false and baseless. First factor: In the case at bar Plaintiff's litigation history is to get justice for the IP rights of Plaintiff violated by defendants and to stop illegal gains by defendants. It is not to harass or duplicate lawsuits. The motions to Rehear filed by Plaintiff were on discovery of new evidence and they cannot be considered as duplicative lawsuits. Second factor: Plaintiff definitely has good faith expectation of prevailing once a fair and impartial court can be had. Third factor: Plaintiff is Pro se and not represented by counsel. Fourth factor: Plaintiff has not caused expenses to other parties or has posed an unnecessary burden on the courts and their personnel, in fact, it is exactly the opposite and Defendants have continued with this Court to consistently deny due process through Abuse of Process. In fact many defendants have not yet been summoned in spite of repeated request from



Plaintiff due to further Obstruction of Justice. Fifth factor: When other four factors are not proved then there is no question of any sanctions on Plaintiff.

Proskauer relies on *Ex 'r of NY Estate of Kates*, 2013 U.S. Dist. LEXIS 16873, at * 15-16, 24-25 that states "enjoining *pro se* plaintiffs from further filings in the Eastern District of New York arising from or relating to the claims at issue and denying their Rule 59(e) motion where this was the Plaintiffs "fourth attempt" at litigating the same claims in the same court."

This case cannot apply to the case at bar as Plaintiff has not litigated same claims but his claim is based on new evidence that was not present at the time of earlier motions, including ADMISSION of CONFLICTS by Defense Counsel and Defendant the New York Attorney General.


This motion is based on grounds that are incorrect and false and misleading and harass Plaintiff. Hence it has to be dismissed and sanctions should be imposed on Proskauer and the New York Attorney General and others.




CONCLUSION

Proskauer shows no proof for their allegations against Plaintiff. The current motion is utterly frivolous and abusive. It should be denied and its campaign of harassment and abuse brought to an end by issuing sanctions on Proskauer and Court Officials for damages done to Plaintiff for several years since the docketing of this lawsuit.

Dated,  2013

Boca Raton, FL 

Respectfully submitted, 

Eliott Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
(561) 245-8588



EXHIBIT 1 – AT&T SETTLEMENT OFFER LETTER

Eliot Ivan Bernstein

Subject: FW: Settlement Offer

From: Adam Floyd [mailto:AFloyd@fblawllp.com]
Sent: Wednesday, April 11, 2012 12:47 PM
To: Eliot I. Bernstein [mailto:eviat@iviewit.tv]
Subject: Settlement Offer

Before taking your settlement offer to my client, I want written confirmation (email is fine) to the terms.

Here are the terms you have offered:

- 33% of the value of all of AT&T's stock;
- a license to all of iViewIt's technology including any and all patents that may issue;
- a dismissal of all existing claims against AT&T;
- a covenant not to sue AT&T or F&B;
- a covenant not to file any complaints against AT&T, F&B, or any of their attorneys to the state bars, PTO bar, or any other agency.

Please let me know if this is correct. I would also strongly encourage you to provide a realistic number, if you actually are intending to resolve all issues you have with AT&T.



Adam V. Floyd
F&B LLP
5113 Southwest Parkway, Suite 140
Austin, TX 78735

T: 512.681.1501
F: 512.681.1590
afloyd@fblawllp.com
www.fblawllp.com

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the Ted Bernstein Report by Investigative Blogger Crystal L.

written upon information, knowledge and belief of Crystal L. Cox, Investigative Blogger

Docket Northern Illinois Case	Simon Bernstein Trust Heritage Jackson National District Court	Shirley Bernstein Estate Docket	Simon Bernstein Estate D
Shirley Bernstein	Simon Bernstein	Teschler, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case	Judge David E. French Robert S
Mark Manceri	Donald Tescher	Teschler and Spallina Law Firm Mark Manceri	Petition to Freeze Estate Assets Estate Fraud Docket Insurance
Donald Tescher	Robert Spallina	Ted and Deborah Bernstein	Life Insurance Concepts Boca Ted Bernstein Fraud

Saturday, January 11, 2014

Investigative Blogger Crystal Cox THINKS it is time to File a Lien against ALL the Judges involved in the massive fraud on the courts, property theft, forgery, and constitutional rights violating case of the Shirley Bernstein Estate and Simon Bernstein Estate going on now in the Florida Probate Courts and involving Judge Martin Colin, Judge David French, Judge Charles E. Burton, Judge David Crow and possible the Sheriff of Palm County Florida.

Let's take a look at your rights to PUT a lien on a Judge or Sheriff.

Information on filing a lien against a bond of a Judge.

I believe state officers are required by statute or by the head of any state department to secure and give a fidelity bond, a bond that ensures their actions.

It is my understanding that if you feel a Judge is corrupt or is not upholding the law or your constitutional rights, you Can You File A Lien Against His Bond On File In Order To Force Him To Do His JOB.

If a judge wants to play "god" in the courtroom, and totally ignore the rules of law and your constitutional rights. I believe you can file a lien upon his bond in order to force him into complying with the law. As it sure seems the Judge and Sheriff are neglecting their duties and neglecting their court.

If a Judge is "railroading" you, clearly acting outside of the laws of the United States and the State of Florida, then it is my understanding that you certainly can file a lien against this judge for his total ignoring of law and violating your rights of due process and constitutional rights.

It is my understand that a judge and a Sheriff cannot work in their job if they cant get bonded.

So why NOT file your Proof of Corruption AND the UnEthical, UnConstitutional, and UnLawful actions of the Judges in this case as a LIEN against their BOND?

Tips, Information and Laws on How to File a Lien against a Judges Surety Bond in Florida

It is my understanding that when you file a lien against a public servant the lien holder/ins company does an investigation, thus they must see proof as to the validity of the lien. In the Simon Bernstein and Shirley Bernstein Estate we see clear evidence of fraud, forgery and attorneys seem to be conspiring with Judges, or so it looks that way from what I have read.

We see clearly that these attorneys and Ted Bernstein conspired with or are connected to Kimberley Moran of Tescher and Spallina law firm to have it look as if Simon Bernstein signed documents, and had them notarized at Tescher & Spallina Law Firm with Kimberley Moran AFTER HE DIED.

This evidence is clear, it is on court dockets, in hearing transcripts, on Governor complaints and rulings, on sheriff reports and yet Judge Martin Colin and other Judges in this case seem to be protecting estate and probate law firm Tescher & Spallina and Boca Raton Insurance Company Life Insurance Concepts, Ted Bernstein.



Judge Martin Colin



Palm County Florida Sheriff

Ted Bernstein



Life Insurance Concep

Ted Bernstein, Tescher a

- Florida Estate Forgi DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher a

- Florida Estate Forgi DOCKET

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Palm Beach Cour

Investigation,

Hello Palm Beach



Ted Bernstein

This is all connected to the multi-Billion dollar legal action of the iViewit technology case and I myself believe that these Judges are favoring what looks to be corrupt lawyers and they may possibly be getting a kick back as there is plenty of money to be had in this case, as we have previously seen from the iViewit case naming all of this same parties and worth 100's of BILLIONS. I believe the Judges involved in the Simon Bernstein and Shirley Bernstein Estate forgery and fraud case have violated title 42 USC code. I also believe they have ALL violated 28 U.S.C. § 455, the Due Process Clause of the Fourteenth Amendment to the Constitution, The Code of Conduct for United States Judges, and have violated human and civil rights of the victims of this case.

A GUIDE TO CIVIL RIGHTS LIABILITY UNDER 42 U.S.C. § 1983:
AN OVERVIEW OF SUPREME COURT AND ELEVENTH CIRCUIT PRECEDENT

http://www.constitution.org/brief/forsythe_42-1983.htm

Section 1983 Litigation to help you understand the laws regarding this issue.
[http://www.fjc.gov/public/pdf.nsf/lookup/Sect1983.pdf/\\$file/Sect1983.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/Sect1983.pdf/$file/Sect1983.pdf)

If Judge Martin Colin appointed Ted Bernstein executor of the Simon Bernstein state after he knew of clear forgery and fraud on the courts and crimes against the true heirs of the Simon Bernstein, and Shirley Bernstein Estate, is Judge Martin Colin liable for the financial damage and hardship that his rulings outside of law and the constitutional rights of those in his court?

Did Judge Martin Colin require a probate bond in this case where millions are at stake and there is massive fraud, estate assets sold off and stolen?

Do laws in the State of Florida require the executor of an estate to provide a probate bond to the courts? Probate bonds will guarantee that executors of the estate will not alter or damage the estate. Did Judge Martin Collin require a probate bonds in this case?

Did Tescher & Spallina provide a probate bond? This is a rather large estate and assets over a million dollars each have already been SOLD off, by what looks like the fraudulent activity of Ted Bernstein conspiring with Donald Tescher and Rober Spallina of Tescher & Spallina.

Are there any laws or ways to uphold the estate and probate law in Florida when someone dies and their own attorneys and estranged offspring loot their estate?

Also in this there was a condo already sold for over a million that may have undersold for a million, this involved a buyer named Wesley Voorheis, who I believe made a deal of some kind to get the property for at least a million less than it was worth, by way of some shady dealings with Life Insurance Concepts and Ted Bernstein, just how I see it.

Note: I am a REAL ESTATE Forensics EXPERT, I do not claim to know fully Florida Law. However, this property SOLD via Old Republic National Title Insurance Company, and had Title Insurance insuring that it was SOLD by the property own and there sure seems to be some fraudulent actions here in my opinion, here is my report and opinion on the Shirley Bernstein Condo Sale.

https://docs.google.com/document/d/1hjawnPI4EXpN0L8oZ33Pmpirng3073da5_i0iVIQtw/edit

It appears to me that Gregory Gefen of Signature ALL REGENCY TITLE COMPANY, Signature Title Group Knowingly allowed Ted Bernstein to steal a 1.6 million dollar property, just how I see it.

So Is Wesley Voorheis a Proxy for Ted Bernstein?
<http://tedbernsteinreport.blogspot.com/2013/08/do-we-have-banking-and-mortgage-fraud.html>

Did Wesley Voorheis of move this asset out of the country for Tescher and Spallina, Ted Bernstein or ?

G. Wesley Voorheis seems to be the same Wesley Voorheis Chairman of Hudbay Minerals Inc., Director at Granite Real Estate Inc., Managing Director of VC & Co. Incorporated and a Partner of Voorheis & Co. LLP, which act as strategic advisors to institutional and other shareholders. Prior to the establishment of Voorheis & Co. LLP in 1995, Wesley Voorheis was a partner in a major Toronto law firm. Wesley Public Company Directorships (Past 5 years): MI Developments Inc. (June 2011 to present), Coventree Inc. (2008 to 2012), easyhome Ltd. (2010 to 2011), Hollinger Inc. (2006 to 2008), Sun Times Media Group, Inc. (2007 to 2008).

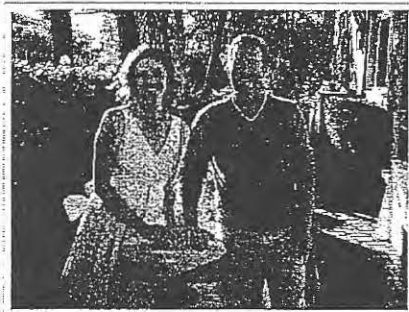
<http://www.forbes.com/profile/g-voorheis/>

http://www.concernedeconomical.com/about_VC_Co.html

How is G. Wesley Voorheis connected to Tescher and Spallina, Ted Bernstein, Greg Gefen or any other players of the Shirley Bernstein, Simon Bernstein fraud and forgery estate and probate case out of Palm County Florida?



Judge David French



Ted Bernstein, Bernstein Family Foundation

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► 2013 (31)

I fully believe, in my opinion that the above sale involved mortgage fraud, title insurance fraud and banking fraud at least. It also seems that the Bank of Montreal is somehow connected to all this, in what sure seems to me to be white collar crime.

How in the world did what seems to be a Canadian Resident, Wesley Voorheis, get a single Family Fannie Mae loan on a condo of this value in FLORIDA? Is this a primary resident? Is this Fannie Mae FRAUD? Surely Fannie Mae, Wesley Voorheis, BMO Harris Bank N.A., and Steve Paraggua know about the fraud and forgery in connection with all of this.

Here is the Mortgage Document I am commenting on;
<https://docs.google.com/file/d/0Bzn2NurXrSkiQjIn5mRoNXJBdHc/edit>

I personally believe that Ted Bernstein of Life Insurance Concepts did some deal to hide this asset from the rightful heirs, either with Wesley Voorhei knowing or not knowingly conspiring, just my opinion.

A bit more on this Condo Sale

<http://tedbernsteinreport.blogspot.com/2013/08/ted-bernstein-life-insurance-concepts.html>

Note: Look at this Insurance company also questioning issues of these Estates, yet the Judges involved are "playing dumb". There is so many layers to all this, meanwhile the victims of all this, in this moment are children and are the heirs of the estate, in which Tescher and Spallina seem to have VIOLATED the wishes of their now deceased clients.

the Heritage Union Life Insurance case
<https://docs.google.com/file/d/0Bzn2NurXrSkiWnBNVUtJUEFJRns/edit>



So can the True and Correct lawful heirs of the Simon Bernstein, and Shirley Bernstein Estate file a lien against the Judges and Sheriff involved, as there are some pretty hefty price tags on these assets and I believe these judges now have some liability.

Folks, pay attention to this case as many of your parents, grandparents move to Florida, many of you in Florida over a lifetime; you work your whole life, pay your attorneys to carry out your wishes and the commit forgery having documents signed by you AFTER YOU DIE, and Florida Judges such as Judge Charles E. Burton, Judge David Crow and estate and probate Judges such as Judge Martin Colin and Judge David French, as well as the Sheriff of Palm County Florida should be liable for any action that violated the constitutional rights of the victims of this case or did not uphold the oath of their office.

It looks to me, in my Opinion, as if these Judges and the Sheriff violated 28 U.S.C. 5 455, the Due Process Clause of the Fourteenth Amendment to the Constitution, The Code of Conduct for United States Judges, and 28 U.S.C. 455.

And I think that Victims of these Judges should file a Lien against their Bond.

Posted by Crystal L. Cox at 4:15 PM

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the Ted Bernstein Report by Investigative Blogger Crystal L.

written upon information, knowledge and belief of Crystal L. Cox, Investigative Blogger



Docket Northern Illinois Case	Simon Bernstein Trust Heritage Jackson National District Court	Shirley Bernstein Estate Docket	Simon Bernstein Estate D
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Donald Tescher	Robert Spallina	Ted and Deborah Bernstein	Life Insurance Concepts Boca Ted Bernstein Fraud

Friday, February 21, 2014

Judge Martin Colin has a history of protecting the bad guys protecting attorneys that he favors and having conflicts of interest. Judge Martin Colin should have walked away from the Simon Bernstein Estate Case and the Shirley Bernstein Estate Case long Ago.

"The self-proclaimed adopted son of the late mob boss John Gotti, Kasman didn't like the way the Gambino crime family treated him after the Dapper Don died in prison in 2002. So the 51-year-old Boca Raton man strapped on an FBI wire and spilled information that in February helped the feds build criminal cases against 62 reputed New York mobsters.

Now Kasman has his sights set on a much less notorious target: Palm Beach County Family Court Judge Martin Colin.

Using court decisions that grew out of a long-running legal battle among Colin and his wife and her ex-husband, Kasman is on a tear to have the judge thrown out of office and get longtime Democratic power broker and attorney Henry Handler disbarred...

When the Judicial Qualifications Commission, which disciplines judges, meets in mid-July, it will consider claims from Kasman and at least two other men that the judge dished out favors to attorneys who represented his wife in her divorce. Similar allegations have been raised in a strange and tortuous legal battle that went all the way to the Florida Supreme Court. The Florida Department of Law Enforcement has investigated as well.

Colin and attorneys embroiled in the quagmire dismiss allegations that a conspiracy was afoot to tip the scales of justice against Kasman or anyone else."

Source and Full Article
<http://jaablog.jaablaw.com/2008/07/01/things-getting-rougher-for-judge-colin.aspx>

"During the protracted divorce that chewed through at least five judges, Lewis Kasman accused one of them - Palm Beach County Circuit Judge Martin Colin - of failing to reveal his ties to the firm. Weiss Handler briefly represented Colin's wife in her divorce from a previous husband. While Colin had been ordered by the Fourth District Court of Appeal to tell litigants who came before him about his wife's connection to the firm, he didn't tell Lewis Kasman."

Source and Full Document
<http://joeburnoonthemob.wordpress.com/tag/palm-beach-county-circuit-judge-martin-colin/>

Why is Judge Martin Colin of Boca Raton Florida still presiding over the Simon Bernstein Estate Case and the Shirley Bernstein Estate Case?

Judge Martin Colin knows of fraud, forgery, possible murder and claimed he "should" read the attorneys involved their Miranda Rights but still no one has a criminal investigation and on top of that Judge Martin Colin is letting these attorneys still have a say in these estates knowing full well that have committed crimes.

Judge Martin Colin knows that officers of his court, attorneys, and law firms have committed crimes yet he lets them have a say in who gets to be the personal representative in these estates. And seems to be planning to use some "Hat Trick Method", a law it seems he made up, in order to pick this powerful position over these estate matters.

Judge Martin Colin knows full well that these guys have acted illegally, so why would he still give them power in this case.

Judge Martin Colin knows that John J. Pankauski has massive conflicts of interest yet lets this lawyer have a say in these matters, knowing full well that John J. Pankauski is violating attorney client privilege, has misled Eliot Bernstein to get personal information, strategy in the case, and proprietary information in this case to then use against Eliot Bernstein acting as counsel

Ted Bernstein



Life Insurance Concep

Ted Bernstein, Tescher at

- Florida Estate Forgery DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher at

- Florida Estate Forgery DOCKET

Blog Archive

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 - Welcome Back, Investigation

6/4/2014 the Ted Bernstein Report by Investigative Blogger Crystal L. Cox: Judge Martin Colin has a history of protecting the bad guys protecting attorneys that he fa... to the opposition.

Judge Martin Colin knows that John J. Pankauski SHOULD not even be allowed in the court room on this, so why is Judge Martin Colin letting all this still go on?

Why is Judge Martin Colin letting a clearly conflicted John J. Pankauski of Pankauski Law Firm get to pick a possible PR in this matter? Is this Legal? I say it is not LEGAL, as far as I see it and certainly there is no law that conflicts checks, due diligence and judicial duty in estate cases is about putting NAMES IN A HAT. This is ludicrous at best.

All of these crimes CLEARLY happened in Judge Martin Colin's court, yet he does not report the crimes, seems to do nothing to bring justice to these rogue and lawless lawyers and now Judge Martin Colin is a material witness to all this, and still does nothing and refuses to remove himself from these proceedings, WHY?

Who PROTECTS Judge Martin Colin to act completely outside of the Law?

The above articles seems to be saying that Judge Martin Colin is connected to the mob, abuses his judicial power to favor attorneys he likes, and blatantly ignores conflicts of interest.

Its the Law that Judge Martin Colin must recuse himself if he has a conflict, yet Judge Martin Colin refuses to remove himself and also rules on this matter himself, which is not lawful. I have seen this in many courts, and the superior Judge rules on this motion, NOT the Judge who the litigant is asking to be removed. This is not LAWFUL.

HERE is a Bit on Judicial Laws and Judicial Disqualification

"According to, Judicial Disqualification: An Analysis of Federal Law, Second Edition, Charles Gardner Geyh, Associate Dean of Research, John F. Kimberling Professor of Law, Indiana University Maurer School of Law, a Federal Judicial Center Publication;

"For centuries, impartiality has been a defining feature of the Anglo-American judge's role in the administration of justice.

The reason is clear: in a constitutional order grounded in the rule of law, it is imperative that judges make decisions according to law, unclouded by personal bias or conflicts of interest.

Accordingly, upon ascending the bench, every federal judge takes an oath to "faithfully and impartially discharge and perform all the duties" of judicial office; and the Due Process Clause of the Fourteenth Amendment to the United States Constitution has been construed to guarantee litigants the right to a "neutral and detached," or impartial, judge.

Moreover, in a democratic republic in which the legitimacy of government depends on the consent and approval of the governed, public confidence in the administration of justice is indispensable.

It is not enough that judges be impartial; the public must perceive them to be so.

The Code of Conduct for United States Judges therefore admonishes judges to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and to "avoid impropriety and the appearance of impropriety in all activities"

"When the impartiality of a judge is in doubt, the appropriate remedy is to disqualify that judge from hearing further proceedings in the matter.

In Caperton v. A. T. Massey Coal Co., a case concerning disqualification of a state supreme court justice, the U.S. Supreme Court reaffirmed that litigants have a due process right to an impartial judge, and that under circumstances in which judicial bias was probable, due process required disqualification. The Court noted, however, that disqualification rules may be and often are more rigorous than the Due Process Clause requires.

So it is with disqualification requirements for federal judges, which require disqualification when a judge's impartiality "might reasonably be questioned."

Disqualification Under 28 U.S.C. § 455

A. Overview

1. The text of § 455 The primary source of disqualification law in the federal judicial system is 28 U.S.C. § 455. It provides, in its entirety, as follows:

§ 455. Disqualification of justice, judge or magistrate judge

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Ted Bernstein

► January (22)
► 2013 (31)

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household. 10 Judicial Disqualification: An Analysis of Federal Law

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the

securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

Sections (a) and (b) occupy the core of § 455 and should be read together. The two sections divide the universe of disqualification into two halves: the general, catch-all category of § 455(a), which requires disqualification from any proceeding in which a judge's "impartiality might reasonably be questioned"; and a list of more specific grounds for disqualification in § (b).

The remainder of § 455 is directed at implementing §§ (a) and (b):

- Section (c) admonishes judges to keep abreast of their financial interests to ensure that they know when to disqualify themselves under § 455(b)(4).
- Section (d) defines terms employed in §§ (a) and (b).
- Section (e) provides parties with a limited opportunity to waive disqualification otherwise required by the catch-all § (a)—typically where the judge is poised to disqualify himself or herself sua sponte—but does not permit the parties to waive disqualification required by the more specific provisions of § (b).
- Section (f) provides a limited opportunity for judges to avoid the need to disqualify themselves for financial interest under § (b)(4) through divestiture.

2. Interpretive ground rules

a. Interpreting § 455(a) in relation to § 455(b)

As embodied in § 455, §§ (a) and (b) are conceptually separate.

Section (a) compels disqualification for the appearance of partiality, while § (b) "also" compels disqualification for bias, financial interest, and other specific grounds. In contrast, the Model Code of Judicial Conduct—after which § 455 was originally modeled—and the current Code of Conduct for United States Judges unify the two halves conceptually by characterizing the specific grounds for disqualification as a nonexclusive subset of circumstances in which a judge's impartiality might reasonably be questioned.

For the most part, this may be a distinction without a difference—disqualification is required if the specific or general provisions are triggered, regardless of whether the specific provisions are characterized as a subset of or separate from the general.

On the other hand, by conceptualizing them separately, § 455 can require disqualification under specific circumstances enumerated in § (b) that might not reasonably be characterized as calling a judge's impartiality into question under § (a). For example, § (b)(4) requires judges to disqualify themselves for financial interest "however small," which necessarily includes an interest so small that it could not reasonably call the judge's impartiality into question.

Any circumstance in which a judge's impartiality might reasonably be questioned under § (a) requires disqualification, even if the circumstance is not enumerated in § 455(b).

At the same time, when § 455(b) identifies a particular situation requiring disqualification, it will tend to control any § 455

(a) analysis with respect to that specific situation. For example, §455(b)(5) requires disqualification when one of the parties is within the third degree of relationship to the judge. Consequently, a fourth-degree relationship to a party does not by itself create an appearance of partiality requiring disqualification under § 455(a)—although disqualification under § 455(a) might still be appropriate if, for example, the judge's personal relationship with the fourth-degree relative was so close as to call the judge's impartiality into question. As the Supreme Court explained, "[s]ection 455(b)(5), which addresses the matter of relationship specifically, ends the disability at the third-degree of relationship, and that should obviously govern for purposes of § 455(a) as well."

The 1974 amendments to § 455, however, shifted the balance by requiring disqualification whenever a judge's impartiality "might" reasonably be questioned, and the legislative history made clear that in revising the statute, Congress sought to end the "duty to sit".

6/4/2014 the Ted Bernstein Report by Investigative Blogger Crystal L. Cox Judge Martin Colin has a history of protecting the bad guys protecting attorneys that he fa...

"When Congress amended § 455(a), it made clear that judges should apply an objective standard in determining whether to disqualify. A judge contemplating disqualification under § 455(a), then, should not ask whether he or she believes he or she is capable of impartially presiding over the case.

Rather, the question is whether a judge's impartiality might be questioned from the perspective of a reasonable person, and every circuit has adopted some version of the "reasonable person" standard to answer this question.

In the context of denying a motion for his disqualification from *Cheney v. United States District Court for the District of Columbia*, Justice Scalia noted that this reasonable person is aware "of all the surrounding facts and circumstances." The Second Circuit has characterized the reasonable person as an "objective, disinterested observer" who is privy to full knowledge of the surrounding circumstances."

...
"The question has sometimes arisen as to whether the standard for disqualification differs in a bench trial where the judge's role is even more pivotal than in a jury trial. In *Alexander v. Primerica Holdings, Inc.*, the court of appeals said: "We cannot overlook the fact that this is a non-jury case, and that [the judge] will be deciding each and every substantive issue at trial. . . . When the judge is the actual trier of fact, the need to preserve the appearance of impartiality is especially pronounced"

Pursuant to 28 U.S.C. 455, and upon examination of the record, I, Personally believe that Judge Martin Colin is NOT impartial and is violating the constitutional and lawful rights of the victims in this case."

<http://www.law.cornell.edu/uscode/text/28/455>

Judge Martin Colin SHOULD NOT, as a matter of law and the duties of his Judicial Office, be RULING on a Motion to NOT exclude HIMSELF. This is unethical, unconstitutional and sure seems to me to be illegal.

Posted by Crystal L. Cox at 8:45 AM

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the Ted Bernstein Report by Investigative Blogger Crystal L.

written upon information, knowledge and belief of Crystal L. Cox, Investigative Blogger

Docket Northern Illinois Case	Simon Bernstein Trust Heritage Jackson National District Court	Shirley Bernstein Estate Docket	Simon Bernstein Estate B
Shirley Bernstein	Simon Bernstein	Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case	Judge David E. French
Mark Manceri	Donald Tescher	Tescher and Spallina Law Firm	Mark Manceri
Donald Tescher	Robert Spallina	Ted and Deborah Bernstein	Life Insurance Concepts Boca
			Ted Bernstein Fraud

Wednesday, May 14, 2014

John Pankauski ~ John J. Pankauski - Pankauski Law Firm PLLC

WOW are you KIDDING. Undo Influence Expert? Really?

Invalid or Void.. ? Hmm.. Why is Johnny Boy Protecting Ted Bernstein to commit Estate Fraud? or is He.. Hmmm.. Undo Influence is SERIOUSLY Abundant in the Simon and Shirley Bernstein Estate's..

Read this WHOLE Blog and WOW, then will you hire this GUY?

Undue Influence | Pankauski Law Firm | Undue L..



0:00 / 1:17

Posted by Crystal L. Cox at 11:11 PM

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Ted Bernstein



Life Insurance Concep

Ted Bernstein, Tescher at

- Florida Estate Forge DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher at

- Florida Estate Forge DOCKET

Blog Archive

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Will Judge Amy J Right Thing an
Does Jackson Na ALLOW People
Why can't Ted Br that his paren
The Lasalle Natic Robert Spallina

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Older Post

Ted Bernstein Insurance Scam

Written Upon Knowledge and Belief of Crystal L. Cox

Monday, March 30, 2015

7020 Lions Head Lane Boca Raton. Real Estate Buyers have a Legal Right to have FULL DISCLOSURE. Buyer Be AWARE.

Why Does Alan Rose Want to HIDE the TRUTH from the Buyers of this Property?

Why Does Judge Martin Colin Think it is ok to HIDE the Truth From Real Estate Consumers?

It is NOT ok for a Real Estate Broker, a Seller or a JUDGE to HIDE Known Facts about a Real Estate Transaction from a Real Estate Consumer. PERIOD.

Assets seem to have been stolen long ago. The property has been left to be run down. The courts simply do nothing to protect this asset and now a buyer is to get in the middle of a mess? I have been a real estate broker, owner of my own company for 15 year and a Real Estate Advocate for Real Estate Buyers. I would not go anywhere near this property until the estate is REALLY Legally Settled. Check out the transcript below as attorney Alan Rose whines and cries to PREVENT disclosure to the Real Estate Consumer.

Judge Martin Colin has no LEGAL Reason, as a matter of LAW to withhold to a real estate buyer that the property is in litigation, this is a violation of the BUYERS Rights, and again the LAW PERIOD.

John Poletto, a real estate broker in Florida seems to have no issue with hiding know facts from buyers. The law is that latent defects, lawsuits, and anything that can harm a buye MUST be disclosed so why is the Florida Courts allowing this cover up that will cause BUYERS massive headache, stress and legal liability.

<https://drive.google.com/file/d/0Bzn2NurXrSkIVUFCVZKb1YtWnM/view?usp=sharing>

I am a Broker, a Real Estate Advocate, a Real Estate Whistleblower and I have owned my own real estate company for over 15 years. Check out the Transcript below as you see a JUDGE, and several attorneys seem to conspire to aid and abet a real estate sale and NOT disclose to BUYERS that they may spend years in litigation down the road after they have fixed up a place that Ted Bernstein let run down as a BAD PR for the property.

It is NOT ok for a JUDGE to want to hide this litigation from BUYERS. It is not lawful nor morally ethically for Judge Martin Colin to NOT want BUYERS to know when this affects their VERY life, the life of their children and their quality of life in EVERY WAY.

SHAME SHAME on this JUDGE.

Really, Look Below, this document clearly shows this JUDGE ranting about YOU, the Real Estate Consumer NOT having a right to know what the Real Estate Seller and the Real Estate Broker KNOW and by law have to disclose. WOW.

	<p>Thursday, March 26, 2015 South County Courthouse Courtroom 8 Delray Beach, Florida 33444 1:03 p.m. - 2:10 p.m.</p> <p>Stenographically Reported By: April Y. Segui, RPR, FPR Registered Professional Reporter Florida Professional Reporter</p> <p>WWW.USLEGALSUPPORT.COM 561-835-0220</p>
2	<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiff:</p> <p>3</p>



E-mail: Arose@mrachek-law.com
ALAN B. ROSE, ESQUIRE

Other Research Links

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121002%20PETITION%20FOR%20ADMINISTRATION%20SIMON.pdf>

<http://tedbernsteinreport.blogspot.com/>

Read the Entire Blog, Go to the bottom of the page and click older posts OR use search in upper left to search the Blog for what you want.

If you need information to protect you as a Real Estate Buyer of 7020 Lions Head Lane Boca Raton, email me at SavvyBroker@yahoo.com

Posted by Crystall Cox at 5:20 PM No comments:

 Recommend this on Google

Saturday, January 4, 2014

Ted Bernstein of Life Insurance Concepts, Tescher and Spallina Law Firm, Robert Spallina, Donald Tescher and Florida Notary Kimberly Moran Florida Insurance Scam and Estate Fraud, Forgery Case, overseeing Judge is Judge Martin H. Colin.

***Kimberly Moran Florida Notary Public, Tescher and Spallina Law Firm involved in Forgery and Estate Fraud**

Kimberly Moran Florida Notary Public, Tescher and Spallina Law Firm (Robert Spallina and Donald Tescher), Ted Bernstein of Life Insurance Concepts and the Bernstein Family Foundation are involved in Estate Fraud, insurance Schemes, Fraud on the Courts, Forgery, Possible Murder and other illegal and unethical behavior. The Judge in the Case is Judge Martin H. Colin.

Kimberly Moran Florida Notary Public of Tescher and Spallina Law Firm, Robert Spallina, Donald Tescher, Ted Bernstein of Life Insurance Concepts sure seems to have a lot of explaining to do, check out the forgery, fraud on the courts, flat out lies and for some reason none of these folks are in jail. The Judge in the Case is Judge Martin H. Colin, we will be watching to see if he follows through with those Miranda Rights and to see if Kimberly Moran, who is already confirmed to have committed forgery, sees any jail time and how this Notary at a law firm got such a high priced criminal attorney?

Take a look at the details of this Florida Estate Fraud, Forgery, Real Estate Fraud, Child Endangerment, Fraud on the Courts and Possible Murder Case is playing out.

Kimberly Moran, Florida Notary Public involved in Fraud, Forgery, Estate Fraud ..
Motion to Freeze Assets in Shirley Bernstein Estate

<https://docs.google.com/file/d/0Bzn2NurXrSkia3dyOGs4MnowODg/edit>



ARREST has been made in the Estate of Shirley for FRAUDULENT NOTARIZATIONS and admitted FORGERIES of five documents in our names and on our father's name, which was FORGED POST MORTEM for him by Donald and Roberts Legal Assistant and Notary Public, Kimberly Moran.

<http://tedbernsteinreport.blogspot.com/2013/12/response-to-ted-and-donald-letters-re.html>

Kimberly Moran State of Florida Notary Suspension

http://www.flgov.com/wp-content/uploads/orders/2013/13_291_moran.pdf

Court Petition Naming Kimberly Moran, Florida Notary Public <http://www.docstoc.com/docs/160162877/Ted-Bernstein-Petition>

RESPONSE TO TED and DONALD LETTERS RE EMERGENCY DISTRIBUTIONS FOR THREE MINOR CHILDREN AND MORE

<http://tedbernsteinreport.blogspot.com/2013/12/response-to-ted-and-donald-letters-re.html>

Additional Respondents Added

<https://docs.google.com/file/d/0Bzn2NurXrSkicnFEdTl5Zktic00/edit>

More information on this Estate Fraud, Forgery, Fraud on the Courts Case

<http://tedbernsteinreport.blogspot.com/>

<http://tedbernsteinreport.blogspot.com/2013/12/does-ted-bernstein-not-understand-truth.html>

Insurance Schemes and Fraud on the Court, Ted Bernstein

http://www.docstoc.com/docs/document-preview.aspx?doc_id=165105099&key=undefined&pass=undefined

"NOTICE OF MOTION TO RE-OPEN BASED ON FRAUD ON THE COURT"

"That Case No. 502012CA013933XXXX, Stansbury v. Ted Bernstein et al. is a lawsuit with a claim against the estate, where RICO Defendant Greenberg Traurig acts as counsel to Plaintiff's brother Theodore. However, after Plaintiff points out to his brother and Spallina that Greenberg Traurig is conflicted with assets of the estates, including but not limited to the approximate 30% interests held in the iViewit Companies, the iViewit Intellectual Properties and this RICO lawsuit, Greenberg Traurig suddenly withdraws as counsel in the matter, months after the lawsuit was instituted"

Source and Full Document

<http://www.iViewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20to%20Rehear%20and%20Reopen%20Obstruction%20of%20Justice165555%20WITH%20EXHIBITS.pdf>

Hearing Transcript where Judge Martin H. Colin clearly knows of fraud on the courts, and has yet to actually follow through with the threatened reading of the Miranda rights.

<https://docs.google.com/file/d/0Bzn2NurXrSkia3NzaDd1NG45aUk/edit>

Lawsuit filed against Ted Bernstein

<https://docs.google.com/file/d/0Bzn2NurXrSkiWnBNVUtJUEFJRms/edit>

<http://tedbernsteinreport.blogspot.com/2013/08/ted-bernstein-life-insurance-concepts.html> "

Source of Robert Spallina and Donald Tescher, Tescher and Spallina Law Firm, Ted Bernstein of Life Insurance Concepts, Greg Geffen Attorney Signature Title, Florida Notary Kimbe Moran and Judge Martin H. Colin post.
<http://ireport.cnn.com/docs/DOC-1072355>



Donald Tescher on the Far Right

Check out the Documents in this Florida Estate Case. The overseeing judge is Judge Martin H. Colin who "almost" read the attorneys their Miranda Rights. We have forgery, fraud, dead people signing documents, possible murder, sibling rivalry and all the makings of a Law and Order mini series. Read these document, and decide for yourself who is committing fraud, who is lying, who is telling the truth, who is abiding the law and take a deep look as to whether you want to buy insurance from Ted Bernstein of Life Insurance Concepts, or your Estate "Handled" by what sure looks to me to be crooks who will do as they please after you die, regardless of your wishes.



Donald Tescher in the Middle

More Robert Spallina and Donald Tescher, Tescher and Spallina Law Firm, Ted Bernstein of Life Insurance Concepts, Greg Geffen Attorney Signature Title, and Florida Notary Kimbe Moran seem to be involved in a massive Florida Insurance Scam and Estate Fraud Case, overseeing judge is Judge Martin H. Colin. research links

<http://tedbernsteinreport.blogspot.com/2013/12/response-to-ted-and-donald-letters-re.html>

Petition to Freeze Bernstein Assets

<https://drive.google.com/file/d/0Bzn2NurXrSkITzBGbkdSTXl4MEU/edit?usp=sharing>

Motion to Remove Personal Representative

<https://drive.google.com/file/d/0Bzn2NurXrSkINFdEOWo3ZnhHMEU/edit?usp=sharing>

Response to Florida Governor in Kimberly Moran Notary Fraud, Forgery Case

<https://drive.google.com/file/d/0Bzn2NurXrSkIOVFPROJOYIQUFU/edit?usp=sharing>

Forgery, Fraud on the Courts, Sanctions

<https://drive.google.com/file/d/0Bzn2NurXrSkIRDZGYjVlnVoQm8/edit?usp=sharing>

Kimberly Moran Notary Fraud, Forgery Case. Kimberly Moran of Tescher and Spallina Law Firm response on Notary Fraud whereby she forged the signature of a deceased man to enher her bosses Robert Spallina and Donald Tescher and DENY the true, moral and legal wishes of those whose Estate Robert Spallina and Donald Tescher were handling the affairs and as of.

<https://drive.google.com/file/d/0Bzn2NurXrSkITmd6Q2VhRvpDdWM/edit?usp=sharing>

Notary Public Comparison of Signatures and Dates, Evidence in Kimberly Moran Notary of Tescher and Spallina Law Firm Fraud, Forgery Case

<https://drive.google.com/file/d/0Bzn2NurXrSkIUzFsT0hVYhocWM/edit?usp=sharing>

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA, (BOTH PERSONALLY & PROFESSIONALLY); DONALD R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY); THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH PERSONALLY & PROFESSIONALLY); Emergency Hearing Judge Martin Colin Court.

<https://drive.google.com/file/d/0Bzn2NurXrSkia3ZTZWNEczNxaEO/edit?usp=sharing>

Jackson Response to Bernstein Trust Requests

<https://drive.google.com/file/d/0Bzn2NurXrSkibWlpdmNoQ21YcmM/edit?usp=sharing>



In March of 2012 Donald Tescher was awarded by the "MITZVAH SOCIETY" for allegedly being a "CARING ESTATE PLANNING PROFESSIONALS".

Yet it is clear from the court documents above, that Donald Tescher and TESCHER & SPALLINA, P.A will do as they please after you die, regardless of what your TRUE wishes are and regardless of how much you pay him, or to what lengths, efforts and legal means you go to prepare your ESTATE to be handled per your wishes.

And it sure seems that the JUDGES in Florida will assist Tescher and Spallina, even if they are involved in clear fraud, forgery and acting outside of the law and the wishes their clients estate plans.

Posted by Crystal L. Cox at 7:46 PM No comments:

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Friday, September 27, 2013

For More Information On Ted Bernstein Being Sued, and More Court Filings Against Ted Bernstein..

Check out the Ted Bernstein Report by Investigative Blogger Crystal L. Cox

<http://tedbernsteinreport.blogspot.com/>

Posted by Crystal L. Cox at 4:27 PM No comments:

 Recommend this on Google

Tuesday, July 30, 2013

Sheri Goldman; Investigative Blogger Crystal Cox Alleges that Ted Bernstein, the man in the news video w the person financing Sheri Goldman to be a building where no other medical professionals were.

Investigative Blogger Crystal Cox Alleges that Ted Bernstein is behind the Botox scheme, used her services and KNEW full well that she was not a nurse. Investigative Blogger Crystal Cox Alleges that Ted Bernstein this is in connection with other insurance and high finance scams in which Ted Bernstein of Boca Raton Florida may be involved in.

"Boca woman arrested after police say she offered botox, told people she was a nurse

"BOCA RATON, Fla. - The Florida Department of Health's Investigative Services Unit- West Palm Beach, announced that their joint investigation with the City of Boca Raton Police Department and the Florida Department of Corrections has led to the arrest of Sheri Goldman for the unlicensed practice of a health care profession, which is a third degree felony punishable by up to five years in jail.

Goldman was also arrested for violation of probation based on a previous arrest for unlicensed activity in Palm Beach County.

The joint operation was conducted after the City of Boca Raton Police Department received an anonymous complaint that Sheri Goldman was offering Botox injections and claiming to be a nurse.

Authorities say Goldman is not licensed to perform any health care profession within the state of Florida.

After a joint undercover operation with the listed agencies at Goldman's place of business, Beauty & Balance, she claimed to be an "OR nurse." In addition, a search of the website www.groupon.com revealed she was posing as a "surgical nurse" according to investigators.

DOH has several resources to combat unlicensed activity: Consumers are encouraged to use DOH's Web site www.flhealthsource.com where they can view the license information of their health care practitioner.

Source of Post and Full Article http://www.wptv.com/dpp/news/region_s_palm_beach_county/boca_raton/boca-woman-arrested-after-police-say-she-offered-botox-and-told-people-she-was-a-nurse#ixzz2a2YFuYt

Research More Regarding the Unethical, possibly ILLEGAL actions of Boca Raton Florida's Life Insurance Concepts owned by Ted Bernstein.

MOTION TO REMOVE PERSONAL REPRESENTATIVES

<https://docs.google.com/file/d/0Bzn2NurXrSKiT0tBZGhKemNzc1E/edit>

"NOTICE OF MOTION TO RE-OPEN BASED ON FRAUD ON THE COURT"

"That Case No. 502012CA013933XXXX, Stansbury v. Ted Bernstein et al. is a lawsuit with a claim against the estate, where RICO Defendant Greenberg Traurig acts as counsel to Plaintiff's brother Theodore. However, after Plaintiff points out to his brother and Spallina that Greenberg Traurig is conflicted with assets of the estates, including but not limited to the approximate 30% interests held in the Iviewit Companies, the Iviewit Intellectual Properties and this RICO lawsuit, Greenberg Traurig suddenly withdraws as counsel in the matter, months after the lawsuit was instituted"

Source and Full Document

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rehear%20and%20Reopen%20Obstron%20of%20Justice165555%20WITH%20EXHIBITS.pdf>

Posted by Crystal Cox at 4:08 PM No comments:

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7020 Lions Head Lane Boca Raton, Real Estate Buyer...

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Blog Archive

7020 Lions Head Lane Boca Raton Florida - Buyer Do your Diligence

Written by Real Estate Whistleblower and Real Estate Consumer Advocate, Investigative Blogger Crystal Cox.

Monday, April 20, 2015

Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company; Insurance Fraud, Forged Documents, Murder Allegations, No Policy and Millions Paid.

Note: All Cases on this property INVOLVE property located at 7020 Lions Head Lane Boca Raton, Florida, 2494 S Ocean Blvd, Apt C5, Boca Raton, FL 33432, and 880 Berkley St. Boca Raton. These properties are tied up in multi-millions in litigation and they don't want potential buyers to know. Do your homework folks. As a, what seems to be corrupt, lawless or just ignorant Florida Probate Judge is ordering that you, the REAL Estate Buyer NOT be told (DISCLOSED) as to what will inevitably affect your life.

The Ocean Blvd property was SOLD, I believe through a fraudulent residential loan. As it is clearly an investment property and the buyer does not even live in the country. I believe the buyer is friends with Ted Bernstein or associates, and is connected to the lender and others acting in Civil Conspiracy regarding buying this property with little money down, a low interest residential loan out of Illinois and then profiting tax free acting as if it's a primary resident instead of an investment property.



Meanwhile in Judge Colin's Court in Palm County Florida there is massive crimes and cover up and Judge Martin Colin seems to want to sweep it all under the rug and get it out of the Illinois courts where Justice may be served.

Judge Martin Colin seems to be involved in a Probate Attorney Protection racket, and the victims are children and other innocent citizens. Meanwhile years go by and properties are run down, stolen, sold... money disappears, jewelry gone, and so much admitted fraud and forgery AND Judge Martin Colin DOES nothing.

Ted Bernstein pays for an attorney with Estate money and seems to pay for his own life, while other heirs have no attorney, no rights and some are minors. Judge Martin Colin has clearly broken the law and violated constitutional rights and seems to believe he is so connected (probably to Labarga and others from his Prosecutor job) that he will never face prison or any kind of justice. I say he is wrong and that one day someone will bring Judge Martin Colin to Justice.

Here is the Illinois Docket
<http://ia601902.us.archive.org/6/items/gov.uscourts.ilnd.283534/gov.uscourts.ilnd.283534.docket.html>

Answer to Complaint
<http://ia601902.us.archive.org/6/items/gov.uscourts.ilnd.283534/gov.uscourts.ilnd.283534.17.0.pdf>

Heritage Union Life Insurance Company, Jackson National will pay YOU millions and all you have to do is say oh ya my dad had a policy for 2 million and the pay with NO Policy, simply to get out of a litigation. WOW?? oh and there is murder allegations and a Heavy Metal Toxin autopsy report. So I guess one can commit murder, then say hey Heritage Union Life Insurance Company, Jackson Life Insurance, I had a policy on that guy, now pay me 2 million and they say ok. Sounds LEGIT.

WOW ... Folks.. WTF comes to mind.

More on the Illinois case

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131104%20Ted%20Pam%20Lisa%20Jill%20Answer%20to%20Complaint%20Jackson%20Heritage%20Northern%20District%20Illinois%20Simon%20v%20Heritage%20Jackson%20Insurance.pdf>

<http://www.iviewit.tv/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Original%20LOW.pdf>

<http://tedbernsteinreport.blogspot.com/search?q=District+of+Illinois>

Why does Judge Martin Colin Protect Tescher and Spallina in CLEAR and Blatant Insurance Fraud, Forgery, and cover ups. And allow them ALL to keep creating victims? There is no policy? Yet millions was paid?? Why is Spallina not investigated by Heritage Life, Jackson National or the the LAW in any Way?

Disclose



DISCLOSURE is LAW



Attorney Robert Spallina, protected by Judge Martin Colin (in my opinion) tried to collect 2 million in life insurance. The alleged policy holder with NO POLICY, looks to have been murdered. So why is Jackson National Insurance Company NOT investigating this matter?

Here is the Letter Robert Spallina, Florida Probate attorney sent to try and collect the millions.

"Dear Sir or Madam: Enclosed is the Claimant's Statement for the above referenced policy. together with an original Death Certificate for the insured, Simon Bernstein, .

We are also enclosing a copy of Internal Revenue Service Form SS-4, Application for Employer Identification Number for the Simon Bernstein Irrevocable Insurance Trust June 1, 1995, which is the trust listed as beneficiary of the above referenced policy.

We will provide wiring instructions for the trust bank account when you have processed the claim, if possible, in lieu of a check. Finally, we are enclosing a copy of the obituary for the decedent which was published in the Palm Beach Post.

We are unable to locate a copy of the original insurance policy.

If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely

ROBERT L SPALLINA*

Heritage Claim Form, Spallina Alleged Fraud

<https://docs.google.com/file/d/0Bzn2NurXrSkia0RmS3lWADF6SEU/edit>

District of Illinois Federal Case regarding insurance of deceased owner of 7020 Lions Head Lane

Folks do you want to put time, money, blood sweat and tears into making a family home, only to have it taken back by the true heirs once there real is clear and legal title in a way that a dead guy does not sign trust documents.

Buy at your own Risk. Below is a Link to more on the Illinois Case involving this Property (the Simon Bernstein Estate)

<http://tedbernsteinreport.blogspot.com/2015/04/illinois-master.html>



Regency Title dba US Title of Florida and Old Republic National Title Insurance Company seems to be involved in Florida Real Estate probate fraud. As we see that the Shirley Bernstein estate condo was SOLD and they guaranteed a clear title through Greg Gefen Florida attorney who seems to have several title companies. Regency Title dba US Title of Florida and Old Republic National Title Insurance Company is liable for the millions in property that they allowed the wrong owner to sell.

<http://judgemartincolin.blogspot.ie/2015/04/gregory-s-gefen-john-paletto-judge.html>

Simon Bernstein Estate Case; Florida Probate Court; Judge Martin Colin; 7020 Lions Head Lane

Click Below for Linked Docket of Simon Bernstein Estate Case

<https://docs.google.com/file/d/0Bzn2NurXrSkis0NMbINaNUk2MXc/edit>

7020 Lions Head Lane Boca Raton; Judge Martin Colin has BANNED Real Estate Disclosure.

Judge Martin Colin has banned Eliot Bernstein from DISCLOSING to Real Estate Buyers, as a matter of law, that 7020 Lions Head Lane, Boca Raton Florida is involved in several multi-million dollar legal actions.

When the buyers find out in the future and sue, Eliot Bernstein or his children will be financially liable, he is abiding by the law and blocked by Judge

Martin Colin.

Click the Link Below for More

<http://tedbernsteinreport.blogspot.com/2015/04/florida-lis-pendens-7020-lions-head.html>

Shirley Bernstein Estate Probate Case connected to the Simon Bernstein Estate Case, both will affect what happens to 7020 Lions Head Lane. Don't Believe Me, do your DUE Diligence, Trust NO One. This is YOUR LIFE.

Click Below for More on the Shirley Bernstein Estate Case, Florida Probate Case in the Court of Judge Martin Colin (ya know the JUDGE who is order NON-Disclosure)

<http://tedbernsteinreport.blogspot.com/2015/04/shirley-bernstein-estate-case-master.html>

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[LEARN MORE](#) [GOT IT](#)

Motion to Remove Ted Bernstein as PR

<https://docs.google.com/file/d/0Bzn2NurXiSkINFdEOWo3ZnhHMEU/edit>

<https://docs.google.com/file/d/0Bzn2NurXiSkIT0fBZGhKemNzc1E/edit>

Florida Probate Attorney Donald Tescher (Protected by Judge Martin Colin), Excerpt from deposition testimony.

<https://docs.google.com/file/d/0Bzn2NurXiSkINDFNwi1sTHBPVzA/edit>

The Lasalle National Trust and C/O Robert Spallina Mystery

"Bates #JCK001262, is a letter regarding the filing of a claim dated October 09, 2012, sent from HERITAGE to SPALLINA with SPALLINA addressed as "LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA, ATTORNEY AT LAW" address "4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431" and the Letter starts "Dear Trustee."

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140112%20FINAL%20SIGNED%20PRINTED%20MOTION%20TO%20S TRIKE%20AMENDED%20COMPLAINT%20ECFCOPY.pdf>

"LaSalle National Trust, N.A." seems to basically be a national holding company, via big title companies and banks and simply a way to convey property, assets, holdings and real estate. Thing is what instrument gave Spallina the right to be the Trustee in the Simon Bernstein estate in this regard?

What was Robert Spallina really up to, using this huge company name and having documents sent to him directly? Or wanting to collect on the Heritage Union Life Insurance Company / Jackson National Life Insurance Company Policy, or lack of policy?



Seems to me that "LaSalle National Trust, N.A.", the real one, has a major claim against Tescher and Spallina unless Robert Spallina was acting with their authority???

"SPALLINA acting as both the TRUSTEE of "LaSalle National Trust, N.A." and as Trustee of the Lost or Suppressed Trust, HERITAGE would have to legally pay him as either the Primary or the Contingent Beneficiary in his fraudulent Legal and Fiduciary roles. "

Page 13

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140112%20FINAL%20SIGNED%20PRINTED%20MOTION%20TO%20S TRIKE%20AMENDED%20COMPLAINT%20ECFCOPY.pdf>

To document search the above page, click on Control F, then type in Lasalle, to read all the places it is mentioned in the above document.

Eliot Bernstein Disclosure; Heritage Union Life Insurance; Jackson National Life Insurance

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131022%20Rule%2026%20Disclosure%20Eliot%20Jackson%20National%20Lawsuit.pdf>

Chicago Title Land Trust Company is successor trustee to the listed bank land trustees, as seen here,

<http://www.ctlandtrust.com/#!/successorships-h-l/ctsk>

If Robert Spallina claimed to speak for LaSalle National Trust then is this connect to Chicago Title Company, and perhaps real estate shady dealings involving Greg Geffen in Florida? Hmmm....

Chicago Title is a pretty big deal in Title Insurance. I have owned my own real estate company for 14 years, and well um.. how is Spallina trying to pull off that he is successor trustee or whatever mumbo jumbo he was trying to pull off?

Did Robert Spallina real say he was speaking for Lasalle? really? Employee fund, real estate, SEC, how in the world is Spallina speaking for Lasalle? call me Confused.

More Research

<http://tedbernsteinreport.blogspot.com/2014/02/why-is-heritage-union-life-insurance.html>

<http://tedbernsteininsurancescam.blogspot.com/2014/01/ted-bernstein-of-life-insurance.html>

<http://www.docstoc.com/docs/160196536/Ted-Bernstein-Life-Insurance-Concepts-Boca-Raton>

<http://tedbernsteinreport.blogspot.com/2014/02/wow-fraud-sure-seems-to-be-piling-up-is.html>

<http://tedbernsteinreport.blogspot.com/2014/01/robert-spallina-consent-and-joinder-to.html>

http://robertspallina.blogspot.com/2014/02/is-adam-simon-liar-liar-pants-on-fire_6.html

Sheriff Report, Spallina

<https://docs.google.com/file/d/0Bzn2NurXrSkITThFWTg452plamM/edit>

Palm Beach County Sheriff Office Supplemental Report

<https://docs.google.com/file/d/0Bzn2NurXrSkINHFZMmhJWjzdk0/edit>

Heritage Claim Form, Spallina Fraud

<https://docs.google.com/file/d/0Bzn2NurXrSkia0RmS3lWADF6SEU/edit>

Fraud on the Courts, Tescher Spallina and Ted Bernstein

<https://docs.google.com/file/d/0Bzn2NurXrSkIRDZGYjVWnVoQm8/edit>

Judge Martin Collin DENIAL Of Emergency Petition to Freeze ASSETS; Now the assets are stolen,sold cheap or just gone.

Judge Martin Colin SHOULD have froze assets until there was clear title, he did NOT.

Here is the DENIAL TO Freeze assets

<https://docs.google.com/file/d/0Bzn2NurXrSkIN0RIUWEz2RWNVU/edit>

One of those assests is 7020 Lions Head Lane Boca Raton

Judge Martin Colin never did Freeze assets and it's been near 2 years now. So the assets have illegally been sold off, stole, moved, damaged and ALL because Florida Probate Judge, Judge Martin Colin is protecting Elite Florida Probate attomeys.

Here is the Petition to Freeze Assets

<https://docs.google.com/file/d/0Bzn2NurXrSkITzBGbkdSTX4MEU/edit>



2494 S Ocean Blvd, Apt C5, Boca Raton, FL 33432

More on Litigation involving the above property.

"SPALLINA STATED THAT TED BERNSTEIN IS THE TRUSTEE FOR SHIRLEY'S TRUST .

HE SAID THAT A CONDO THAT "WAS SOLD FOR \$1, 400, 000 AND THAT MONEY

WENT INTO THE TRUST. "

And lot's more on the supplemental Sheriff's Report Below

<https://docs.google.com/file/d/0Bzn2NurXrSkiNHfZMmhJWjzdk0/edit>

Buyer: Wesley G. Voorheis
333 Bay Street #910
Toronto Ontario, M5h 2R2 Canada

Mortgage
<https://docs.google.com/file/d/0Bzn2NurXrSkiQjImSmRoNXjBdHc/edit>

Closer: Steve Paraggua
Rolling Meadows Illinois

BMO Harris Bank N.A.
Rolling Meadows Illinois

Florida Single Family Fannie Mae / Freddie Mac instrument
Lenders Address is Scottsdale, Arizona

Ok so we have a mortgage broker, banker out of Illinois, a lender out of Arizona, a property in Florida and a buyer in Ontario Canada. And we have a single family residential loan?? REALLY ??

I, Real Estate Expert and advocate Crystal L. Cox say that there is mortgage fraud involved in the sale of the above property, as well as no clear titles, SOLD by someone who had no legal right to sell, has title insurance fraud, RESPA violations and much more.

It says second home, so maybe its legit. But hmm now it's a million more? I say that Broker John Poletto and Ted Bernstein are in on a million dollar scam with the lender and the buyer to dupe the real and true, legal heirs.

What if a buyer knew that they were buying a property from someone who did not have the legal right to sell, and they got a loan like this? Hmm.. all kinds of trouble I'd say.

I know Florida law is different, however, I have never seen a title agent sign on a loan document such as this. Did Title Agent, Florida Attorney Greg Gefen get kickback from this mortgage? On the title insurance? Did Ted Bernstein? Hmm...

Shirley Bernstein Estate Case, Florida Probate Case in the Court of Judge Martin Colin
<http://tedbernsteinreport.blogspot.com/2015/04/shirley-bernstein-estate-case-master.html>



[To research more on the Eliot Bernstein, iViewit RICO](#)

<https://www.facebook.com/iviewit/posts/133089426862083>

<http://federalricolawsuit.blogspot.com/2010/01/judiciary-committee-reviews-iviewit.html>

iViewit RICO Crime Chart
<http://iviewit.tv/CompanyDocs/RICO%20CRIME%20CHARTS.pdf>

<http://iviewit.tv/wordpress/>

<http://www.iviewit.tv/>

Full RICO Filing
<http://investigativeblogger.blogspot.com/2014/03/district-of-nevada-rico-and.html>

Viewit Supreme Court Case
<http://www.iviewit.tv/supreme%20court/index.htm>

Viewit SEC Complaint
<http://iviewit.tv/wordpress/?p=288>

Viewit Motion to ReHear

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rehear%20and%20Reopen%20Obstruction%20of%20Justice16555%20WITH%20EXHIBITS.pdf>

Posted by Crystal L. Cox at 11:19 AM No comments:

 Recommend this on Google

Friday, April 17, 2015

Gregory S. Gefen, John Poletto, Judge Martin Colin, Ted Bernstein and more seem to be involved in massive real estate fraud, forgery and cover up.

" Real Estate Forensics Report / Fraud Analysis: Shirley Bernstein Condo Sale

Real Estate Warranty Deed Transaction Date: April 18th 2013
Prepared by: Gregory S. Gefen, PA
File Number U13-412

Recorded: 05/06/2013
Palm Beach County, Florida
AMT 1,600,000
Doc Stamp 11,200
Pages 1029 - 1031;

The Following report is my Professional Opinion and advice based on 13 years as a Real Estate Broker Owner, and Currently owning a Real Estate Consulting and Real Estate Forensics Firm. This report is written upon the knowledge and information of Crystal L. Cox, Broker.

Notes on Trustee Affidavit

Regarding Warranty Deed prepared by Gregory S. Gefen, PA, File Number: U13-412

This recorded document now seems to be the only recorded documents regarding Ted Bernstein having Seller or Grantor rights in this matter. Before this closing, there appears to be no legal record, as a matter of law in which proves Ted Bernstein of having legal rights to sell subject property.

It appears to me that this real estate transaction is fraudulent, and that All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company have a liability to the buyer in this transaction and to the true and correct heirs of the Shirley Bernstein Estate.

I would tell the Title Company to show you the legal documentation they have that gave them the legal right to allow Ted Bernstein to sell this Condo, to sign as the Seller, Grantor of said Property?

It is my understanding that the Shirley Bernstein Trust Agreement does not state that Ted Bernstein is the executor. Or at least I see no proof provided in the closing documents in which the title company filed in the closing of this 1.6 Million dollar sale, that would give Ted Bernstein a legal right to be the "Grantor" of said property.

What documentation did the title company have that gave them the legal right to let Ted Bernstein sell this real estate? What documentation did the title company have that justified providing a title insurance policy on a 1.6 Million dollar real estate sale, that insured to the buyer, that Ted Bernstein was the legal Grantor / Seller in this sale?

Ted Bernstein swore that the trust had not been revoked or terminated And that the the vesting Deed was

recorded that provides the trustee with the full power of sale and that the subject transaction will not violate the trust. Yet there is no court documents, no judicial ruling that provides legal proof that Ted Bernstein is the person that gets to speak on behalf of the Shirley Bernstein estate.

There seems to have been no probate nor judicial order appointing Ted Bernstein as executor, successor of the Shirley Bernstein estate. So why would this title company guarantee title with no legal documents proving such and allow a \$1.6 million dollar real estate transaction and provide title policy on said property?

As a real estate broker, I would not let Ted Bernstein sign a listing on this property, as there is no documentation that he has Sellers rights and this would be a violation of law.

Ted Bernstein Had no legal right to act as Seller in this deed transfer. This title company provided title insurance in this matter and is liable to the Shirley Bemstein estate, as well as no liable to the buyer in this matter and the cost of this property being deed back to the rightful owner, as far as I see this case.

This seems to be a matter of property theft. All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company guaranteed clear title in this real estate transaction via title insurance policy, and I would demand to see the settlement statement and all related documents, especially any document that was used as legal proof that Ted Bernstein was the SELLER, legally in this transaction. I do not see such a legal document in the recorded documentations for the sale of the subject property.

Ted Bernstein, under penalty and perjury swore the document to be true. The fact is that is simply a "pinky swear", that is one man swearing that he owns a 1.6 million dollar property. There is no court document, no estate documents and no proof, of any kind that Ted Bernstein in fact has a legal right to convey title to this property, as far as I can see.

The Notary ONLY verified that it was indeed Ted Bernstein and that he showed proper ID, a Notary is not a lawyer, nor a court clerk. The title company needs to prove via a court recorded document that Ted Bernstein had a legal right to sell said property.

This is the reason to use a title company to close a LEGAL real estate transaction. The title company insures the title, researches recorded documents and PROVES who has rights to convey property.

Anyone can sign any document and swear that what the document says is true. The Notary swears that it is that person and not that the person is telling the truth, or has a legal document of FACT. Nor does the notary provide any kind of legal recorded proof that this person is entitled to swear to this information as a matter of law. A Notary simply verifies the identity of the person who signs the document.

All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company sold an insurance policy with this real estate transaction insuring that the title was clear to sell to said buyer, when in fact Ted Bernstein did not have a legal right to sell this property, as far as the documentation provide shows.

Ted Bernstein is NOT the true and correct, proper "Grantor" named in the warranty documents.

Ted Bernstein could have just as easily signed an affidavit swearing that he was the seller of the White House, and a Notary would have verified the document, only to the extent that it was indeed a man named Ted Bernstein, whom had the proper identification to prove his identity. And this has NOTHING to do with proof of title rights.

A signed affidavit from someone claiming rights to sell the White House, as in this example, would not give the person the legal right to do so, nor does it in the case of this real estate transaction.

This is a fraudulent real estate transaction, in my expert opinion. The question then becomes did the title company get kick back on this deal? Was the title company promised future deals with these powerful men Ted Bernstein and George Wesley Thomas Voorheis?

It is a title companies job, BEFORE issuing a title insurance policy, to make sure that the title is clear and is able to be Sold. Said property seems to be in major legal dispute and is part of an estate in litigation, of which Ted Bernstein is NOT the Trustee, as appointed by a court of law.

This title company took a man's word that he owned a 1.6 Million dollar property, and let said man sell this property, without legal ownership. Upon my knowledge and belief, this title company has massive liability over this issue.

Notes on the Shirley Bernstein Trust Agreement pages provided in the closing documents of said property.

This document has no clear sign of being true and correct. As a real estate Broker, I would not take this as proof that Ted Bernstein had a right to be a SELLER aKa Grantor of this property.

This is simply a document that may or may not have been actually signed by Shirley Bernstein. The correct and lawful procedure in these matters, in my expert opinion is the subject property to have gone through probate, and have a court appointed executor or trustee of the estate.

The legal process is not simply for someone who wants to be an heir to swear they are and then a Title Company allows

this person to sell millions of dollars of real estate they CLEARLY have no proof of owning.

In order for me to prove title and allow a person to act as Seller, I would have to see the probate documents, and the court rulings that granted Ted Bernstein the power to be the executor or the estate, have legal rights to the deed, and execute the sale of the subject property.

There seems to be no court document that gives Ted Bernstein the LEGAL right to sell subject property, there is only a man saying he has the right and a title company issuing title insurance on a multi-million dollar property insuring the title on said property.

In my experience, professional title companies go to the courthouse records for proof of liens, judgements, deed rights, estate issues and they do NOT simply take a sworn statement from a man who swears he is the legal Seller and give this man the absolute rights to millions of dollars of property of which he clearly has no probate, court stamped, judicial documents to prove this is true.

Notes on the warranty deed dated the 18th day of April, 2013

This appears to be fraudulent as there is no court document in which appoints Ted Bernstein as Successor of the Shirley Bernstein Trust. There does not seem to be any LEGAL documents that prove that Ted Bernstein has rights to the subject property as Successor, Executor, Trustee, Seller or Grantor. Here we see a **Ted Bernstein who himself claims to be a "Successor Trustee", acting as Grantor selling subject property to Grantee G. Wesley Veorheis, a Canadian Resident, and there seems to be something amiss in this transaction.**

There appears to be fraud in this transaction and I advise the true and correct heirs of the Shirley Bernstein estate to file legal action against All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company, against the Corporate Company and the individuals involved in the sale, who may have been involved in kickback schemes or other anti-trust and civil conspiracy violations in this real estate transaction.

From what I can determine, and in my expert opinion, Ted Bernstein is **not the legal "Grantor"** and therefore has no legal right to convey title to said property.

All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company have no legal right to have provide an insurance policy that guaranteed this title.

Just because there is a Notary and witnesses who signed the Warranty Deed, does not in any way legally prove that All Regency Title dba US Title of Florida had a LEGAL right to allow Ted Bernstein to act as Grantor or Seller of Subject Property.

I see no proof, whatsoever that Ted Bernstein is the rightful Grantor, and therefore this transactions appears to be fraudulent.

Just because there is a Notary and witnesses who signed the Warranty Deed, does not in any way legally give this title company right to provide title insurance through their title insurance provider Old Republic National Title Insurance Company, with corporate offices in Minneapolis, MN.

Again, a Notary stamp is not a COURT STAMP, nor a Judicial Ruling.

Regarding the "Certificate of Approval"

This document appears to be directly from the Condo Association. I have not read the bylaws of the Aragon Condominium Association, however, in my professional opinion, there may be some fraud between **Ted Bernstein and the Aragon Condominium Association president James McGee.**

The association in most cases can approve membership, and may be able to exclude certain people, however the association seems to be providing certification to further DUPE the title company, by claiming they have the power to **give Ted Bernstein approval to convey title for Wesley George T. Voorheis to acquire.**

Did the association have court documents that proved that Ted Bernstein had a right to convey title? If not then it is my opinion that the Aragon Condominium Association and that James McGee personally are also liable for what looks to be a real estate heist to me.

Regarding Non Identity Affidavit

This documented is suspected to be a fraudulent tax document. As Ted Bernstein has no proof that he is the court appointed Trustee in this matter and has no legal right to certify that he owes no estate tax in this matter.

Ted Bernstein may be committing fraud against the U.S. government in possibly illegally conveying title to a property he has no legal right to and at the same time claiming **himself tax exempt for this millions of dollars in alleged inheritance.**

I recommend that the true and correct heirs notify the Florida and U.S. Tax Authorities on this issue. As there may be a

great deal of estate tax due on this matter, and Ted Bernstein has no legal proof that he can speak on behalf of the Shirley Bernstein estate.

Based on my experience it is a standard of practice in real estate regarding estate issues, for the property to go through probate, have a court appointed trustee and proceed through the courts and **NOT** through a sworn affidavit by a **dreamy eyed family member wishing to receive millions of tax free dollars.**

If any potential heir or for that matter any person off the street can sign a document to swear they have rights to property, with no recorded deed or court order, well then this is a serious matter that the Department of Justice and Attorney General need to look into, as this title company may have done this before and thereby created many victims in this scheme. It is not lawful to let anyone claiming they have title right to sell other people's property.

It is the PURPOSE of purchasing the Title Insurance Policy, which I assume the Shirley Bernstein Estate paid for, that this policy guarantees to the buyer that Ted Bernstein has the right to sell the property and that all liens, judgments, tax issues on said property have been taken care of and cleared by a court of law.

If not then the Title Insurance company and policy provided has a serious liability not only to the buyer but to the actually true and correct heirs of the Shirley Bernstein estate, whomever the courts deem that to legally be.

As a professional real estate service provider, be it a title company or a real estate brokerage, we are taught to make absolute SURE that a Seller has a legal right to sell a property. This is mostly done by a true and correct, court filed warranty deed in the name of the SELLER aKa Grantor, with the names of the people who will be signing a listing agreement with a real estate brokerage or closing documents with a local title company.

It is not standard of practice, ethical nor lawful to use the closing process and title insurance policy of a local title company in place of a legal, court documented estate and probate proceedings, as a matter of law.

In my experience Sellers aKa Grantors do not sell properties by swearing to an affidavit that they have a right to sell. This would make it so that anyone who wanted to be an heir, or anyone of the street for that matter, could simply go to a notary and sign a document swearing they have a right to sell, and without title in their name sell millions of dollars in property.

It is my professional opinion that this title company is liable to the true heirs of the Shirley Bernstein estate and possibly even interest, punitive damage, and criminal charges.

It is my experience that in an Estate settlement, the Estate is settled in full before property is Sold, another words there would be probate and estate process as a matter of law. And if Ted Bernstein has proper legal documentation then he would have a deed in his name, and from that deed he would then be the Grantor.

See In Barnhart v. Hovde, 490 So.2d 1271 (Fla. 5th DCA) for reference on this matter., review denied 510 So.2d 543 (Fla. 1986), Hovde was named trustee for the beneficiaries, who were her stepchildren. Hovde sold a trust asset (an apartment complex) without obtaining a court order to do so in violation of Fla. Stat. 737.403(2). Hovde had conflicting interests with the beneficiaries of the trust, and the sale of asset resulted in benefit to the trustee and a detriment to the beneficiaries. Id. The Trustee had interests which definitely conflicted with those of the other beneficiaries, which resulted in a benefit to the trustee and a detriment to the other beneficiaries, and the Court found that Hovde violated the terms of the trust and applicable state statutes. Id.

Again an affidavit is not a legal document proving title rights. This affidavit is a **man claiming under penalty and perjury that he has legal rights to be the Grantor of said property**, however this is not a legally binding document in which I, as a Real Estate Broker would accept as proof of entitlement to act as Seller or Grantor.

It is not a Power of Attorney, it is not a legally filed Warranty Deed in Ted Bernstein's name, nor is it a court order ruling that Ted Bernstein is the true and correct, LEGAL Seller, Owner, Grantor of said property.

This document appears to be a Ted Bernstein claiming that he has the rights to be the Seller, Grantor and is the Successor Trustee, Executor of the Shirley Bernstein estate and that with this claim he promises to **NOT hold All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company liable for any legal actions, legal fees in the future, or any other future liability.**

Ted Bernstein does not seem to be the LEGAL Seller / Grantor of said property and therefore cannot be in a legal agreement releasing All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company of liability regarding the matters of the Shirley Bernstein estate.

Conclusion

In my expert opinion, the title company in this case, All Regency Title dba US Title of Florida, has made a grave error in allowing Ted Bernstein to sell the subject property with the documents provided to them.

And it is my professional opinion that All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company, needs to file notice of insurance claim, fraud and massive liability in this matter as soon as possible.

As a Real Estate Broker owning my own firm, I would not let Ted Bernstein have listed this property for sale, nor would I have allowed any agent working for me to do so. As there is no court documented proof that Ted Bernstein has a legal right to sell said property and I would not put my liability insurance provider nor my company at that risk.

A title company has even a greater risk in guaranteeing title, and is therefore liable to the heirs of the Shirley Bernstein Trust.

No reputable real estate company SHOULD take this property as a listing, due to the inability to prove who has property authority and rights of Grantor / Seller.

It is my opinion that Ted Bernstein has used **All Regency Title dba US Title of Florida** to circumvent the legal process and thereby gaining title to Shirley Bernstein's property.

Ted Bernstein went straight for the paycheck, and skipped the step of gaining legal title to the property first. Therefore avoiding estate tax, capital gains, and the process of fighting the legal heirs of the Shirley Bernstein Trust in order to obtain money from the sale of the subject property.

It is my opinion that the true and proper legal heirs of the Shirley Bernstein estate should use all legal means necessary regarding All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company, in order to make this right.

Florida Laws: FL Statutes - Title XLII Estates and Trusts Section 736.0101 Short title. seem to have been violated in this transaction.

As a Real Estate Broker owner experienced in all manner of real estate for over 13 years, including estate, trust tax issues, and all related matters, I strongly advise the true legal heirs of the Shirley Bernstein estate to contact a Florida lawyer and sue All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company of Minneapolis.

Corporate Headquarters:
Old Republic National Title Insurance Company
400 Second Avenue South
Minneapolis, MN 55401
(612) 371-1111

I, Crystal L. Cox am fully qualified to give this real estate opinion and forensics analysis. I am not a lawyer. I am a fully qualified real estate advisor and forensics expert. I am FULLY qualified to provide expert witness and expert opinion in the Shirley Bernstein estate on all related matters discussed herein, real estate matters.

Written By

Crystal L. Cox

Real Estate Broker Owner
Real Estate Forensics Expert
Expert Witness Real Estate
Real Estate Fraud Expert
Real Estate Consultant"

Source; April 18th 2013 Real Estate Forensics Report by Broker Crystal Cox; Original Report
https://docs.google.com/document/d/1hjawnP14EXpN0L8oZ33Pmpimgh3073da5_0iVIQtw/edit

About the Title Company who closed this sale

Gregory S Gefen is president and managing member of Signature Title Group, LLC and personally oversees all closings.

Greg has been admitted to the Florida Bar since 1991 and is a member of the Real Property, Probate and Trust Section.

Greg has been a member and agent of several of South Florida's largest title underwriter, since founding his law firm, Gregory S. Gefen, PA, in 1995 www.gefenlaw.com.

He resides in Boca Raton

Posted by Crystal L. Cox at 10:05 AM No comments:

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Alan B. Rose of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss Florida Probate Case

Florida Estate and Probate Case, Forgery, and Alleged Murder, blog written upon information, knowledge and belief of Crystal L. Cox, Blogger.

Alan Rose	7020 Lions Head Lane Boca Raton	Docket Northern Illinois Case	Simon Bernstein Trust Heritage Jackson National District Court
Shirley Bernstein Estate Docket	Simon Bernstein Estate Docket	7020 Lions Head Lane Boca Raton	Shirley Bernstein
Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case	Judge David E. French	Robert Spallina	Mark Manceri
Tescher and Spallina Law Firm	Mark Manceri	Petition to Freeze Estate Assets	Estate Fraud Docket
Robert Spallina	Ted and Deborah Bernstein	Life Insurance Concepts Boca	Ted Bernstein Fraud

Thursday, June 4, 2015

I Allege that this Web Stat is the Condo Buyer in the Shirley Bernstein Estate. I also allege that Ted Bernstein, Alan Rose, and other conspired with this buyer to get a rock bottom deal on this condo under illegal and unethical circumstance.

Visitor Analysis & System Spec

Referring URL:	(No referring link)	Browser:	IE 11.0
Host Name:		Operating System:	Win7
IP Address:	67.71.41.251 -- [Label IP Address]	Resolution:	1366x768
Location:	Toronto, Ontario, Canada	Javascript:	Enabled
Returning Visits:	0	ISP:	Bell Canada
Visit Length:	Multiple visits spread over more than one day		

Navigation Path

Date	Time	WebPage
		(No referring link)
26 May	05:41:05	tedbernsteinreport.blogspot.ca/2014/06/why-is-alan-rose-knowingly-willfully.html
		(No referring link)
31 May	07:37:36	tedbernsteinreport.blogspot.ca/2014/06/why-is-alan-rose-knowingly-willfully.html
		(No referring link)
4 Jun	05:39:42	tedbernsteinreport.blogspot.ca/2014/06/why-is-alan-rose-knowingly-willfully.html
		(No referring link)
4 Jun	05:40:53	tedbernsteinreport.blogspot.ca/2014/06/why-is-alan-rose-knowingly-willfully.html

Posted by Crystal L. Cox at 7:03 AM No comments: Recommend this on Google

Eye on Alan Rose of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. in West Palm Beach, Fla.. in West Palm Beach, Florida.

Alan Rose has a NEW CASE. Well Let's keep an eye on this one too; Transparency

"WEST PALM BEACH, Fla. (Legal Newswire) - A prominent class action law firm is suing two firms with which it partnered on a class action lawsuit in Florida for allegedly failing to pay it a fee.

Cohen, Milstein, Sellers & Toll, PLLC filed the lawsuit in Palm Beach County Circuit Court on May 5 against Anderson + Wanca and Bock & Hatch LLC, claiming it is owed about \$280,000 in fees for joining in on the class action lawsuit. Bock & Hatch removed the case to U.S. District Court for the Southern District of Florida on May 26.

The suit claims Cohen Milstein agreed in March 2012 to to serve as the local counsel for a class action suit in which the firms were involved in Florida. The two sides came to terms on a fee agreement and also agreed that Cohen would receive 20 percent of the attorneys' fees awarded in the class action suit, the complaint says.

<http://tedbernsteinreport.blogspot.com/>

To Read this WHOLE BLOG posts on the bottom right page. Don't let this Florida Insurance FRAUD and Forg YOU.

Posts

- Alan B. Rose of Page Mr Fitzgerald & Rose Ll...
- Eliot Bernstein Interview Dick Wo...
- Alexandra aka Monica in Bernstein
- Alan B. Rose is MADD as he ain't goin...
- Hey Lindsay, you may w the ol digital...
- Alan B. Rose of Page Mr Fitzgerald & Rose Ge...
- UNITED STATES DISTRICT SOUTHERN DISTRICT OF
- You know that Mark Tw "Truth is stranger...
- John Pankauski, Pankau Alan B. Rose, ...
- Who does Alan B. Rose of Mrachek, Fitzgerald ...
- Don Sanders, Jackson N seems to have m...
- Oh and you Spineless, C Lawless, Free Spee...
- Burke, Warren, Mackay i Taking a Look
- Alan B. Rose of Page Mr Fitzgerald & Rose se...
- Folks, Alan Rose is a MA Hypocrite. ...
- Alan B. Rose, Esq. seem suppressing speech...
- Eliot Bernstein and iVie
- Isn't Armonk, New York Lamont's neck of th...
- Don Sanders, assistant i National Life ...
- Life Reassurance Corp. - Bankers Life Insu...
- Judge Amy J. St. Eve is Davis Polk & W...



In October, the court awarded about \$1.4 million in attorneys fees. Cohen Milstein claims Anderson has not paid the 20 percent contingency fee made in the fee agreement.

In March, Anderson acknowledged the fee agreement, but "demanded" Cohen Milstein reduce the fee, the lawsuit said.

In addition to the \$280,000, the plaintiff is also seeking lost profit damages, plus court costs for filing the suit.

The law firm is represented by Alan B. Rose of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. in West Palm Beach, Fla.

U.S. District Court for the Southern District of Florida case 9:15-cv-80662"

Source

<http://www.washingtonexaminer.com/cohen-milstein-suing-fellow-class-action-firm-over-fees-from-fla.-case/article/feed/2176218>

Also Check Out

of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. in West Palm Beach, Fla.

<http://attorneyalanrose.blogspot.ie/>

Posted by Crystal L. Cox at 6:23 AM No comments:

 Recommend this on Google

Saturday, May 30, 2015

I am Reporting on the Simon Bernstein Estate CASE and will continue to do so. My reporting is NOT controlled by anyone but ME. Alan Rose continues to WHINE.

Alan Rose is acting suspicious, does he WANT Eliot to complain about Judge Coates? It sure looks like it. What is Alan Rose REALLY up to?

Why wine about this DRIBBLE now? There is a new judge, we shall see if the law is obeyed. Alan Rose seems to be pushing to disqualify Judge Coates, why is that?

I mean the Proskauer Rose thing is true, however if Judge Coates were to sign a Conflict of Interest Disclosure then maybe no issue, either way why in the world is Alan Rose so whiny about all this?

Sounds like Alan Rose should file a motion to disqualify himself instead of pushing Eliot Bernstein to do it.

Oh and I love that Florida Attorney Alan Rose is hanging on my every word INSTEAD of doing his JOB. Just obey the law and don't worry about the bloggers dude.

Either Coates will do a lawful, ethical, constitutional job or not?

I have never seen Alan Rose show so much knowledge about iViewit, oh and so much love for me, It kind of makes me blush actually.

Judge Coates must be a Good Guy for Alan Rose to show such disingenuous concern over possibly conflicts. Things that make you say hmmm...

Check out the eMails below. (Transparency and Accountability)



Cedarhurst, New York
WOW, a full days wages
National Empl...
Pam and Ted CUT out of
they seem to be...
Whatch all worried about
Fines, Judgement...
Not Getting Much Work
ya? I sure ho...
303 East Wacker Drive S
Chicago Illinois
STP Enterprises, Inc. - F
Jackson National Life Di
Registere...
So Where Does Christop
Ex Proskauer...
Carol Ann Kindred at He
Life Insurance...
Heritage Union Life Insu
is well awar...
So, who at Jackson Nati
palms, all ...
So is Pamela Simon the i
in all this?...
Jackson National Life In:
Company has HUGE L...
oh and Don't Forget the
CONDO and how...
More on Michael A. Well
National Life Co...
Looks to me like Jackso
Little SPOO...
So Funny, that Heritage
Insurance Compa...
Heritage Union Life Inst
is well awar...

Ted Bernstein



Life Insurance Concepts

Blog Posts

Is Google Really the Best
Conduct a Fraud, ...

Welcome Back, How is t
Investigation Goi...

Order for Discharge and
Counsel Tesc...

Morgan Stanley Group N
Tescher & Spall...

Judge Martin Colin seen
the Right Thi...

Why is Ted Bernstein N
to this Story? ...

Motion to Halt Hat Trick
Believe this is ...

Hmmrn.. Friend or Foe?



"From: Alan Rose
 Sent: Tuesday, May 26, 2015 11:52 AM
 To: 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'
 Subject: Judge Coates

Mr. Eliot Bernstein:

The estate/trust cases have been assigned to Judge Coates. One order is attached but he has all of the cases.

You already have started with the internet nonsense as to Judge Coates:

(<http://tedbernsteinreport.blogspot.com>) as of mid-day Friday. Apparently, he worked at Proskauer, and we all know you labor under the belief that someone there stole trillions of dollars of intellectual property from you or your company.

If you object to his continued service, please advise the parties asap, so we can consider simply doing an agreed or joint motion/order requesting his recusal.

Please advise.

Alan B. Rose
 Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A."

From: Alan Rose
Sent: Wednesday, May 27, 2015 11:44 AM
To: 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'
Cc: 'John P. Morrissey'; 'O'Connell, Brian M.'; 'Foglietta, Joy A'; 'Peter J. Feaman, Esq.'
Subject: RE: Judge Coates

Now that Brian has set a hearing before Judge Coates, Eliot needs to speak now if he contests the court's ability to hear this case. Silence equals acceptance and waiver of any objections in my view.

Eliot has filed at least two and probably more motions to disqualify Judge Colin, and already has started with nonsense about Judge Coates.

For the record, we have no objection to Judge Coates. But Eliot may and he needs to assert that objection or waive it. There is no point having a hearing and wasting time just to have Eliot complain that day about Judge Coates.

Also for the record, the "journalist" Eliot corresponds and communicates with, Crystal Cox, posted the following highlighted material:

Friday, May 22, 2015

Was Howard Coates REALLY picked Randomly as a Judge in this Case? REALLY? Seriously? A former Proskauer Rose attorney? WOW Was with Proskauer Rose for 10 years and now on the iViewit SCANDAL in Florida?? Are you kidding. WOW Well this should be interesting, hopefully lawful !!

Bio

<http://15thcircuitco.palm-beach.fl.us/web/judge-coates>

http://ballotpedia.org/Howard_K_Coates

<http://www.avvo.com/attorneys/33401-fl-howard-coates-1273629.html>

News on ..

<http://www.palmbeachpost.com/news/crime-law/scott-picks-three-for-palm-beach-county-judgeships/njZNI/>

Alan B. Rose, Mrachek, I
 Rose, Konopka &...

Hello Marc Randazza, W
 PARTY, Hope yo...

Alan Rose Wants the Fir
 to Be Set Asid...

Hey Liars, Thugs, Thieve
 Murdering, Gre...

Hey Alan B. Rose, Mrach
 Rose, Konop...

Judge Martin Collin has a
 protecting the...

I keep waiting for Judge
 punish, o...

Whatch hiding FROM Bo

Hey Flushing New York .
 Raymond or possib...

Objection to Motion to
 Personal Repres...

Objection to Motion to
 Personal Repres...

I am getting me some "b
 that somethin...

Why is Heritage Union L
 Company Filin...

"Criminal Action through
 Simulated Legal Pr...

Letter to Judge Martin i
 Opposition to Ted...

What is Going on with J
 about not ...

Motion for Appointment
 Administrator...

Ted Petition for Appoin
 Successor Personal...

Alan Rose Esq., John J.
 Pankauski Law F...

Chicago Insurance and C
 Litigation Law Fi...

Morgan Stanley Group, I
 and Tescher & ...

Wow, the Fraud Sure Se
 Piling Up. Is Ted ...

Full Docket Of Heritage
 Insurance Case ...

Heritage Lawsuit Illinois
 Response Regar...

Reported as a Murder, y
 checked is medic...

"The Document in Ques
 the Inheritance ...

Looks like the Tescher &
 Bernstein F...

Ted Bernstein, Tescher and Sp:

- Florida Estate Forgery, f
 DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher and Sp:

Judge Coates was at Proskauer between 1991 and 2000; I believe those are some of the years Proskauer represented iViewIt and possibly during the times that Eliot sued that firm. Eliot has alleged that during these years is when Proskauer stole his patents. It was an unpleasant lawsuit for the firm I'm sure, and no doubt Eliot made it as unpleasant as possible for the partners of "Porksour Rose". Eliot lost his claim in federal court back in 2008 and I believe owes the firm a sanction award imposed by Judge Scheindlin, but he has not given up on that firm and continues to mention it in recent filings.

The point here is that Eliot must advise the parties of his position and the PR needs to get this resolved before there a number of hearings.

Also, you have set too many issues for one 30 minute hearing, particularly when it would be the Judge's first involvement in the case, in my opinion.

Alan B. Rose, Esq."



• Florida Estate Forgery, F DOCKET

Blog Archive

▼ 2015 (110)

▼ June (2)

! Allege that this Wet Condo Buyer in ...

Eye on Alan Rose of / Fitzgerald, Rose, K

► May (22)

► April (63)

► March (8)

► February (7)

► January (8)

► 2014 (248)

► 2013 (31)

Posted by Crystal L. Cox at 9:09 AM No comments:

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Has Alan Rose gone ROUND the BEND? Alan Rose is already whining to a new Judge about my blogs reporting on this case? WOW

Calm Down Alan Rose, the Law Speaks for itself. Obey the Law, tell the TRUTH, the whole Truth and nothing but, and don't worry about those reporting on this high profile never ending Florida Estate Case which is a MASSIVE public concern.

Murder Allegations and millions paid in insurance, heirs waiting years for money while Ted Bernstein sells homes and let's them run down, Ted Bernstein getting an estate paid attorney and no one else, forged documents, documents signed by dead guys to close estates, and much MORE. This case is VERY important as so many go to Florida for their retirement, yet the attorneys in this case did NOT carry out the wishes of the Deceased. So why move to Florida if Probate Court will not carry out your wishes?

How in the world has all this been allowed to go on for years in Florida Probate court? Meanwhile Eliot Bernstein's family is starved out, kids lose their school and they are constantly harassed by Alan Rose attorney(paid by the estate in which is bullying the other heirs it seems) and others in the case. All this in a simple estate, that should have easily been settled years ago.

Now Alan Rose is WHINING to the New Judge about my blogs, again claiming my blogs are Eliot's and they are MY BLOGS, controlled by me.

Check this whiny Dribble out; GROW UP ALAN ROSE
<https://docs.google.com/file/d/0Bzn2NurXr5kiNzZxRGtYb01MTzA/edit>



NO WHINING



Marie Chandler

Subject: FW: Case Nos. 502011CP000653, 502012CP004391, 502015CP00162, 502014CP003698 XXXXXXBJ
Attachments: ABR to Judge Coates 05-29-15 re Bernstein Matters.pdf

From: Marie Chandler
Sent: Friday, May 29, 2015 4:39 PM
To: (Redacted)
Cc: Alan Rose
Subject: Case Nos. 502011CP000653, 502012CP004391, 502015CP00162, 502014CP003698 XXXXXXBJ

Dear Ms. Phillips:

Pursuant to your permission given to Mr. Rose, attached please find correspondence from Mr. Rose to Judge Coates.

cc: All parties on all service lists attached to letter.

Marie B. Chandler
 Assistant to L. Louis Mrachek and Alan B. Rose
 Email: mchandler@mrachek-law.com
 Direct: (561) 472-2417

M MIRACHEK
 FITZGERALD
 ROSE
 KONOPKA
 THOMAS
 & WEISS, PA.
 505 S. Flagler Drive, Suite 600

Posted by Crystal L. Cox at 8:59 AM No comments:

 Recommend this on Google

Friday, May 22, 2015

Was Howard Coates REALLY picked Randomly as a Judge in this Case? REALLY? Seriously? A former Proskauer Rose attorney? WOW

Was with Proskauer Rose for 10 years and now on the Viewit SCANDAL in Florida?? Are you Kidding, WOW

Well this should be interesting, hopefully lawful !!

Bio

<http://15thcircuit.co.palm-beach.fl.us/web/judge-coates>

http://ballotpedia.org/Howard_K._Coates

<http://www.avvo.com/attorneys/33401-fl-howard-coates-1273629.html>

News on ..

<http://www.palmbeachpost.com/news/news/crime-law/scott-picks-three-for-palm-beach-county-judgeships/njZNL/>

Posted by Crystal L. Cox at 12:57 PM No comments:

 Recommend this on Google

YAY Judge Colin Recused himself. Good Thing, as he has fumbled around for years. We shall HOPE that a New Judge is MORE Lawful and Ethical.

To Download

<https://drive.google.com/file/d/0Bzn2NurXrSkidVdIWENFTFzoaG8/view?usp=sharing>

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


CASE NO: 502012CP004391XXXXSB
PROBATE DIVISION: IY

THE ESTATE OF
SIMON L. BERNSTEIN,
Deceased.


ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19th day of May, 2015.



Posted by Crystal L. Cox at 12:03 PM No comments:

 Recommend this on Google

Thursday, May 21, 2015

so Ted Bernstein Never Called the Sheriff and reported a murder? never contacted a corner? and he did not report that Robert Spallina was acting .. hmmm Check it Out

<https://drive.google.com/file/d/0Bzn2NurXrSkvGt5bVwcE9vQ00/view?usp=sharing>

1	IN THE UNITED STATES DISTRICT COURT	
2	FOR THE NORTHERN DISTRICT OF ILLINOIS	
3	EASTERN DIVISION	
4	SIMON BERNSTEIN IRREVOCABLE	
5	INSURANCE TRUST DTD 6/21/95,	
6	Plaintiff,	Case No. 13 cv 3643
7	v.	
8	HERITAGE UNION LIFE INSURANCE	
9	COMPANY,	
10	Defendant,	
11	HERITAGE UNION LIFE INSURANCE	
12	COMPANY,	
13	Counter-Plaintiff	
14	v.	
15	SIMON BERNSTEIN IRREVOCABLE	
16	INSURANCE TRUST DTD 6/21/95	
17	Counter-Defendant	

Posted by Crystal L. Cox at 10:59 AM No comments:

 Recommend this on Google

Tuesday, May 19, 2015

Wells Fargo AGAIN ?

<http://tedbernsteinreport.blogspot.com/>

Visitor Analysis & System Spec

Search Referral:	www.google.com/ (Keywords Unavailable)		
Host Name:	bp06aloxdc-out.wellsfargo.com	Browser:	IE 8.0
IP Address:	159.45.71.14 — [Label IP Address]	Operating System:	Win7
Location:	Saint Louis, Missouri, United States	Resolution:	1600x900
Returning Visits:	1	Javascript:	Enabled
Visit Length:	Not Applicable	ISP:	Wells Fargo & Company

Navigation Path

Date	Time	WebPage
		www.google.com/ (Keywords Unavailable)
19 May	06:28:41	tedbernsteinreport.blogspot.com/

Posted by Crystal L. Cox at 6:52 AM No comments: Recommend this on Google

Friday, May 15, 2015

Petition to Remove Judge Martin Colin from the Simon and Shirley Bernstein Estate Cases in Florida. Judge Martin Colin has let massive crimes occur in his court and has seriously caused irreparable harm to the victims in this case.

Click Below to Read or Download this Court Filing
<https://docs.google.com/file/d/0Bzn2NurXrSkiRlp6bTlYVnZZYmc/edit>

Judge Martin Colin has let this Fraud, Forgery, Alleged Murder Case go on and on for years. He must, as a matter of law be removed. Judge Martin Colin has serious conflicts of interest in this case.

Filing # 27319445 E-Filed 05/14/2015 05:23:02 PM

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

TED BERNSTEIN, AS TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST AGREEMENT DATED MAY 20, 2008, AS AMENDED,	PROBATE DIVISION CASE NO.: 502014CP00369XXXXSB
--	---

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

Other Applicable Related Cases this Disqualification of Judge Martin Colin Should Apply to

Case # 502012CP004391XXXXSB – Simon Bernstein Estate

Case # 502011CP000653XXXXSB – Shirley Bernstein Estate

Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

Case # 502014CP003692XXXXSB – Shirley Trust Construction

Case# 502013CP001162XXXXSB – Elliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB

Posted by Crystal L. Cox at 5:13 AM No comments: Recommend this on Google

Wednesday, May 13, 2015

Heritage Union Life Insurance Company is well aware of what is going on in the Simon Bernstein Case. So is Heritage Union part of the fraud? If not then why have they, themselves not joined in to SUE Tescher & Spallina and to cry out fraud on the courts, insurance fraud and possible murder?

Letter To Mark Sarlitto ~ Senior Vice President and General Counsel of Heritage Union Life Insurance Company / WiltonRe and Chris Stroup ~ Chairman of the Board of Directors and Chief Executive Officer.

"From: Eliot Ivan Bernstein [mailto:iviewit@gmail.com]
Sent: Wednesday, May 21, 2014 6:19 AM

To: **Mark Sarlitto** ~ Senior Vice President and General Counsel @ Heritage Union Life / WiltonRe (msarlitto@wiltonre.com); **Chris Stroup** ~ Chairman of the Board of Directors and Chief Executive Officer @ Heritage Union Life / WiltonRe (cstroup@wiltonre.com)

Subject: URGENT RE INSURANCE FRAUD -
Policy Number: 1009208 on the life of SIMON L. BERNSTEIN

Dear Mr. Stroup and Mr. Sarlitto @ Heritage Union Life / Wilton RE,

I am writing regarding the Life Insurance Policy on my father, Simon L. Bernstein (deceased), Policy No. 1009208. It has come to my attention through a Federal Court case titled "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/1995, et. al. v. Heritage Union Life Insurance Company, et. al," Case No.13 cv 3643 in the US District Court Northern District of Illinois that a claim was filed with Heritage by a one **Robert Spallina, Esq. of the law firm Tescher & Spallina PA**, acting as the Trustee for an **alleged lost trust** named "**The Simon Bernstein 1995 Irrevocable Insurance Trust**" claimed to be the Contingent Beneficiary, however **no executed copies of the Trust exist as of this date.**

Further, **Mr. Spallina represented that he has never seen nor been in possession of the lost trust**, yet he filed a claim with Heritage Union acting as the Trustee of **that lost trust he never saw or possessed.**

Further, from production documents in the Federal Case it was also learned that Spallina additionally **represented himself to the carrier as the Trustee of the alleged Primary Beneficiary of the Policy**, a one **LaSalle National Trust, N.A.**, of which he also is not.

The claim was **DENIED due to the inability to show a proper beneficiary and produce a legal valid trust document as beneficiary.**

Legally, a **valid executed trust instrument must be present at death for a trust to be paid any benefits and in the case of a lost beneficiary at death Florida law is clear that the benefit should be paid to the Estate of the insured.**

Mr. Spallina and his partner Donald Tescher, Esq. have recently resigned as Personal Representatives/Executors, Trustees and Counsel to the Estate and Trusts of Simon Bernstein, after admittedly altering Trust documents in my parents Estates and Trusts to illegally change beneficiaries and whose Notary Public and Legal Assistant, a one Kimberly Moran has been arrested and convicted of Fraud and admitted to six counts of FORGERY of estate documents, including a POST MORTEM FORGERY of my deceased father's name in efforts to alter the beneficiaries of my deceased mother's estate.

They also **used my deceased father to act as Personal Representative/Executor after he was deceased and consummated a fraud on the Florida Probate Court under Judge Martin Colin.**

After the claim was rightfully denied by Heritage, certain of Simon's children who were **wholly disinherited in the Estate plan by both Simon and his deceased spouse Shirley, Theodore Stuart Bernstein and Pamela Simon, filed a Breach of Contract lawsuit against Heritage Union and in this action Theodore suddenly now claimed he was the Trustee of the lost trust and not Spallina.**

Theodore Bernstein it has been learned from a Palm Beach County Sheriff investigation report, attached herein, is **alleged to have taken already improper distributions of assets in his alleged fiduciary capacities, AGAINST THE ADVICE OF COUNSEL.**

You will note that in Jackson National's initial opposition to the lawsuit on behalf of Heritage, **Jackson also claimed that Theodore had NO LEGAL STANDING to file the lawsuit in the first place and was advised by counsel of such, which appears a correct legal analysis.**

Due to these alleged **FRAUDULENT ACTIVITIES** that took place in the filing of the life insurance claim, I have contacted the Jacksonville, IL Police department and spoke with **Detective Scott Erthal** who opened **Case No. 2014000865.**

Detective Erthal then contacted me and told me he had **spoken to Carol Ann Kindred at Heritage Union and that they would be conducting the initial FRAUD investigation internally.**

I was surprised when I got the attached letter from C.A. Kindred, which attempts to inform me that **Heritage is not investigating the alleged FRAUDULENT claim filed with the company, most surprising is why she did not direct her letter to Detective Erthal and instead contacted me to inform me that Heritage was refusing to conduct an investigation.**

C.A. Kindred also stated that the Federal Court would be handling the Fraud issues and obviously Federal Courts do not conduct criminal investigations or insurance investigations.

As you may know, life insurance carriers are legally required to attempt to find the true and proper beneficiary of an

insurance contract upon death and in this instance no effort has been made to either contact LaSalle National Trust, N.A. to join the Federal lawsuit by the life insurance carrier or any other party and attempts are being made to pay an alleged contingent beneficiary (the lost trust, which is not listed with the carrier as the contingent beneficiary according to their records) without first paying the Primary Beneficiary, a truly bizarre case.

The Life Insurance contract has also not been produced and it appears Heritage and their Successors and their reinsurers have all lost the contract that the Breach of Contract lawsuit was filed on, making an almost surreal lawsuit where neither the alleged Plaintiff, the lost trust is legally nonexistent and the contract the breach is based upon also does not exist.

In efforts to secure the contract I am asking that you check your files for Heritage and see if you can locate one. It also has come to my attention that no one has notified the Primary Beneficiary or made any efforts to this date to make contact with them, LaSalle National Trust, N.A., which is now owned by:

Chicago Title Land Trust Company
10 South LaSalle Street, Suite 2750
Chicago, Illinois 60603
Tel: ☐ 312.223.2195

As hearings in the Federal Case are proceeding quickly, your prompt attention to these matters is required and please inform me of your work with the Jacksonville PD so that I may know if this matter has to be investigated by Federal Authorities at this time for the initial alleged Fraudulent claim made to Heritage Union that Heritage and its successors refuse to investigate internally.

I have contacted your offices as it appears that the Heritage Union Life Insurance Company website was taken down and refers now to Wilton RE as the successor.

Attorney for Jackson National Life in the Federal case, Alexander Marks, Esq. has told the Federal Court Judge, Amy St. Eve, that Heritage et al. while being discharged from the Federal lawsuit would be willing to help the parties in any way and this refusal to investigate is directly opposite this claim and if further problems stand in the way I will be forced to seek leave to have all parties reinstated in the Federal action instantly, including now Wilton RE.

Finally, from reviewing the production materials in the lawsuit, it appears that certain carrier files may have been tampered with by an insider, who Plaintiffs have claimed was willing to pay an insurance claim without any proper beneficiary documentation and we are also looking to find who this party is.

Thank you for your cooperation in these matters and please feel free to contact me with any questions or further information.
Eliot

Eliot I. Bernstein"

Attached the Letter were These Two Documents

<https://drive.google.com/file/d/0Bzn2NurXrSkialSQ0U1RVpqdVvk/edit?usp=sharing>

<https://drive.google.com/file/d/0Bzn2NurXrSkInkNTVzV1S1NZTEk/edit?usp=sharing>

So Heritage Union Life Insurance Company is very aware of what is going on in this case. What will they do, if anything, is yet a mystery.

Posted by Crystal L. Cox at 11:54 AM No comments:

 Recommend this on Google

Hey did one of you bad guys hide your money at Lloyds Banking Group Plc

Visitor Analysis & System Spec

Search Referral:	www.google.co.uk/ (Keywords Unavailable)		
Host Name:		Browser:	IE 8.0
IP Address:	141.92.129.44 — [Label IP Address]	Operating System:	WinXP
Location:	United Kingdom	Resolution:	1680x1050
Returning Visits:	0	Javascript:	Enabled
Visit Length:	2 mins 32 secs	ISP:	Lloyds Banking Group Plc

Navigation Path

Date	Time	WebPage
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6/4/2015

Alan B. Rose of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss Florida Probate Case

www.google.co.uk/ (Keywords Unavailable)
13 May 08:05:19 tedbernsteinreport.blogspot.co.uk/2014/02/alan-rose-wants-first-amendment-to-be.html
www.google.co.uk/ (Keywords Unavailable)
13 May 08:07:51 tedbernsteinreport.blogspot.co.uk/2015/04/judge-martin-colin-ordered-alan-rose.html

Posted by Crystal L. Cox at 8:13 AM No comments:

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Florida Probate Fraud, Forgery and Corruption; Simon Berns Estate Case

Florida Estate and Probate Case, Forgery, and Alleged Murder, blog written upon information, knowledge and belief of Crystal L. Cox Blogger.

Alan Rose	7020 Lions Head Lane Boca Raton	Docket Northern Illinois Case	Simon Bernstein Trust Heritage Jackson National District Court
Shirley Bernstein Estate Docket	Simon Bernstein Estate Docket	7020 Lions Head Lane Boca Raton	Shirley Bernstein Simon Bernstein
Teschler, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case	Judge David E. French	Robert Spallina	Mark Manceri Donald Tescher
Teschler and Spallina Law Firm	Mark Manceri	Petition to Freeze Estate Assets	Estate Fraud Docket Insurance Proceed Scheme Donald Tescher
Robert Spallina	Ted and Deborah Bernstein	Life Insurance Concepts Boca	Ted Bernstein Fraud

Monday, September 14, 2015

oh and you do know that Blogging is a Constitutionally Protected Activity RIGHT?

Do you need me to list cases to assist you in this? Besides my MAJOR, Landslide one of a kind court of appeals win, there are tons of courts that flat out state that blogging is a constitutionally protected activity.. just a factoid.

So here we go, more whining from the Ted Bernstein camp. Why? The TRUTH really would be easier. Simply DO THE RIGHT THING and OBEY the LAW.

oh and for the 10 millionth time, Eliot Bernstein DOES not control any of my blogs, never has and never will. I have a constitutionally protected right to report on this case.

Posted by Crystal L. Cox at 8:30 PM No comments:

Recommend this on Google

Hey Alan

Don't forget when tattling on me for reporting on this story, there are tons of blogs you missed such as

<http://attorneyalanrose.blogspot.com/>

Updates to ALL coming soon

<http://donaldtescher.blogspot.com/>

<http://robertspallina.blogspot.com/>

<http://judgemartincolin.blogspot.com/>

oh and hundreds of other blogs on this and connected cases exposing corruption in the Florida Probate Courts, Family Court, Police Investigations, Intellectual Property and patent lawyers and lot's more documents of undeniable PROOF. Should an honest court ever actually take a look.

Posted by Crystal L. Cox at 8:24 PM No comments:

Recommend this on Google

Saturday, September 12, 2015

POOR Baby Ted Bernstein is going to Use his Legal Power ?? to STOP the First Amendment? Or is it use legal remedies to huff and puff? So funny Ted Bernstein costs the "estate" millions and is now trying to avoid jail it sure seems and is whining of 100,000? What? Check out this whiny DRIBBLE.

To Read this WHOLE BLOG, posts on the bottom right, page. Don't let this Florida Insurance FRAUD and Forge YOU.

Posts

Alan B. Rose of Page Mracl & Rose Li...

Eliot Bernstein iViewIt Inve Dick Wo...

Alexandra aka Monica inter Bernstein

Alan B. Rose is MADD as a l he ain't goin...

Hey Lindsay, you may want ol' digital...

Alan B. Rose of Page Mracl & Rose Ge...

UNITED STATES DISTRICT CC SOUTHERN DISTRICT OF ...

You know that Mark Twain is stranger...

John Pankauski, Pankauski Alan B. Rose, ...

Who does Alan B. Rose of F Fitzgerald ...

Don Sanders, Jackson Natik seems to have m...

Oh and you Spineless, Cow Lawless, Free Spee...

Burke, Warren, Mackay & S Taking a Look

Alan B. Rose of Page Mracl & Rose se...

Folks, Alan Rose is a MASSI Hypocrite. ...

Alan B. Rose, Esq, seems 9 suppressing speech...

Eliot Bernstein and iViewIt

Isn't Armonk, New York Ste neck of th...

Don Sanders, assistant VP - National Life ...

Life Reassurance Corp. - G Life insu...

Judge Amy J. St. Eve is for Potk & W...

Cedarhurst, New York



My clattering rambling RANT is in BLUE.

"From: Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]

Sent: Friday, September 11, 2015 1:12 PM

...

Subject: Online defamation

...

"The 3rd anniversary of Dad's death is approaching and I feel obligated, as his son and your brother, to reach out to you on behalf of myself and the other professionals working for Dad's trusts and estates."

Yes Sad isn't it Ted, that you have disgraced and dishonored your father so badly, and you have harmed his grand children, seemingly forged his signature and tied up millions of his money and your mom's money and greedily did what ever you pleased while your siblings suffered. And you feel a sense of morbid "OBLIGATION" now? What a Crock of Shit.

There were NO professionals working on your Dad's Trust, It seems to me that there were crooks, forgers, liars, thieves and those who massively dishonored your Dad's wishes, oh and broke the law.

" On numerous occasions and in many different ways, I have requested that you remove all of the blogs and websites in which you are slandering and defaming me, my family, my businesses and the judges and other professionals providing service to the trusts and estates of mom and dad; but so far you have refused."

Does Eliot have things written online about you? Hmmm I can't seem to find them. I can't seem to find any websites or blogs that Eliot has about whiny baby Ted at all. And WOW crying about blogs defaming JUDGES?? What? Judges are public officials and COLIN umm he broke the law Ted for you, well not really you but to protect Tescher and Spallina for YOU. So it will all come out in a non-corrupt court one day, just keep on sitting there doing NOTHING to make things right and ENSURE your prison sentence COMING SOON, as far as I see it.

Slandering YOUR Business? Are you Kidding? Anyone who reads my news blogs that have nothing to do with Eliot, oh except he is a party to the case, well if they can read the actual DOCUMENTS then they can see you have broke the law, and looks to me personally that you were involved in your Dad's death or covering it up for whoever was.

So where is this slander of you, your family, your business? Oh and your business really? What business is that? the illegal Botox business? or the insurance business? whatever you actually do with that one?

"I also have asked you to cease publishing information about, and interfering in, the sale of our parents' home; but so far you have refused."

Where has Eliot published anything about you? You mean documents of his case? or do you mean my blogs, that are published and COMPLETELY controlled by me, Crystal Cox, personally, as is my First Amendment right.

"To date, your actions have cost the Trust more than \$100,000 of net sales proceeds for this property alone."

Is this a joke? Your actions have cost around a million in attorney fees right? to keep up your LIES, right? And you have sold off condos and personal property with NO money to the actual heirs, right? And you have used up, stolen or somehow hidden millions, or so it seems from the documents I have read over YEARS. And now your whining over \$100,000? WOW Alan Rose or even the Broker John Poletto got more then that right?

"As you know better than anyone, whether or not Dad adequately provided for us during his lifetime, Dad's final wishes were to leave his assets equally to his grandchildren, 3 of whom are your children. Your disappointment about this and your resulting actions are helping to ensure that most of his assets will be squandered in administrative costs and professional fees. Over the past three years, in my role as a fiduciary attempting to carry out Mom and Dad's final wishes, I have tolerated an incredible amount of abuse from you."

Just so there is no error here to who ever you are spewing this bullshit to. YOU are the one who has hurt the grandkids and you have NOT carried out ANY final wishes. You are the abuser and NOT the VICTIM. You appear to be delusional, must be all that botox and the ???

"We hardly know one another, having virtually no contact over the past 30 years. Since our Dad died, you have made unfounded accusations about me that appear to be part of a playbook repeated by you over the past 20 years to intimidate and bully those who do not agree with you. Your motivation for slandering and defaming innocent people online is malicious and serves no purpose to the efficient administration of the trusts and estates."

Slandering and Defaming "innocent" people? Really? Have you even read the thousands of documents of proof of the iViewit case, or even this estate case? Your CAUGHT Ted. Who ever you worked for or with at Proskauer, you are ALL caught. It is now only a matter of time before an honest court steps up to indict you ALL.

No Playbook, just Rules of Procedure and the LAW, oh and some pretty good reporting of course.

WOW, a full days wages fo National Empl...

Pam and Ted CUT out of th they seem to be...

Whatch all worried about? Judgement...

Not Getting Much Work Dor ya? I sure ho...

303 East Wacker Drive Suit Chicago Illinois

STP Enterprises, Inc. - Pan

Jackson National Life Distr Registere...

So Where Does Christopher Ex Proskauer...

Carol Ann Kindred at Herit. Insurance...

Heritage Union Life Insurar is well awar...

So, who at Jackson Nation; palms, all ...

So is Pamela Simon the rea all this?...

Jackson National Life insur has HUGE L...

oh and Don't Forget the BU CONDO and how...

More on Michael A. Wells, National Life Co...

Looks to me like Jackson N Little SPOO...

So Funny, that Heritage Ur Insurance Compa...

Heritage Union Life Insurar is well awar...

Ted Bernstein



Life Insurance Concepts

Blog Posts

Is Google Really the Best V a Fraud, ...

Welcome Back, How is that Investigation Gof...

Order for Discharge and W Counsel Tesc...

Morgan Stanley Group New Tescher & Spall...

Judge Martin Colin seems t the Right Thi...

Why is Ted Bernstein NOT this Story? ...

Motion to Halt Hat Trick. C Believe this is ...

Hmmm.. Friend or Foe?

Alan B. Rose, Mrachek, Fit: Konopka E...

Hello Marc: Randazza, Wcl PARTY, Hope yo...

"You endlessly level accusations against people without providing proof for what you claim. "

WHAT? Have you NOT read THOUSANDS, literally thousands of documents of proof in this and other cases connected in any way to Eliot Bernstein?

"Mom and Dad chose Tescher and Spallina to draft their documents and to act as their trusted fiduciaries upon their deaths."

YEP and Tescher and Spallina chose to go against their wishes, hook up with you and sign their name after they died and try and run off with millions. Can you say Aid and Abet?

"Members of that firm admittedly acted illegally and with poor judgment. I am sure Mom and Dad would not be pleased to learn what occurred. But their wrongdoing, which has been investigated by the proper agencies and will be addressed in a prudent manner, does not justify your continued and disruptive actions."

It doesn't? Well you helped them do those illegal acts Ted? You are the one who had poor judgement and broke the law right? Did you not work with them?

And here you are saying they admitted to the crimes, yet you want blogs talking about the crimes to stop publishing what you allege to be slander and defamation?

"Moreover, none of the people or professional firms who now provide service or act as fiduciaries, including myself, played any role in the creation of these documents. Despite these realities, you have made allegations for 3 years now, about all of us, ranging from murder, explosions and illegal Botox funding. Every allegation you have made remains only that, allegations and accusations made by you and Crystal Cox, your partner. No proof, no charges, no investigations. Nothing but carefully constructed blogs designed to trick unknowing readers.

I am not out to TRICK anyone. If these "unknowing readers" come to my blog, they can read the documents of the case and think for themselves. Read your depositions, read the police report and you claiming there was a murder then changing your story, they can KNOW as they read all of your words, and all of the documented proof that I give them and THINK for themselves. There is no requirement to believe me. I always insist that the reader have a BRAIN.

"Every single matter you are involved in results in you claiming fraud, car bombings, theft, ethical violations, professional misconduct, judicial misconduct, law suits, threats - and ultimately, online defamation of your opponents. None of these matters are related yet you use the same tactics each and every time."

Umm hey DUMBASS, there was a car bombing. Do you even give a shit that your family had someone try and murder them? hmm I guess not, why would you?

opponent?? defamation?? you mean the criminals who robbed him and his family?

"You represent yourself as an attorney, although you are not a lawyer and have no legal background or training whatsoever. Representing yourself, without competent legal counsel, you play without rules and eviscerate the boundaries and rules which counselors and judges must follow. "

Being pro se is a THING, dumb dumb. And Eliot is VERY good at it. Read the legal documents or have someone read them to you, ya um seems to be doing a very good job in the face of MASSIVE EVIL, and not just your face.

"You sued Florida Supreme Court justices, New York Supreme Court justices and dozens of companies and individuals. In New York, Judge Schiendlin has enjoined you from filing additional claims based upon your belief that your trillion-dollar technology has been stolen through a conspiracy involving courts, judges, lawyers and major tech companies, and entered sanctions against you.

"You have also litigated unsuccessfully in other states, including Nevada. Your behavior in the Palm Beach county courts is remarkably similar. You are a vexatious litigant. This appears to be a crucial part of your method."

Ummmm WHAT? Did Eliot litigate in Nevada? I have not seen

You signed a contract with Mom and Dad more than 10 years ago agreeing that you would never sue any member of your family. As a planner dealing in this area for the past 30 years, I have never heard of any other similar agreement between a child and his parents.

All of us understand that the death of Mom and Dad has been emotionally devastating for you and economically destabilizing. Your sisters and I understand the special challenges and circumstances you face and as a result, we have been extremely tolerant."

Tolerant? You have been made to obey the law and you have hated it, you have done all you can to be EVIL and have not been TOLERANT in any way"

Alan Rose Wants the First / Be Set Aside...

Hey Liars, Thugs, Thieves, Murdering, Gre...

Hey Alan B. Rose, Mrachek Rose, Konop...

Judge Martin Colin has a hi protecting the...

I keep waiting for Judge M punish, o...

Whatch hiding FROM Boys?

Hey Flushing New York .. it or possib...

Objection to Motion to Wit Personal Repres...

Objection to Motion to Wit Personal Repres...

I am getting me some 'bad that somethin...

Why is Heritage Union Life Company Filin...

"Criminal Action through u Simulated Legal Pr...

Letter to Judge Martin Coli Opposition to Ted...

What is Going on with Jane about not ...

Motion for Appointment of Administrator...

Ted Petition for Appointm Successor Personal...

Alan Rose Esq., John J. Pa Pankauski Law F...

Chicago Insurance and Cor Litigation Law Fi...

Morgan Stanley Group, Tec and Tescher & ...

Wow, the Fraud Sure Seem Up. Is Ted ...

Full Docket Of Heritage Un Insurance Case ...

Heritage Lawsuit Illinois, R Response Regar...

Reported as a Murder, yet checked Is medic...

"The Document in Question Inheritance ...

Looks like the Tescher & Sp Bernstein F...

Ted Bernstein, Tescher and Spallin

• Florida Estate Forgery, Fri DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher and Spallin

• Florida Estate Forgery, Fri DOCKET

Blog Archive

▼ 2015(124)

"But history is repeating itself and you have turned this into an abusive tirade against your family. After 3 years of baseless accusations about fraud, frauds and fraud on the courts, enough is enough. "

Baseless, Really? You hypocrite, you just admitted above that there was fraud, illegal activity and poor judgement and now it's all baseless? What a Dumb Ass.

"The online defamation and slandering is simply no longer an acceptable way for you to cope."

Not about COPING Teddy, it is about reporting on corruption in the Probate court in FLORIDA. Actually documents and information, REPORTING and not a way to "cope".

"I am not suggesting that you stop your campaign to prove what you believe - that is your prerogative. I am, however, pleading with you to immediately stop the defamation and the slander about me and the other innocent professionals. "

What? Eliot cannot stop something he is not doing and Eliot is not my partner, and has no access or control over my blogs in ANY way. And there are no "innocent professionals", they know who broke the law and have not upheld their oath of honor, ethics and to the constitution. THEY have violated their professional standards and they are being exposed, period.

".. Please remove these sites from the Internet and instruct your partner, Crystal Cox, to do the same. If you do not immediately remove these sites and my name from them, you are leaving me with no other choice but to pursue all available legal remedies. "

Eliot has NOT ever controlled my blogs, nor will he ever. And the TRUTH about you and these not so professional professionals will remain online, eternally, no matter what, so there is that.

Eliot is not MY PARTNER, he is one of thousands of victims of corruption I report on my thousands of blogs. So what is this huff and puff legal remedy you are going to do to Eliot about my blogs? Well I guess we shall wait and see.

Ted

Posted by Crystal L. Cox at 8:40 PM No comments:

Recommend this on Google

Friday, September 11, 2015

John Poletto, YOU are LIABLE for what Ted Bernstein and Alan Rose talked you into doing. YOU know what is LAW and what is NOT. Tell the TRUTH now and maybe avoid going to jail with them.

Visitor Analysis & System Spec			
Search Referral:	https://www.google.com/ (Keywords Unavailable)		
Host Name:	c-98-219-94-233.hsd1.fl.comcast.net	Browser/OS:	Safari iPad/iOS
IP Address:	98.219.94.233 — [Label IP Address]	Mobile Device:	Apple iPad
Location:	Boca Raton, Florida, United States	Resolution:	768x1024
Returning Visits:	0	Javascript:	Enabled
Visit Length:	Not Applicable	ISP:	Comcast Cable

Navigation Path

Date	Time	WebPage
5 Sep	08:16:42	tedbernsteinreport.blogspot.com/2014/07/john-poletto-and-mark-nester-ted.html

Posted by Crystal L. Cox at 11:25 PM No comments:

Recommend this on Google

- ▼ September(8)
 - oh and you do know the a Constitution...
 - Hey Alan
 - POOR Baby Ted Bernste Use his Legal ...
 - John Poletto, YOU are I what Ted Bernstei...
 - Hello Pam, so ya ready TRUTH, the whol...
 - Oppenheimer iViewit - wait to see what h...
 - Mcknight Dallas Real Es this, what's ...
 - Hello John Pankauski, I party of all...
- ▶ August(3)
- ▶ July(1)
- ▶ June(4)
- ▶ May(22)
- ▶ April(63)
- ▶ March(8)
- ▶ February(7)
- ▶ January(8)
- ▶ 2014(248)
- ▶ 2013(31)

Hello Pam, so ya ready to tell the TRUTH, the whole Truth and nothing but the TRUTH about Ted and Alan Rose or go to the BIG HOUSE with em?

Visitor Analysis & System Spec			
Search Referral:	https://www.google.com/ (Keywords Unavailable)		
Host Name:	c-73-22-164-177.hsd1.il.comcast.net	Browser:	Chrome 45.0
IP Address:	73.22.164.177 — [Label IP Address]	Operating System:	Win8.1
Location:	Northbrook, Illinois, United States	Resolution:	1920 x1080
Returning Visits:	0	Javascript:	Enabled
Visit Length:	41 seconds	ISP:	Comcast Cable

Navigation Path

Date	Time	WebPage
		https://www.google.com/ (Keywords Unavailable)
5 Sep	20:09:52	tedbernsteinreport.blogspot.com/2014/06/stp-enterprises-inc-pamela-simon.html
5 Sep	20:10:22	investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=30771400 (Exit Link)
		https://www.google.com/ (Keywords Unavailable)
5 Sep	20:10:33	tedbernsteinreport.blogspot.com/2014/06/stp-enterprises-inc-pamela-simon.html

Posted by Crystal L. Cox at 11:19 PM No comments:

Recommend this on Google

Oppenheimer iViewit - Gee can't wait to see what happens.. oh ya the TRUTH coming soon to a court near you.

Visitor Analysis & System Spec			
Search Referral:	https://www.google.com/ (Keywords Unavailable)		
Host Name:	c-50-186-203-60.hsd1.fl.comcast.net	Browser:	Chrome 44.0
IP Address:	50.186.203.60 — [Label IP Address]	Operating System:	Win10
Location:	Boca Raton, Florida, United States	Resolution:	1600 x1200
Returning Visits:	0	Javascript:	Enabled
Visit Length:	Multiple visits spread over more than one day	ISP:	Comcast Cable

Navigation Path

Date	Time	WebPage
		https://www.google.com/ (Keywords Unavailable)
25 Aug	12:28:57	tedbernsteinreport.blogspot.com/
		https://www.facebook.com/
25 Aug	12:29:38	tedbernsteinreport.blogspot.com/
		nortonsafe.search.ask.com — oppenheimer iviewit
6 Sep	11:48:08	tedbernsteinreport.blogspot.com/2014/07/what-really-happened-in-sudden-death-of.html
6 Sep	11:48:11	tedbernsteinreport.blogspot.com/2014/07/what-really-happened-in-sudden-death-of.html
		tedbernsteinreport.blogspot.com/
		https://www.google.com/ (Keywords Unavailable)
8 Sep	09:04:00	tedbernsteinreport.blogspot.com/2014/06/stp-enterprises-inc-pamela-simon.html
8 Sep	09:04:15	investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=30771400 (Exit Link)
		https://www.google.com/ (Keywords Unavailable)
8 Sep	09:04:26	tedbernsteinreport.blogspot.com/2014/06/stp-enterprises-inc-pamela-simon.html

Posted by Crystal L. Cox at 11:14 PM No comments:

Recommend this on Google

Mcknight Dallas Real Estate - who is this, what's up?

Visitor Analysis & System Spec			
Search Referral:	www.google.com/ (Keywords Unavailable)		
Host Name:	208_86_164_214.marketscout.com	Browser:	IE 11.0
IP Address:	208.86.164.214 - [Label IP Address]	Operating System:	Win7
Location:	Dallas, Texas, United States	Resolution:	1366 x768
Returning Visits:	0	Javascript:	Enabled
Visit Length:	Not Applicable	ISP:	Mcknight Dallas Real Estate, LP

Navigation Path

Date	Time	WebPage
11 Sep	15:02:39	www.google.com/ (Keywords Unavailable) tedbernsteinreport.blogspot.com/

Posted by Crystal L. Cox at 11:07 PM No comments: [G+1](#) Recommend this on Google

Hello John Pankauski, YOU are still a party of all this. Maybe it's time to come clean on what you know about Ted Bernstein and Alan Rose. The TRUTH will come out in the right court, an honest court one day.

Visitor Analysis & System Spec			
Search Referral:	https://www.google.com/ (Keywords Unavailable)		
Host Name:	cpe-24-164-135-152.nyc.res.rr.com	Browser:	Safari 8.0
IP Address:	24.164.135.152 - [Label IP Address]	Operating System:	OS X
Location:	New York, United States	Resolution:	1600 x900
Returning Visits:	0	Javascript:	Enabled
Visit Length:	35 mins 36 secs	ISP:	Time Warner Cable

Navigation Path

Date	Time	WebPage
11 Sep	22:21:22	https://www.google.com/ (Keywords Unavailable) tedbernsteinreport.blogspot.com/2014_05_01_archive.html
11 Sep	22:49:25	https://www.google.com/ (Keywords Unavailable) tedbernsteinreport.blogspot.com/ tedbernsteinreport.blogspot.com/
11 Sep	22:50:08	tedbernsteinreport.blogspot.com/2014/06/john-pankauski-pankauski-law-firm-alan.html
11 Sep	22:50:31	https://www.google.com/ (Keywords Unavailable) tedbernsteinreport.blogspot.com/
11 Sep	22:50:57	tedbernsteinreport.blogspot.com/2014/02/alan-rose-esq-john-j-pankauski.html
11 Sep	22:51:22	https://www.google.com/ (Keywords Unavailable) tedbernsteinreport.blogspot.com/
11 Sep	22:56:58	https://www.google.com/ (Keywords Unavailable) tedbernsteinreport.blogspot.com/2014/06/so-what-perp-do-we-have-at-proskauer.html

Posted by Crystal L. Cox at 11:04 PM No comments: [G+1](#) Recommend this on Google

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Christine P. Yates
Direct Dial: 954.760.4916
Email: cty@trippscott.com

November 9, 2012

Via E-Mail and U.S. Mail

Robert L. Spallina, Esq.
Tescher & Spallina, P.A.
4855 Technology Way
Suite 720
Boca Raton, FL 33431

Re: Estates of Shirley Bernstein and Simon Leon Bernstein

Dear Mr. Spallina:

Our firm represents Mr. and Mrs. Bernstein, individually, as natural guardians of Joshua, Jacob, and Daniel Bernstein, and as Trustees of any trusts created for Joshua, Jacob and Daniel Bernstein by Simon and/or Shirley Bernstein. In order to assist us in this matter, please provide us with copies of the following:

1. Copies of all estate planning documents including all Wills and Trusts for Shirley Bernstein and Simon Leon Bernstein that our client was a beneficiary, whether qualified or contingent;
2. Copies of all estate planning documents including all Wills and Trusts that our client's children, Joshua, Jacob and/or Daniel, are named as beneficiary, whether qualified or contingent;
3. Copies of all documents executed in May and June 2012 regarding the Last Will and Testament of Shirley Bernstein;
4. Estate Accounting for Shirley Bernstein;
5. Estate Accounting for Simon Bernstein;
6. Trust Accountings for any Trusts that our client, his spouse, or his children are a beneficiary, whether qualified or contingent;
7. Copies of any claims filed in the Estate of Shirley Bernstein and Simon Bernstein;
8. Copy of the Inventory filed in the Estate of Shirley Bernstein;
9. Copy of the Inventory filed in the Estate of Simon Bernstein, or if none, please provide the approximate date you expect the Inventory will be prepared and filed with the Probate Court;
10. Allocation of the tangible personal property of Shirley and Simon Bernstein. Specifically, is the jewelry being divided among the ten grandchildren?;
11. Appraisals of tangible personal property, specifically the jewelry, artwork and collectibles;
12. All documents relating to the life insurance policies owned by Shirley and/or Simon, insuring Shirley and/or Simon's life, or for the benefit of Shirley and/or Simon Bernstein;
13. Please provide documentation concerning the allocation and division of all companies owned by Simon and/or Shirley at the time of their deaths and copies of any partnership,

659917v2 895508.0001

110 Southeast Sixth Street, Fifteenth Floor • Fort Lauderdale, Florida 33301

Post Office Box 14245 • Fort Lauderdale, Florida 33302

Tel 954.525.7500 • Fax 954.761.8475 • www.trippscott.com



Fort Lauderdale • Tallahassee

TS004363

Robert L. Spallina, Esq.
November 9, 2012
Page 2 of 2

- operating, or stockholders agreements;
14. Please provide a status of the ongoing litigation involving Stanford;
 15. Please provide a status of the Hiewit company stock. Were the issues with Gerald Lewin resolved?;
 16. Please provide a status of the funding of Telenet Company and Candice's employment with Telenet; and
 17. Please provide any information you have with regards to the college funds created by Simon or Shirley Bernstein for the benefit of Joshua, Jacob and/or Daniel.

Thank you for your attention to this matter. Should you have any questions, please feel free to contact my office.

Very truly yours,


Christine P. Yates
For the Firm

CPY/jcj
cc: Eliot Bernstein
Marc Garber

Christine P. Yates
Direct Dial: 954.760.4916
Email: cty@trippscott.com



November 29, 2012

Via E-Mail and U.S. Mail

Robert L. Spallina, Esq.
Tescher & Spallina, P.A.
4855 Technology Way - Suite 720
Boca Raton, FL 33431

Re: Estates of Shirley Bernstein and Simon Leon Bernstein

Dear Mr. Spallina:

We wanted to take this opportunity to follow up with you regarding my November 9, 2012 correspondence. As you are aware, my firm represents Mr. and Mrs. Bernstein, individually, as natural guardians of Joshua, Jacob, and Daniel Bernstein, and as Trustees of any trusts created for Joshua, Jacob and Daniel Bernstein by Simon and/or Shirley Bernstein. We would appreciate receiving copies of the following information and documents no later than December 4, 2012, in order to assist us in this matter:

1. Copies of all estate planning documents including all Wills and Trusts for Shirley Bernstein and Simon Leon Bernstein that our client was a beneficiary, whether qualified or contingent;
2. Copies of all estate planning documents including all Wills and Trusts that our client's children, Joshua, Jacob and/or Daniel, are named as beneficiary, whether qualified or contingent;
3. Copies of all documents executed in May and June 2012 regarding the Last Will and Testament of Shirley Bernstein;
4. Estate Accounting for Shirley Bernstein;
5. Estate Accounting for Simon Bernstein;
6. Trust Accountings for any Trusts that our client, his spouse, or his children are a beneficiary, whether qualified or contingent;
7. Copies of any claims filed in the Estate of Shirley Bernstein and Simon Bernstein;
8. Copy of the Inventory filed in the Estate of Shirley Bernstein;
9. Copy of the Inventory filed in the Estate of Simon Bernstein, or if none, please provide the approximate date you expect the Inventory will be prepared and filed with the Probate Court;
10. Allocation of the tangible personal property of Shirley and Simon Bernstein. Specifically, is the jewelry being divided among the ten grandchildren?;
11. Appraisals of tangible personal property, specifically the jewelry, artwork and collectibles;
12. All documents relating to the life insurance policies owned by Shirley and/or Simon, insuring Shirley and/or Simon's life, or for the benefit of Shirley and/or Simon Bernstein;

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Tel 954.525.7500 - Fax 954.761.8475 - www.trippscott.com

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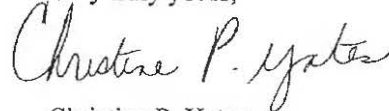
TS004365

Robert L. Spallina, Esq.
November 29, 2012
Page 2 of 2

13. Please provide documentation concerning the allocation and division of all companies owned by Simon and/or Shirley at the time of their deaths and copies of any partnership, operating, or stockholders agreements;
14. Please provide a status of the ongoing litigation involving Stanford;
15. Please provide a status of the Iliewit company stock. Were the issues with Gerald Lewin resolved?;
16. Please provide a status of the funding of Telenet Company and Candice's employment with Telenet; and
17. Please provide any information you have with regards to the college funds created by Simon or Shirley Bernstein for the benefit of Joshua, Jacob and/or Daniel.

Thank you for your attention to this matter. Should you have any questions, please feel free to contact my office.

Very truly yours,



Christine P. Yates
For the Firm

CPY/cak

cc: Eliot Bernstein
Marc Garber

661738v1 995508.0001

TS004366

2007 WEST PALM BEACH FL 33411
OCT 15 2007 WEST PALM BEACH FL 33411

LAW OFFICES OF
STEVEN J. GREENWALD, P. A.
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6971 NORTH FEDERAL HIGHWAY SUITE 105
BOCA RATON, FLORIDA 33497

To: Mr. and Mrs. Simon L. Bernstein
7020 Lions Head Lane
Boca Raton, Florida 33496

Blumberg No. 5713
PLAINTIFF'S
EXHIBIT
40-A

TS000001

LAW OFFICES OF
STEVEN I. GREENWALD, P.A.
BOCA PALM PROFESSIONAL PLAZA
6971 NORTH FEDERAL HIGHWAY, SUITE 105
BOCA RATON, FLORIDA 33487

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TELEPHONE (561) 994 - 5560
FAX (561) 994 - 5629

October 12, 2007

Mr. and Mrs. Simon L. Bernstein
7020 Lions Head Lane
Boca Raton, Florida 33496

Re: Estate Planning

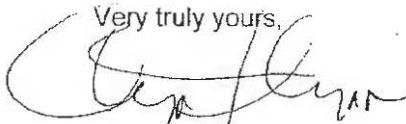
Dear Mr. and Mrs. Bernstein:

Pursuant to the request of Diane of your office, please find enclosed copies of the following estate planning documents:

Living Wills
Durable Powers of Attorney
Designation of Health Care Surrogate
Trust Agreement dated August 15, 2000
Last Wills and Testaments
First Codicils to Last Wills

If you should need anything further, please do not hesitate to contact us.

Very truly yours,



Cynthia Flynn
Assistant to Steven I. Greenwald

enclosures



TS000043

LAW OFFICES OF
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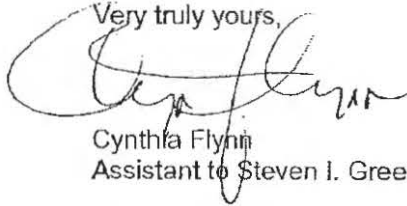
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Very truly yours,



Cynthia Flynn
Assistant to Steven I. Greenwald

enclosures

TS000044

LAST WILL AND TESTAMENT
OF
SIMON BERNSTEIN

DATED: August 15, 2000

PROSKAUER ROSE LLP

Attorneys at Law
2255 Glades Road, Suite 340 West
Boca Raton, FL 33431-7383

Blumberg No. 5113
PLAINTIFF'S
EXHIBIT
40-C

I, SIMON L. BERNSTEIN, of the County of Palm Beach, State of Florida, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all prior Wills, Testaments and Codicils at any time made by me.

FIRST: I direct that all my just debts and funeral and administration expenses be paid as soon after my death as may be practicable.

SECOND: I hereby direct that, pursuant to Florida Statutes §732.515, or the comparable provision in effect at the time of my death, my personal and household effects, including jewelry, works of art and automobiles, if any, be distributed in accordance with a separate written statement executed by me. In the event there shall be more than one such written statement, the statement bearing the last date shall be controlling. If no such written statement is found and properly identified by my Personal Representatives within thirty days after my Personal Representatives are appointed, it shall be conclusively presumed that no such writing exists. In the event there shall be no such written statement (or to the extent such written statement does not effectively dispose of all of my personal and household effects, including jewelry, works of art and automobiles, if any), I give and bequeath all (or the balance) of my personal and household effects, if any, to my wife, SHIRLEY BERNSTEIN, if she survives me, or, if she predeceases me, to such of my children, TED STUART BERNSTEIN, PAMELA BETH SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN, as shall survive me, in shares as nearly equal as they shall agree upon, or, failing agreement, said personal and household effects shall be sold and the proceeds therefrom added to and disposed of as part of my residuary estate.

THIRD: If my wife, SHIRLEY BERNSTEIN, survives me, I

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PROSKAUER ROSE LLP
2255 GLADES ROAD
BOCA RATON, FLORIDA 33431

give and bequeath to my Trustees a "credit equivalent amount" (as defined below) to hold in separate trust to pay so much of the income therefrom and such sums out of the principal thereof (even to the extent of the whole thereof) to such of my wife and my descendants, living from time to time, equally or unequally, and to any one or more of them to the exclusion of the others, as my Trustees, in their absolute discretion, deem necessary or advisable; provided, however, that no such payment shall be made to my wife from the principal of the trust under this Article THIRD until the principal of her trust, if any, under Article FOURTH of this Will shall first have been exhausted. Any balance of the income shall be accumulated and added to principal annually.

Upon the death of my wife, the then principal of the trust shall pass to such one or more of my descendants in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as my wife shall by Will appoint. To the extent that said power of appointment is not effectively exercised, said principal shall be divided into as many equal shares as may be necessary to provide one for each of my then living grandchildren and one for each of my grandchildren who is then dead but who leaves descendants who are then living (such descendants to take in portions, per stirpes, the share set aside for them), and each such share or portion shall be distributed absolutely, except that any share or portion so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SIXTH of this Will.

The "credit equivalent amount" shall be (a) the maximum amount which could comprise my taxable estate for Federal estate tax purposes without resulting in any Federal estate tax, after taking into account the applicable credit amount as defined in

Section 2010(c) of the Code, but no other credits allowable against such tax, reduced by (b) the aggregate of:

(1) the value (as finally determined for Federal estate tax purposes) of all property (including interests in property) includable in my estate for Federal estate tax purposes which passes under other provisions of this Will or otherwise than under this Will and with respect to which no marital deduction or charitable deduction is finally allowed in determining said tax, and

(2) the amount of my adjusted taxable gifts within the meaning of Section 2001(b) of the Code.

The trust under this Article THIRD shall be known as the "Simon L. Bernstein Credit Equivalent Trust."

FOURTH: I give and bequeath to my Trustees an amount equal to my "Unused GST Exemption" (as defined below) to hold in separate trust to pay the income therefrom in quarterly or more frequent installments to my wife, SHIRLEY BERNSTEIN, during her life.

I authorize and empower my Trustees, from time to time, to pay to my wife such sums out of the principal of her trust (even to the extent of the whole thereof) as my Trustees, in their absolute discretion, deem in her best interests; provided, however, that no such payment shall be made to my wife from the principal of her trust under this Article FOURTH until the principal of her trust, if any, under subdivision (a) of Article FIFTH of this Will shall first have been exhausted.

Upon the death of my wife, the then principal of the trust shall pass to such of one or more of my descendants in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as my wife shall by Will appoint. To the extent that said power of appointment shall not be effectively exercised, or upon my death if my wife predeceases me, said principal shall be divided into as many equal shares as may be necessary to provide one for each of my then living grandchildren

and one for each of my grandchildren who is then dead but who leaves descendants who are then living (such descendants to take in portions, per stirpes, the share set aside for them), and each such share or portion shall be distributed absolutely, except that any share or portion so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SIXTH of this Will.

I direct that all estate and inheritance taxes of whatever kind imposed by reason of the inclusion of the trust under this Article in my wife's estate for such tax purposes shall (absent a contrary provision in my wife's Will) be charged, without right of reimbursement, against the principal of the trust for the benefit of my wife under subdivision (a) of Article FIFTH of this Will.

My "Unused GST Exemption" shall be an amount equal to the maximum GST exemption allowable to me pursuant to Section 2631 of the Code, reduced by the aggregate amount of my GST Exemption which has been allocated or deemed allocated by me or which shall be allocated by my Personal Representatives with respect to property transferred by me either under the provisions of this Will or otherwise than under this Will.

The trust under this Article FOURTH shall be known as the "Simon L. Bernstein Exempt Marital Trust."

FIFTH: All the rest, residue and remainder of my estate, real, personal or otherwise and wheresoever situate, including any lapsed legacy or bequest, hereinafter called my residuary estate, shall be disposed of as follows:

(a) If my wife, SHIRLEY BERNSTEIN, survives me, my residuary estate shall be held by my Trustees in separate trust to pay the income therefrom in quarterly or more frequent installments to my wife during her life.

I authorize and empower my Trustees, from time to time, to pay to my wife such sums out of the principal of her trust (even to the extent of the whole thereof) as my Trustees, in their absolute discretion, deem in her best interests.

Upon the death of my wife, the then principal of her trust shall pass to such one or more of my descendants, in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as my wife shall by Will appoint. To the extent that said power of appointment is not effectively exercised, said principal shall be divided into shares, per stirpes, for such of my children TED STUART BERNSTEIN, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN as are then living and for the then living descendants of such of them as are then dead, and each such share shall be distributed absolutely, except that any share so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SEVENTH of this Will.

The trust for my wife under this subdivision (a) shall be known as the "Simon L. Bernstein Non-Exempt Marital Trust.

(b) If my wife predeceases me, my residuary estate shall be divided into shares, per stirpes, for such of my children TED STUART BERNSTEIN, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN as survive me and for the descendants who survive me of such of them as may predecease me, and each such share shall be distributed absolutely, except that any share so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SEVENTH of this Will.

SIXTH: All shares, portions or parts above or below set aside for a grandchild or more remote descendant of mine and directed to be disposed of as provided in this Article SIXTH

shall be combined and held by my Trustees in separate trust to apply so much of the income therefrom for the health, education, maintenance or support of the beneficiary as my Trustees, in their absolute discretion, deem necessary or advisable, accumulating any balance of the income at least annually and adding the same to principal until the beneficiary attains the age of twenty-one; thereafter, the income shall be paid to the beneficiary in convenient installments.

I authorize and empower my Trustees, from time to time, to pay to the beneficiary such sums out of the principal of his or her trust (even to the extent of the whole thereof) as my Trustees deem that the beneficiary needs for his or her health, education, maintenance or support.

Upon the beneficiary's attaining the age of twenty-five, one-half of the then principal of his or her trust shall be distributed to the beneficiary absolutely, and upon the beneficiary's attaining the age of thirty, the balance of the principal of his or her trust shall be distributed to the beneficiary absolutely.

In the event of and upon the death of the beneficiary during the continuance of his or her trust, the then principal thereof shall be divided into portions or parts, per stirpes, for his or her then living descendants, or, in default thereof, for the then living descendants of the beneficiary's nearest ancestor who was a grandchild or more remote descendant of mine and who has descendants then living, or, in default thereof, shall be divided into as many equal portions or parts as may be necessary to provide one for each of my then living grandchildren, and one for each of them who is then dead but who leaves descendants who are then living (such descendants to take in parts, per stirpes, the share set aside for them), and each such portion or part shall be distributed absolutely, except that any portion or part

so set aside for a grandchild or more remote descendant of mine who is then the beneficiary of a trust under this Article SIXTH shall be added to the principal of said trust and disposed of as a part thereof, subject to subsequent, but not prior, mandatory distributions of principal, and any portion or part so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty and who is not then the beneficiary of a trust under this Article SIXTH shall be disposed of as provided in this Article SIXTH.

SEVENTH: Each share or portion above or below set aside for a grandchild or more remote descendant of mine and directed to be disposed of as provided in this Article SEVENTH shall be held by my Trustees in separate trust to apply so much of the income therefrom for the health, education, maintenance or support of the beneficiary as my Trustees, in their absolute discretion, deem necessary or advisable, accumulating any balance of the income at least annually and adding the same to principal until the beneficiary attains the age of twenty-one; thereafter, the income shall be paid to the beneficiary in convenient installments.

I authorize and empower my Trustees, from time to time, to pay to the beneficiary such sums out of the principal of his or her trust (even to the extent of the whole thereof) as my Trustees deem that the beneficiary needs for his or her health, education, maintenance or support.

Upon the beneficiary's attaining the age of twenty-five, one-half of the then principal of his or her trust shall be distributed to the beneficiary absolutely, and upon the beneficiary's attaining the age of thirty, the balance of the principal of his or her trust shall be distributed to the beneficiary absolutely.

In the event of and upon the death of the beneficiary

during the continuance of his or her trust, the then principal thereof shall be divided into portions, per stirpes, for his or her then living descendants, or, in default thereof, for the then living descendants of the beneficiary's nearest ancestor who was a descendant of mine and who has descendants then living, or, in default thereof, for my then living descendants, and each such portion shall be distributed absolutely, except that any portion so set aside for a grandchild or more remote descendant of mine who is then the beneficiary of a trust under this Article SEVENTH shall be added to the principal of said trust and disposed of as a part thereof, subject to subsequent, but not prior, mandatory distributions of principal, and any portion so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty and who is not then the beneficiary of a trust under this Article SEVENTH shall be disposed of as provided in this Article SEVENTH.

EIGHTH: I nominate and appoint my wife, SHIRLEY BERNSTEIN, as my Personal Representative. If my wife fails to qualify or ceases to be qualified, I nominate and appoint in her place the following individuals who shall be entitled to qualify, singly and in the order named: ALBERT W. GORTZ; LISA SUE FRIEDSTEIN; PAMELA BETH SIMON.

With respect to any trust created under Article THIRD, Article FOURTH or subdivision (a) of Article FIFTH of this Will, I nominate and appoint my wife, my daughter LISA SUE FRIEDSTEIN, and my daughter PAMELA BETH SIMON as Trustees hereunder.

With respect to any trust created under Article SIXTH or Article SEVENTH of this Will, I nominate and appoint my wife, SHIRLEY BERNSTEIN, and my daughter PAMELA BETH SIMON as Trustees. If my either my wife or PAMELA BETH SIMON fails to qualify or ceases to be qualified, I nominate and appoint in her place the following individuals who shall be entitled to qualify, singly

and in the order named: LISA SUE FRIEDSTEIN; JILL IANTONI.

My Personal Representatives and Trustees at any time qualified hereunder are authorized and empowered to designate a person or persons or a bank or trust company to act with them and, subject to the foregoing, a sole surviving Personal Representative or Trustee at any time qualified hereunder is authorized and empowered to designate a person or persons or a bank or trust company to act with or to succeed him or her; provided, however, that JEANNIE BERNSTEIN shall never be designated as or serve as a Personal Representative or as a Trustee of any trust created hereunder.

At all times at least one Trustee of any trust created hereunder shall not have an interest in the income or principal of such trust.

I direct that no bond or other security shall be required of any Personal Representative or Trustee named herein or designated as herein provided for any reason whatsoever.

NINTH: I hereby grant to my Personal Representatives and Trustees, in addition to the general powers conferred upon them by law, the following discretionary powers:

(a) To distribute my estate and set up the trusts herein at one time or at different times as soon after my death as they may deem practicable, whether before or after the expiration of any statutory period.

(b) To charge or credit to principal or income or to apportion between them, in such manner as they deem advisable, any ordinary or extraordinary expenses and any extraordinary, wasting or liquidating dividends and any dividends payable in the stock of the corporation declaring the dividend or payable in the stock of another corporation and so-called "capital gains dividends" declared by investment companies or investment trusts; to determine if and to what extent they shall amortize any premium paid by them on bonds or other obligations for the payment of money; upon the death of an income beneficiary, or any other termination of a trust herein, any accrued income (including dividends theretofore declared but not yet payable) shall be paid to the persons entitled to receive the income when it becomes payable, but any undistributed income which my Personal Representatives or Trustees are authorized in their discretion to accumulate shall be added to principal.

(c) To set apart out of the income of the trusts

herein (or out of the income of corporations of which the trusts own securities) reserves for such purposes including, without limitation, depreciation, depletion, obsolescence and other contingencies, and in such amounts as they, in their absolute discretion, shall deem advisable.

(d) To claim expenses chargeable against principal as estate tax or income tax deductions as they deem advisable and to determine if and to what extent any adjustment in favor of principal required by law shall be made.

(e) To make any payment or distribution (required or authorized under this Will) either wholly or partly in kind at market value at date of distribution; to cause any share to be composed of cash, property or undivided fractional interests in property different in kind from any other share and without regard, among such shares, to whether the property distributed has an equivalent basis for income tax purposes.

(f) To alter, repair, improve, demolish, manage, partition, mortgage, lease for any period (including a period in excess of any fixed by statute), exchange, grant options to lease or to buy, and sell or dispose of, at public or private sale and upon such conditions and such terms as to cash and credit as they deem advisable, any property held by them hereunder; said leases may extend beyond the duration of the trusts herein.

(g) To borrow such sums as they deem advisable for the proper administration of my estate and the trusts hereunder and to give security therefor.

(h) To continue, settle or discontinue any business or partnership in which I may be interested.

(i) To continue to hold any property, real, personal or otherwise, including, but not limited to, stocks, bonds or other securities, domestic or foreign, in the form in which it shall be at my death or when received by them hereunder (without regard to any rule of law that may require them to decide whether or not to retain such property) or as the form thereof may be changed pursuant to the provisions of the other subdivisions of this Article of my Will, so long as they, in their absolute discretion, deem it advisable.

(j) To invest and reinvest in any property, including, but not limited to, stocks, bonds or other securities or so-called derivative investments, domestic or foreign, options to sell or to purchase such securities or so-called derivative investments (whether or not then held hereunder), shares or interests in mutual funds, investment companies, investment trusts or common trust funds of a bank or trust company, currencies, precious metals, oil and gas properties or other natural resources and commodities, or interests in, rights to or options to sell or to purchase any of the foregoing (whether or not then held hereunder), improved or unimproved real property or tangible personal property or life insurance, endowment, annuity or similar contracts (including such contracts insuring the then income beneficiary of any trust hereunder) that they may, in their absolute discretion, deem advisable and without regard to any duty to diversify or, except with respect to any trust for the benefit of my spouse that qualifies for the marital deduction under either Federal or state law, to make such property productive of income, and in any manner, including by direct purchase, entry into a joint venture, creation of or purchase of

an interest in any form of partnership or corporation or through any other form of participation or ownership.

(k) To employ any person, firm, corporation, bank or trust company for advice with respect to investment policy, but my Personal Representatives or Trustees may, in their absolute discretion, follow or refrain from following any recommendations so obtained, and said recommendations shall not in any way limit the discretionary power and authority herein conferred upon, and not otherwise delegated by, them with respect to investments; to designate a corporation, partnership or other firm, authorized so to act, as custodian, and to employ attorneys, accountants and bookkeepers; and to charge the fees and expenses of the foregoing to my estate or any trust hereunder.

(l) To retain possession, in their absolute discretion, of any property payable absolutely to an infant, and to invest and reinvest the same, to collect the income therefrom, and, after deducting all proper expenses, to apply the income and principal to the use of said infant (and in the case of tangible personal property to permit the infant to have the custody and use of all or part of it from time to time), with all the powers, rights and compensation of Trustees hereunder, provided, however, that nothing herein contained shall be construed to prevent or postpone the vesting of said property in said infant or to suspend the alienability of said property.

(m) In determining the amounts applicable to the use of an infant, to consider or disregard the ability of the parent or parents of said infant to support said infant; and to make payment of any amount, applicable to the use of or payable to an infant, (1) to the guardian (whether qualified in my domicile or any other jurisdiction) of the person or property of such infant, or (2) to the parent or parents of such infant (whether or not legally appointed his or her guardian(s)), or (3) to the extent permitted by law, to a Custodian for such infant under a Uniform Gifts to Minors Act or a Uniform Transfers to Minors Act, or (4) to apply the same for his or her benefit; the receipt of such guardian, parent or Custodian or the evidence of the application of such amount shall be a full discharge to my Personal Representatives and Trustees for such payment; provided, however, that with respect to any such payments to or for the benefit of my grandchildren ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and MICHAEL BERNSTEIN, no such payment shall be made to JEANNIE BERNSTEIN in any capacity as such grandchild's parent, guardian or Custodian.

(n) Severally to authorize, by instrument in writing, any person or corporation, including any co-fiduciary, bank or trust company, to act in the place of said Personal Representative or Trustee with respect to specified transactions, to sign a particular check or checks, or to execute any other specifically stated instruments in the name of said Personal Representative or Trustee.

(o) To remove any property held by them hereunder to or from my domicile or any other jurisdiction.

(p) To organize or participate in the organization of corporations, and to transfer to them any part or all of the property held by them hereunder in exchange for securities thereof.

(q) To exercise or perform every power, authority or duty, including discretionary powers, by the concurrence and in

the names of a majority of the Personal Representatives or Trustees qualified to participate, with the same effect as if all had joined therein; but by unanimous vote of the Personal Representatives or Trustees they may determine the number (one or more) who may give instructions to custodians, sign checks or have access to safe deposit boxes.

(r) To hold the principal or part of the principal of any of the trusts herein in one or more joint funds in which the separate trusts shall have undivided interests.

(s) To file such gift tax and income tax returns jointly with my spouse as they deem advisable.

(t) To compromise, settle, subordinate, arbitrate, extend, renew, modify, waive or extend the statute of limitations with respect to, or release, in whole or in part, any claim held by or against my estate or the trusts herein, or any mortgage or other security held by them or held against any property held by them hereunder.

(u) To participate in and consent to any corporate reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in any corporation or in its financial structure, and to become a depositor with any protective, reorganization or similar committee, and to make any necessary payments incident to the foregoing; to exercise or to sell any conversion, subscription or similar rights; and in general to exercise in respect to any securities the unrestricted rights of a personal owner, including voting in person and granting proxies, discretionary, general or otherwise.

(v) To the extent permitted by law, to register any property held by them hereunder in their names as Personal Representatives or Trustees or in the names of nominees, or to take and keep the same unregistered, in bearer form or otherwise in such condition as to pass by delivery.

(w) To lend such sums out of the income (other than of any trust for the benefit of my spouse that qualifies for the marital deduction under either Federal or state law) or principal of the trusts hereunder and upon such terms and conditions as they deem advisable; provided, however, that adequate security be obtained from, and reasonable interest be charged to, the borrower.

(x) To guarantee loans made to any beneficiary hereunder.

(y) To trade on margin (but only with the approval of my spouse in the case of any trust that qualifies for the marital deduction under either Federal or state law) and, for such purpose, to maintain and operate a margin account with any broker and to pledge any property held hereunder with such broker for loans and advances made to them. In connection with the foregoing, my Personal Representatives and Trustees are authorized and empowered to hold title in and to property in bearer, nominee or other form, without disclosure of any trust, so that title may pass by delivery.

TENTH: (a) All the powers granted to my Personal Representatives and Trustees hereunder may be exercised after the termination of the trusts hereunder in connection with the proper

administration and distribution thereof.

(b) Notwithstanding any provision in this Will to the contrary, any power (including discretionary powers) granted to my Personal Representatives and Trustees hereunder shall be absolutely void to the extent that the right to exercise or the exercise thereof would in any way cause my estate to lose all or part of the tax benefit afforded my estate by the marital deduction provisions under either Federal or state laws; without limiting the foregoing, with respect to the trusts for my spouse under Articles FOURTH and FIFTH of this Will, (1) subdivisions (a), (b), (c) and (p) of the preceding Article of this Will shall not apply and (2) my spouse may direct the Trustees, from time to time, to sell any property held as part of the principal, if it produces little or no income, and to invest the proceeds of sale in property that produces sufficient income to assure that such trust will qualify for the marital deduction.

(c) If any person beneficially interested hereunder shall die in the course of or as a direct result of the same disaster, accident or calamity as shall cause my death or the death of the life beneficiary upon whose death said person's interest is to take effect or under such circumstances that it cannot be readily determined whether I or said person, or the life beneficiary or said person, as the case may be, died first, then, for the purposes of this Will, said person shall be deemed to have died before me or before said life beneficiary, and my estate shall pass in such manner as would occur hereunder if said person had predeceased me or said life beneficiary, as the case may be.

(d) I direct that my Personal Representative(s) shall exercise the right, under Section 2207A(a)(1) of the Code and under any similar provision of any state law, to recover from the persons receiving any property referred to in said provisions (including the Trustees of any trust other than the pre-residuary trust under Article FOURTH of my spouse's Will) the amount of estate and inheritance taxes (and any interest and penalties relating thereto) paid by my estate attributable to such property. Subject to the direction in the preceding sentence, all estate and inheritance taxes of whatever kind imposed by reason of my death upon the property disposed of in this Will and upon any other property, including insurance but not including the pre-residuary trust under Article FOURTH of my spouse's Will (the taxes on which are to be paid out of the residuary trust thereunder), otherwise disposed of and subject to the imposition of said taxes, shall be charged, without right of reimbursement, (1) if my spouse survives me, against the property disposed of in Article THIRD of this Will, or, to the extent that said property is insufficient, against my residuary estate, or, (2) if my spouse predeceases me, against my residuary estate.

For the foregoing purposes, estate and inheritance taxes shall include any generation-skipping transfer tax on a direct skip taking effect at my death (other than a direct skip from a trust not created by me), but no other generation-skipping transfer tax.

(e) Any income or principal payable to a beneficiary hereunder may, in the discretion of my Personal Representatives and Trustees, be applied by them for the benefit of said beneficiary.

(f) All testamentary powers of appointment granted in

this Will shall be exercisable by specific reference to this Will and, except as provided in subdivision (p) herein, shall not be exercisable in favor of the donee of the power or the donee's estate or creditors of the donee or of the donee's estate.

(g) Any person may renounce, in whole or in part, any provision in his or her favor hereunder and, in such event, the property covered by said provision, to the extent renounced, shall be disposed of as though said person had predeceased me, and if said property is to be held in trust, to the extent renounced, said property shall become free of the trust for said person (and of any power of appointment said person may have with respect thereto) and shall be disposed of as though said person had predeceased me. I do not intend by the foregoing to suggest that any particular person should so renounce.

(h) Any Personal Representative or Trustee who is an income beneficiary of a trust hereunder shall not be qualified to participate in the exercise of any power to make discretionary distributions to himself or herself or to make allocations, in his or her own favor, of receipts or expenses as between principal and income of such trust; nor shall any Personal Representative or Trustee participate in the exercise of a discretionary power to pay or apply income or principal to or for the benefit of a beneficiary whom said Personal Representative or Trustee (in his or her individual capacity) is then legally obligated to support; all said powers shall be exercisable by the other Personal Representative(s) or Trustee(s).

(i) With respect to any Personal Representative or Trustee who is interested, in his or her individual capacity, in any firm or corporation in which my estate or any trust hereunder may have an interest, I direct that he or she may deal freely with said firm or corporation in his or her individual capacity, notwithstanding that there may be a conflict with his or her fiduciary capacity hereunder, but I direct that if one or more of my Personal Representatives or Trustees has no such personal interest, then as to all matters pertaining to said firm or corporation involving such conflict of interest the decision of my estate and of said trust shall be made by said disinterested Personal Representative(s) or Trustee(s).

(j) A person from time to time qualified as Personal Representative or Trustee hereunder shall not be disqualified from purchasing assets of my estate, provided (1) said purchaser shall not participate as Personal Representative or Trustee in the decisions of the Personal Representatives or Trustees as to the price, conditions and terms of the sale, all of which decisions shall be made by the other Personal Representative(s) or Trustee(s); and (2) in fixing said price, conditions and terms said other Personal Representative(s) or Trustee(s) shall in all respects treat said purchaser in the same manner as though he or she were a third party, not qualified as Personal Representative or Trustee.

(k) My Personal Representatives and Trustees may purchase assets from or sell assets to other estates or trusts not created hereunder, notwithstanding that one or more of my said Personal Representatives and Trustees are fiduciaries of or beneficially interested in said estates or trusts; provided, however, that if one or more of my Personal Representatives or Trustees has no such interest, then as to all such matters the decision of my estate or of the trusts hereunder shall be made by said disinterested Personal Representative(s) or Trustee(s).

(l) My Personal Representatives and Trustees may exercise any rights or options with respect to any policy of life insurance held by them, whether granted in said policy or allowed by the insurer, including, but not limited to, surrendering, converting (into paid up or extended term insurance) or borrowing upon said policy; applying dividends against premiums or to purchase paid up additions; and exercising options with respect to surrender or payment of death proceeds.

(m) In any judicial proceeding involving my estate or any trust hereunder and in any non-judicial settlement of the account of a Personal Representative or Trustee hereunder, the interest of a person under disability may be represented by a party to such proceeding or settlement who is not under disability and who has the same interest.

(n) I direct that any administration expenses or debts charged to principal and not claimed and allowed as estate tax deductions shall be charged, (1) if my spouse survives me, against the property disposed of in Article THIRD of this Will, or, to the extent that said property is insufficient, against my residuary estate, or, (2) if my spouse predeceases me, against my residuary estate.

(o) I direct that all charges incurred by my Personal Representatives in storing, packing, shipping, delivering and insuring any property passing under the provisions of this Will, whether such property is specifically bequeathed or otherwise, shall be paid by my Personal Representatives as expenses of administering my estate.

(p) Notwithstanding the provisions of Article SEVENTH of this Will, if (1) pursuant thereto, upon the death of the beneficiary of a trust thereunder, any trust property would be set aside for a person who is assigned to a generation younger than that of the beneficiary under Section 2651 of the Code and if (2) said property would be subject to a generation-skipping transfer tax on the death of the beneficiary, but would not be subject to said tax to the extent that said property is includable in the beneficiary's estate for Federal estate tax purposes, then and in that event said property shall instead pass in such manner, including to his or her estate, if he or she shall so appoint, as the beneficiary shall by Will appoint with the unanimous prior written consent of all of the then qualified Trustees of said trust, except those whose required concurrence would prevent said power of appointment from being a "general power of appointment" within the meaning of Section 2041(b)(1) of the Code. Only if and to the extent that said power of appointment is not effectively exercised shall said property be disposed of as provided in said Article SEVENTH.

(q) Wherever in this Will property is directed to be added to or combined with an existing trust for a descendant of mine hereunder, my Personal Representatives and Trustees shall not combine property with different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code, but shall add such property to the trust for such descendant hereunder which has the same generation-skipping transfer tax inclusion ratio as defined in Section 2642(a) of the Code as such property, or, if necessary, such property shall be held in a separate trust for such descendant, with said trust to have identical provisions to the existing trust for such descendant hereunder.

(r) If, at any time, there shall be a trust under the Will of my spouse, or a trust created by me or by my spouse during our lifetimes, for the same beneficiaries and subject to the same provisions as a trust under this Will (or as a trust intended to be created under this Will), my Personal Representatives and Trustees are authorized and empowered, in their absolute discretion, to transfer the principal held (or intended to be held) in trust hereunder to the Trustees of such other trust (whether or not the Trustees of such other trust or their successors are the Trustees nominated or appointed hereunder) or to combine them (unless such trusts have different generation-skipping transfer tax inclusion ratios, as defined in section 2642(a) of the Code), to form a single trust for simplicity and convenience of administration; provided, however, that if any such trusts are prevented from being combined or otherwise consolidated pursuant to the provisions of this subdivision because any such trust has a different maximum period of time that property held in such trust could remain held in such trust (the "perpetuities period"), the Trustees shall be permitted to combine or otherwise consolidate such trusts pursuant to the provisions of this subdivision with the resulting trust assigned the lesser of the perpetuities periods of the original trusts.

(s) I authorize and empower my Personal Representatives to allocate the GST Exemption allowable to me pursuant to Section 2631 of the Code, to the extent that it shall not have been allocated (or deemed allocated) by me during my lifetime, in such manner as they, in their absolute discretion, shall determine.

(t) In no event shall any trust hereunder continue longer than the maximum term allowable under Florida law (or any other state that may govern the provisions of my Will) in effect at the time of my death, and any trust then still in effect hereunder shall thereupon terminate and the then principal thereof shall be distributed absolutely to the beneficiary thereof.

(u) Every Personal Representative and Trustee hereunder, original and substitute, shall be chargeable only with said fiduciary's own respective receipts or acts, and shall not be liable for any loss or damage occurring hereunder without said fiduciary's willful default or deliberate wrongdoing, unless such loss or damage be occasioned by a violation of an express provision of this Will, and shall not be liable to my estate or any person beneficially interested hereunder for any loss or depreciation which may arise from any investment retained or made in accordance with the provisions of this Will or which may be occasioned by the exercise of any discretion authorized herein, whether such investment be continued or made in accordance with or in disregard of recommendations obtained as above provided.

(v) Wherever the context permits, the words "Personal Representatives" or "Trustees" shall be deemed to include "their survivor or survivors, successor or successors."

(w) To the extent permitted by law, none of the beneficiaries hereunder shall have the power to convey, anticipate, assign, encumber or in any way dispose of any part of the income or principal of their respective trust funds, nor shall said principal or income be in any way or in any amount answerable or chargeable with their duties, obligations, judgments or claims however arising, nor shall said principal or income be

taken or reached by any legal or equitable process in satisfaction thereof, it being my intent, so far as the law allows, to make said trusts what are commonly known as "spendthrift trusts."

(x) In determining whether or not to exercise any discretionary power to pay income or principal of my estate or any trust hereunder, my Personal Representatives or Trustees may, but shall not be required to, (1) with respect to the trusts created under Article THIRD, Article FOURTH, and subdivision (a) of Article FIFTH of this Will, take into account any other resources available to the beneficiary under consideration; (2) take into account any effect the exercise thereof may have on the respective tax liabilities of my estate or any trust hereunder and the beneficiary under consideration; and (3) consider and accept as correct any statement concerning these matters made by the beneficiary under consideration or on behalf of such beneficiary.

(y) I waive compliance by my Trustees with any law now or hereafter in effect requiring qualification, registration or accounting by my Trustees to any Court.

(z) Wherever reference is made in this Will to the "Code" it shall mean the Internal Revenue Code of 1986, as amended, and, if to any specific provision, it shall include any comparable provision of any subsequently enacted revenue law of the United States in effect from time to time.

ELEVENTH: The term "descendants" as used in this Will shall specifically exclude my daughter PAMELA BETH SIMON and her

descendants. Except as provided in Article SECOND of this Will, I have not made any provisions herein for PAMELA BETH SIMON or any of her descendants not out of lack of love or affection but because they have been adequately provided for.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 15 day of August, Two Thousand.


(L.S.)

The foregoing instrument, consisting of this and seventeen preceding typewritten pages, was signed, sealed, published and declared by SIMON L. BERNSTEIN, the Testator, to be his Last Will and Testament, in our presence, and we, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses, this 15th day of August, Two Thousand at 2255 Glades Road, Boca Raton, Florida.

George A. Rubin residing at 1133 SW 20th Street

Boca Raton, FL

Tommy G. [Signature] residing at 2415 NW 32nd St.

Boca Raton, FL

STATE OF FLORIDA)
) SS.:
COUNTY OF PALM BEACH)

We, SIMON L. BERNSTEIN, *George D. Karibjanian* and *Robert Jacobowitz*, the Testator and the witnesses respectively, whose names are signed to the attached or foregoing instrument, were sworn, and declared to the undersigned officer that the Testator, in the presence of the witnesses, signed the instrument as his Last Will and that each of the witnesses, in the presence of the Testator and in the presence of each other, signed the Will as a witness.

[Signature]

Testator

George D. Karibjanian

Witness

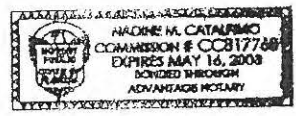
Robert Jacobowitz

Witness

Subscribed and sworn to before me by SIMON L. BERNSTEIN, the Testator, and by *George D. Karibjanian* and *Robert Jacobowitz*, the witnesses, on *August 15*, 2000, all of whom personally appeared before me. SIMON L. BERNSTEIN is personally known to me or has produced *George D. Karibjanian* as identification. *George D. Karibjanian* is personally known to me or has produced as identification. *Robert Jacobowitz* is personally known to me or has produced as identification.

[Signature]

Notary Public (Affix Seal)
My commission expires:
My commission number is:



LAST WILL AND TESTAMENT
OF
SIMON BERNSTEIN

DATED: *August 15, 2000*

PROSKAUER ROSE LLP

Attorneys at Law
2255 Glades Road, Suite 340 West
Boca Raton, FL 33431-7303

LAST WILL AND TESTAMENT
OF
SHIRLEY BERNSTEIN

DATED: August 15, 2003

PROSKAUER ROSE LLP
Attorneys at Law
2255 Grades Road, Suite 340 West
Boca Raton, FL 33431-7383

Blumberg No. 8113
PLAINTIFF'S
EXHIBIT
40-D

I, SHIRLEY BERNSTEIN, of the County of Palm Beach, State of Florida, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all prior Wills, Testaments and Codicils at any time made by me.

FIRST: I direct that all my just debts and funeral and administration expenses be paid as soon after my death as may be practicable.

SECOND: I hereby direct that, pursuant to Florida Statutes §732.515, or the comparable provision in effect at the time of my death, my personal and household effects, including jewelry, works of art and automobiles, if any, be distributed in accordance with a separate written statement executed by me. In the event there shall be more than one such written statement, the statement bearing the last date shall be controlling. If no such written statement is found and properly identified by my Personal Representatives within thirty days after my Personal Representatives are appointed, it shall be conclusively presumed that no such writing exists. In the event there shall be no such written statement (or to the extent such written statement does not effectively dispose of all of my personal and household effects, including jewelry, works of art and automobiles, if any), I give and bequeath all (or the balance) of my personal and household effects, if any, to my husband, SIMON L. BERNSTEIN, if he survives me, or, if he predeceases me, to such of my children, TED STUART BERNSTEIN, PAMELA BETH SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN, as shall survive me, in shares as nearly equal as they shall agree upon, or, failing agreement, said personal and household effects shall be sold and the proceeds therefrom added to and disposed of as part of my residuary estate.

THIRD: If my husband, SIMON L. BERNSTEIN, survives me,

THE ORIGINAL OF THIS DOCUMENT IS BEING
HELD FOR SAFEKEEPING BY
PROSKAUER ROSE LLP
2255 GLADES ROAD
BOCA RATON, FLORIDA 33431

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I give and bequeath to my Trustees a "credit equivalent amount" (as defined below) to hold in separate trust to pay so much of the income therefrom and such sums out of the principal thereof (even to the extent of the whole thereof) to such of my husband and my descendants, living from time to time, equally or unequally, and to any one or more of them to the exclusion of the others, as my Trustees, in their absolute discretion, deem necessary or advisable; provided, however, that no such payment shall be made to my husband from the principal of the trust under this Article THIRD until the principal of his trust, if any, under Article FOURTH of this Will shall first have been exhausted. Any balance of the income shall be accumulated and added to principal annually.

Upon the death of my husband, the then principal of the trust shall pass to such one or more of my descendants in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as my husband shall by Will appoint. To the extent that said power of appointment is not effectively exercised, said principal shall be divided into as many equal shares as may be necessary to provide one for each of my then living grandchildren and one for each of my grandchildren who is then dead but who leaves descendants who are then living (such descendants to take in portions, per stirpes, the share set aside for them), and each such share or portion shall be distributed absolutely, except that any share or portion so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SIXTH of this Will.

The "credit equivalent amount" shall be (a) the maximum amount which could comprise my taxable estate for Federal estate tax purposes without resulting in any Federal estate tax, after taking into account the applicable credit amount as defined in

Section 2010(c) of the Code, but no other credits allowable against such tax, reduced by (b) the aggregate of:

(1) the value (as finally determined for Federal estate tax purposes) of all property (including interests in property) includable in my estate for Federal estate tax purposes which passes under other provisions of this Will or otherwise than under this Will and with respect to which no marital deduction or charitable deduction is finally allowed in determining said tax, and

(2) the amount of my adjusted taxable gifts within the meaning of Section 2001(b) of the Code.

The trust under this Article THIRD shall be known as the "Shirley Bernstein Credit Equivalent Trust."

FOURTH: I give and bequeath to my Trustees an amount equal to my "Unused GST Exemption" (as defined below) to hold in separate trust to pay the income therefrom in quarterly or more frequent installments to my husband, SIMON L. BERNSTEIN, during his life.

I authorize and empower my Trustees, from time to time, to pay to my husband such sums out of the principal of his trust (even to the extent of the whole thereof) as my Trustees, in their absolute discretion, deem in his best interests; provided, however, that no such payment shall be made to my husband from the principal of his trust under this Article FOURTH until the principal of his trust, if any, under subdivision (a) of Article FIFTH of this Will shall first have been exhausted.

Upon the death of my husband, the then principal of the trust shall pass to such of one or more of my descendants in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as my husband shall by Will appoint. To the extent that said power of appointment shall not be effectively exercised, or upon my death if my husband predeceases me, said principal shall be divided into as many equal shares as may be necessary to provide one for each of my then living grandchildren

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and one for each of my grandchildren who is then dead but who leaves descendants who are then living (such descendants to take in portions, per stirpes, the share set aside for them), and each such share or portion shall be distributed absolutely, except that any share or portion so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SIXTH of this Will.

I direct that all estate and inheritance taxes of whatever kind imposed by reason of the inclusion of the trust under this Article in my husband's estate for such tax purposes shall (absent a contrary provision in my husband's Will) be charged, without right of reimbursement, against the principal of the trust for the benefit of my husband under subdivision (a) of Article FIFTH of this Will.

My "Unused GST Exemption" shall be an amount equal to the maximum GST exemption allowable to me pursuant to Section 2631 of the Code, reduced by the aggregate amount of my GST Exemption which has been allocated or deemed allocated by me or which shall be allocated by my Personal Representatives with respect to property transferred by me either under the provisions of this Will or otherwise than under this Will.

The trust under this Article FOURTH shall be known as the "Shirley Bernstein Exempt Marital Trust."

FIFTH: All the rest, residue and remainder of my estate, real, personal or otherwise and wheresoever situate, including any lapsed legacy or bequest, hereinafter called my residuary estate, shall be disposed of as follows:

(a) If my husband, SIMON L. BERNSTEIN, survives me, my residuary estate shall be held by my Trustees in separate trust to pay the income therefrom in quarterly or more frequent installments to my husband during his life.

I authorize and empower my Trustees, from time to time, to pay to my husband such sums out of the principal of his trust (even to the extent of the whole thereof) as my Trustees, in their absolute discretion, deem in his best interests.

Upon the death of my husband, the then principal of his trust shall pass to such one or more of my descendants, in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as my husband shall by Will appoint. To the extent that said power of appointment is not effectively exercised, said principal shall be divided into shares, per stirpes, for such of my children TED STUART BERNSTEIN, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN, as are then living and for the then living descendants of such of them as are then dead, and each such share shall be distributed absolutely, except that any share so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SEVENTH of this Will.

The trust for my husband under this subdivision (a) shall be known as the "Shirley Bernstein Non-Exempt Marital Trust.

(b) If my husband predeceases me, my residuary estate shall be divided into shares, per stirpes, for such of my children TED STUART BERNSTEIN, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN, as survive me and for the descendants who survive me of such of them as may predecease me, and each such share shall be distributed absolutely, except that any share so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SEVENTH of this Will.

SIXTH: All shares, portions or parts above or below set aside for a grandchild or more remote descendant of mine and

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directed to be disposed of as provided in this Article SIXTH shall be combined and held by my Trustees in separate trust to apply so much of the income therefrom for the health, education, maintenance or support of the beneficiary as my Trustees, in their absolute discretion, deem necessary or advisable, accumulating any balance of the income at least annually and adding the same to principal until the beneficiary attains the age of twenty-one; thereafter, the income shall be paid to the beneficiary in convenient installments.

I authorize and empower my Trustees, from time to time, to pay to the beneficiary such sums out of the principal of his or her trust (even to the extent of the whole thereof) as my Trustees deem that the beneficiary needs for his or her health, education, maintenance or support.

Upon the beneficiary's attaining the age of twenty-five, one-half of the then principal of his or her trust shall be distributed to the beneficiary absolutely, and upon the beneficiary's attaining the age of thirty, the balance of the principal of his or her trust shall be distributed to the beneficiary absolutely.

In the event of and upon the death of the beneficiary during the continuance of his or her trust, the then principal thereof shall be divided into portions or parts, per stirpes, for his or her then living descendants, or, in default thereof, for the then living descendants of the beneficiary's nearest ancestor who was a grandchild or more remote descendant of mine and who has descendants then living, or, in default thereof, shall be divided into as many equal portions or parts as may be necessary to provide one for each of my then living grandchildren, and one for each of them who is then dead but who leaves descendants who are then living (such descendants to take in parts, per stirpes, the share set aside for them), and each such portion or part

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shall be distributed absolutely, except that any portion or part so set aside for a grandchild or more remote descendant of mine who is then the beneficiary of a trust under this Article SIXTH shall be added to the principal of said trust and disposed of as a part thereof, subject to subsequent, but not prior, mandatory distributions of principal, and any portion or part so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty and who is not then the beneficiary of a trust under this Article SIXTH shall be disposed of as provided in this Article SIXTH.

SEVENTH: Each share or portion above or below set aside for a grandchild or more remote descendant of mine and directed to be disposed of as provided in this Article SEVENTH shall be held by my Trustees in separate trust to apply so much of the income therefrom for the health, education, maintenance or support of the beneficiary as my Trustees, in their absolute discretion, deem necessary or advisable, accumulating any balance of the income at least annually and adding the same to principal until the beneficiary attains the age of twenty-one; thereafter, the income shall be paid to the beneficiary in convenient installments.

I authorize and empower my Trustees, from time to time, to pay to the beneficiary such sums out of the principal of his or her trust (even to the extent of the whole thereof) as my Trustees deem that the beneficiary needs for his or her health, education, maintenance or support.

Upon the beneficiary's attaining the age of twenty-five, one-half of the then principal of his or her trust shall be distributed to the beneficiary absolutely, and upon the beneficiary's attaining the age of thirty, the balance of the principal of his or her trust shall be distributed to the beneficiary absolutely.

In the event of and upon the death of the beneficiary during the continuance of his or her trust, the then principal thereof shall be divided into portions, per stirpes, for his or her then living descendants, or, in default thereof, for the then living descendants of the beneficiary's nearest ancestor who was a descendant of mine and who has descendants then living, or, in default thereof, for my then living descendants, and each such portion shall be distributed absolutely, except that any portion so set aside for a grandchild or more remote descendant of mine who is then the beneficiary of a trust under this Article SEVENTH shall be added to the principal of said trust and disposed of as a part thereof, subject to subsequent, but not prior, mandatory distributions of principal, and any portion so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty and who is not then the beneficiary of a trust under this Article SEVENTH shall be disposed of as provided in this Article SEVENTH.

EIGHTH: I nominate and appoint my husband, SIMON L. BERNSTEIN, as my Personal Representative. If my husband fails to qualify or ceases to be qualified, I nominate and appoint in his place the following individuals who shall be entitled to qualify, singly and in the order named: ALBERT W. GORTZ; LISA SUE FRIEDSTEIN; PAMELA BETH SIMON.

With respect to any trust created under Article THIRD, Article FOURTH or subdivision (a) of Article FIFTH of this Will, I nominate and appoint my husband, my daughter LISA SUE FRIEDSTEIN, and my daughter PAMELA BETH SIMON as Trustees hereunder.

With respect to any trust created under Article SIXTH or Article SEVENTH of this Will, I nominate and appoint my husband, SIMON L. BERNSTEIN, and my daughter PAMELA BETH SIMON as Trustees. If either my husband or PAMELA BETH SIMON fails to

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qualify or ceases to be qualified, I nominate and appoint in his or her place the following individuals who shall be entitled to qualify, singly and in the order named: LISA SUE FRIEDSTEIN; JILL IANTONI.

My Personal Representatives and Trustees at any time qualified hereunder are authorized and empowered to designate a person or persons or a bank or trust company to act with them and, subject to the foregoing, a sole surviving Personal Representative or Trustee at any time qualified hereunder is authorized and empowered to designate a person or persons or a bank or trust company to act with or to succeed him or her; provided, however, that JEANNIE BERNSTEIN shall never be designated as or serve as a Personal Representative or as a Trustee of any trust created hereunder.

At all times at least one Trustee of any trust created hereunder shall not have an interest in the income or principal of such trust.

I direct that no bond or other security shall be required of any Personal Representative or Trustee named herein or designated as herein provided for any reason whatsoever.

NINTH: I hereby grant to my Personal Representatives and Trustees, in addition to the general powers conferred upon them by law, the following discretionary powers:

(a) To distribute my estate and set up the trusts herein at one time or at different times as soon after my death as they may deem practicable, whether before or after the expiration of any statutory period.

(b) To charge or credit to principal or income or to apportion between them, in such manner as they deem advisable, any ordinary or extraordinary expenses and any extraordinary, wasting or liquidating dividends and any dividends payable in the stock of the corporation declaring the dividend or payable in the stock of another corporation and so-called "capital gains dividends" declared by investment companies or investment trusts; to determine if and to what extent they shall amortize any premium paid by them on bonds or other obligations for the payment of money; upon the death of an income beneficiary, or any other termination of a trust herein, any accrued income (including dividends theretofore declared but not yet payable) shall be paid

to the persons entitled to receive the income when it becomes payable, but any undistributed income which my Personal Representatives or Trustees are authorized in their discretion to accumulate shall be added to principal.

(c) To set apart out of the income of the trusts herein (or out of the income of corporations of which the trusts own securities) reserves for such purposes including, without limitation, depreciation, depletion, obsolescence and other contingencies, and in such amounts as they, in their absolute discretion, shall deem advisable.

(d) To claim expenses chargeable against principal as estate tax or income tax deductions as they deem advisable and to determine if and to what extent any adjustment in favor of principal required by law shall be made.

(e) To make any payment or distribution (required or authorized under this Will) either wholly or partly in kind at market value at date of distribution; to cause any share to be composed of cash, property or undivided fractional interests in property different in kind from any other share and without regard, among such shares, to whether the property distributed has an equivalent basis for income tax purposes.

(f) To alter, repair, improve, demolish, manage, partition, mortgage, lease for any period (including a period in excess of any fixed by statute), exchange, grant options to lease or to buy, and sell or dispose of, at public or private sale and upon such conditions and such terms as to cash and credit as they deem advisable, any property held by them hereunder; said leases may extend beyond the duration of the trusts herein.

(g) To borrow such sums as they deem advisable for the proper administration of my estate and the trusts hereunder and to give security therefor.

(h) To continue, settle or discontinue any business or partnership in which I may be interested.

(i) To continue to hold any property, real, personal or otherwise, including, but not limited to, stocks, bonds or other securities, domestic or foreign, in the form in which it shall be at my death or when received by them hereunder (without regard to any rule of law that may require them to decide whether or not to retain such property) or as the form thereof may be changed pursuant to the provisions of the other subdivisions of this Article of my Will, so long as they, in their absolute discretion, deem it advisable.

(j) To invest and reinvest in any property, including, but not limited to, stocks, bonds or other securities or so-called derivative investments, domestic or foreign, options to sell or to purchase such securities or so-called derivative investments (whether or not then held hereunder), shares or interests in mutual funds, investment companies, investment trusts or common trust funds of a bank or trust company, currencies, precious metals, oil and gas properties or other natural resources and commodities, or interests in, rights to or options to sell or to purchase any of the foregoing (whether or not then held hereunder), improved or unimproved real property or tangible personal property or life insurance, endowment, annuity or similar contracts (including such contracts insuring the then income beneficiary of any trust hereunder) that they may, in

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their absolute discretion, deem advisable and without regard to any duty to diversify or, except with respect to any trust for the benefit of my spouse that qualifies for the marital deduction under either Federal or state law, to make such property productive of income, and in any manner, including by direct purchase, entry into a joint venture, creation of or purchase of an interest in any form of partnership or corporation or through any other form of participation or ownership.

(k) To employ any person, firm, corporation, bank or trust company for advice with respect to investment policy, but my Personal Representatives or Trustees may, in their absolute discretion, follow or refrain from following any recommendations so obtained, and said recommendations shall not in any way limit the discretionary power and authority herein conferred upon, and not otherwise delegated by, them with respect to investments; to designate a corporation, partnership or other firm, authorized so to act, as custodian, and to employ attorneys, accountants and bookkeepers; and to charge the fees and expenses of the foregoing to my estate or any trust hereunder.

(l) To retain possession, in their absolute discretion, of any property payable absolutely to an infant, and to invest and reinvest the same, to collect the income therefrom, and, after deducting all proper expenses, to apply the income and principal to the use of said infant (and in the case of tangible personal property to permit the infant to have the custody and use of all or part of it from time to time), with all the powers, rights and compensation of Trustees hereunder, provided, however, that nothing herein contained shall be construed to prevent or postpone the vesting of said property in said infant or to suspend the alienability of said property.

(m) In determining the amounts applicable to the use of an infant, to consider or disregard the ability of the parent or parents of said infant to support said infant; and to make payment of any amount, applicable to the use of or payable to an infant, (1) to the guardian (whether qualified in my domicile or any other jurisdiction) of the person or property of such infant, or (2) to the parent or parents of such infant (whether or not legally appointed his or her guardian(s)), or (3) to the extent permitted by law, to a Custodian for such infant under a Uniform Gifts to Minors Act or a Uniform Transfers to Minors Act, or (4) to apply the same for his or her benefit; the receipt of such guardian, parent or Custodian or the evidence of the application of such amount shall be a full discharge to my Personal Representatives and Trustees for such payment; provided, however, that with respect to any such payments to or for the benefit of my grandchildren ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and MICHAEL BERNSTEIN, no such payment shall be made to JEANNIE BERNSTEIN in any capacity as such grandchild's parent, guardian or Custodian.

(n) Severally to authorize, by instrument in writing, any person or corporation, including any co-fiduciary, bank or trust company, to act in the place of said Personal Representative or Trustee with respect to specified transactions, to sign a particular check or checks, or to execute any other specifically stated instruments in the name of said Personal Representative or Trustee.

(o) To remove any property held by them hereunder to or from my domicile or any other jurisdiction.

(p) To organize or participate in the organization of

corporations, and to transfer to them any part or all of the property held by them hereunder in exchange for securities thereof.

(g) To exercise or perform every power, authority or duty, including discretionary powers, by the concurrence and in the names of a majority of the Personal Representatives or Trustees qualified to participate, with the same effect as if all had joined therein; but by unanimous vote of the Personal Representatives or Trustees they may determine the number (one or more) who may give instructions to custodians, sign checks or have access to safe deposit boxes.

(r) To hold the principal or part of the principal of any of the trusts herein in one or more joint funds in which the separate trusts shall have undivided interests.

(s) To file such gift tax and income tax returns jointly with my spouse as they deem advisable.

(t) To compromise, settle, subordinate, arbitrate, extend, renew, modify, waive or extend the statute of limitations with respect to, or release, in whole or in part, any claim held by or against my estate or the trusts herein, or any mortgage or other security held by them or held against any property held by them hereunder.

(u) To participate in and consent to any corporate reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in any corporation or in its financial structure, and to become a depositor with any protective, reorganization or similar committee, and to make any necessary payments incident to the foregoing; to exercise or to sell any conversion, subscription or similar rights; and in general to exercise in respect to any securities the unrestricted rights of a personal owner, including voting in person and granting proxies, discretionary, general or otherwise.

(v) To the extent permitted by law, to register any property held by them hereunder in their names as Personal Representatives or Trustees or in the names of nominees, or to take and keep the same unregistered, in bearer form or otherwise in such condition as to pass by delivery.

(w) To lend such sums out of the income (other than of any trust for the benefit of my spouse that qualifies for the marital deduction under either Federal or state law) or principal of the trusts hereunder and upon such terms and conditions as they deem advisable; provided, however, that adequate security be obtained from, and reasonable interest be charged to, the borrower.

(x) To guarantee loans made to any beneficiary hereunder.

(y) To trade on margin (but only with the approval of my spouse in the case of any trust that qualifies for the marital deduction under either Federal or state law) and, for such purpose, to maintain and operate a margin account with any broker and to pledge any property held hereunder with such broker for loans and advances made to them. In connection with the foregoing, my Personal Representatives and Trustees are authorized and empowered to hold title in and to property in bearer, nominee or other form, without disclosure of any trust,

so that title may pass by delivery.

TENTH: (a) All the powers granted to my Personal Representatives and Trustees hereunder may be exercised after the termination of the trusts hereunder in connection with the proper administration and distribution thereof.

(b) Notwithstanding any provision in this Will to the contrary, any power (including discretionary powers) granted to my Personal Representatives and Trustees hereunder shall be absolutely void to the extent that the right to exercise or the exercise thereof would in any way cause my estate to lose all or part of the tax benefit afforded my estate by the marital deduction provisions under either Federal or state laws; without limiting the foregoing, with respect to the trusts for my spouse under Articles FOURTH and FIFTH of this Will, (1) subdivisions (a), (b), (c) and (p) of the preceding Article of this Will shall not apply and (2) my spouse may direct the Trustees, from time to time, to sell any property held as part of the principal, if it produces little or no income, and to invest the proceeds of sale in property that produces sufficient income to assure that such trust will qualify for the marital deduction.

(c) If any person beneficially interested hereunder shall die in the course of or as a direct result of the same disaster, accident or calamity as shall cause my death or the death of the life beneficiary upon whose death said person's interest is to take effect or under such circumstances that it cannot be readily determined whether I or said person, or the life beneficiary or said person, as the case may be, died first, then, for the purposes of this Will, said person shall be deemed to have died before me or before said life beneficiary, and my estate shall pass in such manner as would occur hereunder if said person had predeceased me or said life beneficiary, as the case may be.

(d) I direct that my Personal Representative(s) shall exercise the right, under Section 2207A(a)(1) of the Code and under any similar provision of any state law, to recover from the persons receiving any property referred to in said provisions (including the Trustees of any trust other than the pre-residuary trust under Article FOURTH of my spouse's Will) the amount of estate and inheritance taxes (and any interest and penalties relating thereto) paid by my estate attributable to such property. Subject to the direction in the preceding sentence, all estate and inheritance taxes of whatever kind imposed by reason of my death upon the property disposed of in this Will and upon any other property, including insurance but not including the pre-residuary trust under Article FOURTH of my spouse's Will (the taxes on which are to be paid out of the residuary trust thereunder), otherwise disposed of and subject to the imposition of said taxes, shall be charged, without right of reimbursement, (1) if my spouse survives me, against the property disposed of in Article THIRD of this Will, or, to the extent that said property is insufficient, against my residuary estate, or, (2) if my spouse predeceases me, against my residuary estate.

For the foregoing purposes, estate and inheritance taxes shall include any generation-skipping transfer tax on a direct skip taking effect at my death (other than a direct skip from a trust not created by me), but no other generation-skipping transfer tax.

(e) Any income or principal payable to a beneficiary hereunder may, in the discretion of my Personal Representatives and Trustees, be applied by them for the benefit of said beneficiary.

(f) All testamentary powers of appointment granted in this Will shall be exercisable by specific reference to this Will and, except as provided in subdivision (p) herein, shall not be exercisable in favor of the donee of the power or the donee's estate or creditors of the donee or of the donee's estate.

(g) Any person may renounce, in whole or in part, any provision in his or her favor hereunder and, in such event, the property covered by said provision, to the extent renounced, shall be disposed of as though said person had predeceased me, and if said property is to be held in trust, to the extent renounced, said property shall become free of the trust for said person (and of any power of appointment said person may have with respect thereto) and shall be disposed of as though said person had predeceased me. I do not intend by the foregoing to suggest that any particular person should so renounce.

(h) Any Personal Representative or Trustee who is an income beneficiary of a trust hereunder shall not be qualified to participate in the exercise of any power to make discretionary distributions to himself or herself or to make allocations, in his or her own favor, of receipts or expenses as between principal and income of such trust; nor shall any Personal Representative or Trustee participate in the exercise of a discretionary power to pay or apply income or principal to or for the benefit of a beneficiary whom said Personal Representative or Trustee (in his or her individual capacity) is then legally obligated to support; all said powers shall be exercisable by the other Personal Representative(s) or Trustee(s).

(i) With respect to any Personal Representative or Trustee who is interested, in his or her individual capacity, in any firm or corporation in which my estate or any trust hereunder may have an interest, I direct that he or she may deal freely with said firm or corporation in his or her individual capacity, notwithstanding that there may be a conflict with his or her fiduciary capacity hereunder, but I direct that if one or more of my Personal Representatives or Trustees has no such personal interest, then as to all matters pertaining to said firm or corporation involving such conflict of interest the decision of my estate and of said trust shall be made by said disinterested Personal Representative(s) or Trustee(s).

(j) A person from time to time qualified as Personal Representative or Trustee hereunder shall not be disqualified from purchasing assets of my estate, provided (1) said purchaser shall not participate as Personal Representative or Trustee in the decisions of the Personal Representatives or Trustees as to the price, conditions and terms of the sale, all of which decisions shall be made by the other Personal Representative(s) or Trustee(s); and (2) in fixing said price, conditions and terms said other Personal Representative(s) or Trustee(s) shall in all respects treat said purchaser in the same manner as though he or she were a third party, not qualified as Personal Representative or Trustee.

(k) My Personal Representatives and Trustees may purchase assets from or sell assets to other estates or trusts not created hereunder, notwithstanding that one or more of my

said Personal Representatives and Trustees are fiduciaries of or beneficially interested in said estates or trusts; provided, however, that if one or more of my Personal Representatives or Trustees has no such interest, then as to all such matters the decision of my estate or of the trusts hereunder shall be made by said disinterested Personal Representative(s) or Trustee(s).

(l) My Personal Representatives and Trustees may exercise any rights or options with respect to any policy of life insurance held by them, whether granted in said policy or allowed by the insurer, including, but not limited to, surrendering, converting (into paid up or extended term insurance) or borrowing upon said policy; applying dividends against premiums or to purchase paid up additions; and exercising options with respect to surrender or payment of death proceeds.

(m) In any judicial proceeding involving my estate or any trust hereunder and in any non-judicial settlement of the account of a Personal Representative or Trustee hereunder, the interest of a person under disability may be represented by a party to such proceeding or settlement who is not under disability and who has the same interest.

(n) I direct that any administration expenses or debts charged to principal and not claimed and allowed as estate tax deductions shall be charged, (1) if my spouse survives me, against the property disposed of in Article THIRD of this Will, or, to the extent that said property is insufficient, against my residuary estate, or, (2) if my spouse predeceases me, against my residuary estate.

(o) I direct that all charges incurred by my Personal Representatives in storing, packing, shipping, delivering and insuring any property passing under the provisions of this Will, whether such property is specifically bequeathed or otherwise, shall be paid by my Personal Representatives as expenses of administering my estate.

(p) Notwithstanding the provisions of Article SEVENTH of this Will, if (1) pursuant thereto, upon the death of the beneficiary of a trust thereunder, any trust property would be set aside for a person who is assigned to a generation younger than that of the beneficiary under Section 2651 of the Code and if (2) said property would be subject to a generation-skipping transfer tax on the death of the beneficiary, but would not be subject to said tax to the extent that said property is includable in the beneficiary's estate for Federal estate tax purposes, then and in that event said property shall instead pass in such manner, including to his or her estate, if he or she shall so appoint, as the beneficiary shall by Will appoint with the unanimous prior written consent of all of the then qualified Trustees of said trust, except those whose required concurrence would prevent said power of appointment from being a "general power of appointment" within the meaning of Section 2041(b)(1) of the Code. Only if and to the extent that said power of appointment is not effectively exercised shall said property be disposed of as provided in said Article SEVENTH.

(q) Wherever in this Will property is directed to be added to or combined with an existing trust for a descendant of mine hereunder, my Personal Representatives and Trustees shall not combine property with different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code, but shall add such property to the trust for such descendant

hereunder which has the same generation-skipping transfer tax inclusion ratio as defined in Section 2642(a) of the Code as such property, or, if necessary, such property shall be held in a separate trust for such descendant, with said trust to have identical provisions to the existing trust for such descendant hereunder.

(r) If, at any time, there shall be a trust under the Will of my spouse, or a trust created by me or by my spouse during our lifetimes, for the same beneficiaries and subject to the same provisions as a trust under this Will (or as a trust intended to be created under this Will), my Personal Representatives and Trustees are authorized and empowered, in their absolute discretion, to transfer the principal held (or intended to be held) in trust hereunder to the Trustees of such other trust (whether or not the Trustees of such other trust or their successors are the Trustees nominated or appointed hereunder) or to combine them (unless such trusts have different generation-skipping transfer tax inclusion ratios, as defined in section 2642(a) of the Code), to form a single trust for simplicity and convenience of administration; provided, however, that if any such trusts are prevented from being combined or otherwise consolidated pursuant to the provisions of this subdivision because any such trust has a different maximum period of time that property held in such trust could remain held in such trust (the "perpetuities period"), the Trustees shall be permitted to combine or otherwise consolidate such trusts pursuant to the provisions of this subdivision with the resulting trust assigned the lesser of the perpetuities periods of the original trusts.

(s) I authorize and empower my Personal Representatives to allocate the GST Exemption allowable to me pursuant to Section 2631 of the Code, to the extent that it shall not have been allocated (or deemed allocated) by me during my lifetime, in such manner as they, in their absolute discretion, shall determine.

(t) In no event shall any trust hereunder continue longer than the maximum term allowable under Florida law (or any other state that may govern the provisions of my Will) in effect at the time of my death, and any trust then still in effect hereunder shall thereupon terminate and the then principal thereof shall be distributed absolutely to the beneficiary thereof.

(u) Every Personal Representative and Trustee hereunder, original and substitute, shall be chargeable only with said fiduciary's own respective receipts or acts, and shall not be liable for any loss or damage occurring hereunder without said fiduciary's willful default or deliberate wrongdoing, unless such loss or damage be occasioned by a violation of an express provision of this Will, and shall not be liable to my estate or any person beneficially interested hereunder for any loss or depreciation which may arise from any investment retained or made in accordance with the provisions of this Will or which may be occasioned by the exercise of any discretion authorized herein, whether such investment be continued or made in accordance with or in disregard of recommendations obtained as above provided.

(v) Wherever the context permits, the words "Personal Representatives" or "Trustees" shall be deemed to include "their survivor or survivors, successor or successors."

(w) To the extent permitted by law, none of the beneficiaries hereunder shall have the power to convey, anticipate, assign, encumber or in any way dispose of any part of the income or principal of their respective trust funds, nor shall said principal or income be in any way or in any amount answerable or chargeable with their duties, obligations, judgments or claims however arising, nor shall said principal or income be taken or reached by any legal or equitable process in satisfaction thereof, it being my intent, so far as the law allows, to make said trusts what are commonly known as "spendthrift trusts."

(x) In determining whether or not to exercise any discretionary power to pay income or principal of my estate or any trust hereunder, my Personal Representatives or Trustees may, but shall not be required to, (1) with respect to the trusts created under Article THIRD, Article FOURTH, and subdivision (a) of Article FIFTH of this Will, take into account any other resources available to the beneficiary under consideration; (2) take into account any effect the exercise thereof may have on the respective tax liabilities of my estate or any trust hereunder and the beneficiary under consideration; and (3) consider and accept as correct any statement concerning these matters made by the beneficiary under consideration or on behalf of such beneficiary.


(y) I waive compliance by my Trustees with any law now or hereafter in effect requiring qualification, registration or accounting by my Trustees to any Court.

(z) Wherever reference is made in this Will to the "Code" it shall mean the Internal Revenue Code of 1986, as amended, and, if to any specific provision, it shall include any comparable provision of any subsequently enacted revenue law of the United States in effect from time to time

ELEVENTH: The term "descendants" as used in this Will shall specifically exclude my daughter PAMELA BETH SIMON and her

STATE OF FLORIDA)
 : SS.:
COUNTY OF PALM BEACH)

We, SHIRLEY BERNSTEIN, George O. Karibyanian and Robert Jacobowitz, the Testatrix and the witnesses respectively, whose names are signed to the attached or foregoing instrument, were sworn, and declared to the undersigned officer that the Testatrix, in the presence of the witnesses, signed the instrument as her Last Will and that each of the witnesses, in the presence of the Testatrix and in the presence of each other, signed the Will as a witness.



Testatrix


George O. Karibyanian

Witness

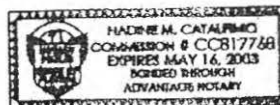
Robert Jacobowitz

Witness

Subscribed and sworn to before me by SHIRLEY BERNSTEIN, the Testatrix, and by George O. Karibyanian and Robert Jacobowitz the witnesses, on August 15, 2000, all of whom personally appeared before me. SHIRLEY BERNSTEIN is personally known to me or has produced _____ as identification.
George O. Karibyanian is personally known to me or has produced _____ as identification.
Robert Jacobowitz is personally known to me or has produced _____ as identification.



Notary Public (Affix Seal)
My commission expires:
My commission number is:



descendants. Except as provided in Article SECOND of this Will, I have not made any provisions herein for PAMELA BETH SIMON or any of her descendants not out of lack of love or affection but because they have been adequately provided for.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 15 day of August, Two Thousand.

 (L.S.)

The foregoing instrument, consisting of this and seventeen preceding typewritten pages, was signed, sealed, published and declared by SHIRLEY BERNSTEIN, the Testatrix, to be her Last Will and Testament, in our presence, and we, at her request and in her presence and in the presence of each other, have hereunto subscribed our names as witnesses, this 15th day of August, Two Thousand at 2255 Glades Road, Boca Raton, Florida.

George A. Karlygin residing at 1133 SW 20th Street

Boca Raton, FL

Will [Signature] residing at 2415 NW 32nd St.

Boca Raton, FL

FIRST CODICIL TO
LAST WILL AND TESTAMENT OF
SHIRLEY BERNSTEIN

ORIGINAL DOCUMENT AT
LAW OFFICES OF
STEVEN I. GREENWALD, P.A.
Boca Raton Professional Plaza
6971 N. Federal Highway
Suite 105
Boca Raton, Florida 33487

I, SHIRLEY BERNSTEIN, a resident of the County of Palm Beach, State of Florida, declare that this is the First Codicil to my Last Will and Testament which is dated August 15, 2000.

FIRST: I revoke, in its entirety, Article EIGHTH of my Last Will and Testament. In place of this revoked Article EIGHTH, I substitute the following:

"EIGHTH: I nominate and appoint my husband, SIMON L. BERNSTEIN, as my Personal Representative. If my husband fails to qualify or ceases to be qualified, I nominate and appoint in his place the following individuals who shall be entitled to qualify, singly and in the order named: STEVEN I. GREENWALD, ESQUIRE; LISA SUE FRIEDSTEIN; PAMELA BETH SIMON.

With respect to any trust created under Article THIRD, Article FOURTH or subdivision (a) of Article FIFTH of this Will, I nominate and appoint my husband, my daughter LISA SUE FRIEDSTEIN, and my daughter PAMELA BETH SIMON as Trustees hereunder.

With respect to any trust created under Article SIXTH or Article SEVENTH of this Will, I nominate and appoint my husband, SIMON L. BERNSTEIN, and my daughter PAMELA BETH SIMON as Trustees.

If either my husband, or PAMELA BETH SIMON fails to qualify or ceases to be qualified, I nominate and appoint in their place the following individuals who shall be entitled to qualify, singly and in the order named: LISA SUE FRIEDSTEIN; JILL IANTONI.



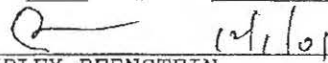
My Personal Representatives and Trustees at any time qualified hereunder are authorized and empowered to designate a person or persons or a bank or trust company to act with them and, subject to the foregoing, a sole surviving Personal Representative or Trustee at any time qualified hereunder is authorized and empowered to designate a person or persons or a bank or trust company to act with or to succeed him or her; provided, however, that JEANNIE BERNSTEIN shall never be designated as or serve as a Personal Representative or as a Trustee of any trust created hereunder.

At all times at least one Trustee of any trust created hereunder shall not have an interest in the income or principal of such trust.

I direct that no bond or other security shall be required of any Personal Representative or Trustee named herein or designated as herein provided for any reason whatsoever."

SECOND: I hereby confirm and republish my Will dated August 15, 2000, in all respects other than those herein mentioned.

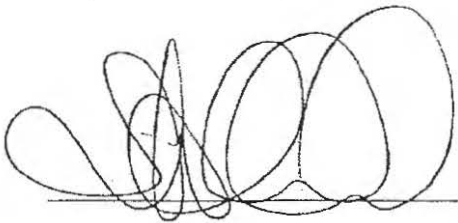
IN WITNESS WHEREOF, I have signed this First Codicil consisting of 4 pages, this and the following pages included, and for the purpose of identification have placed my initials at the bottom of all pages, this 1st day of December, 2001.



SHIRLEY BERNSTEIN

We certify that the above instrument was on the date thereof signed and declared by SHIRLEY BERNSTEIN, as a First Codicil to her Will dated August 15, 2000, in our presence and that we, in her presence and in the presence of each other, have signed our names as witnesses thereto, believing SHIRLEY BERNSTEIN to be of sound mind at the time of signing.

Keith Crick residing at 1344 N.W. 82nd Ave.
Coral Springs, Fl. 33071

 residing at 7239 Ballantrae Court
Boca Raton, Fl. 33496

5

SELF-PROOF AFFIDAVIT

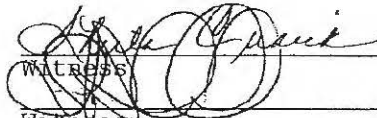
STATE OF FLORIDA

COUNTY OF PALM BEACH

We, SHIRLEY BERNSTEIN, the Testatrix and the witnesses respectively, whose names are signed to the attached or foregoing instrument, having been sworn, declared to the undersigned officer that the Testatrix signed this instrument as her First Codicil to her Last Will and Testament, and that she signed voluntarily and that each of the witnesses in the presence of the Testatrix, at her request, and in the presence of each other signed the Codicil as a witness and to the best of the knowledge of each witness the Testatrix was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.



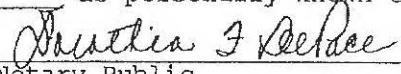
Testatrix



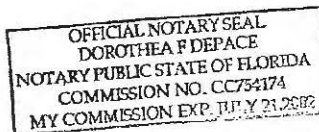
Witness

Witness

Subscribed and sworn to before me by SHIRLEY BERNSTEIN, the Testatrix, Sheila Cusick and Steven I. Greenwald, the witnesses, on the 1st day of December, 2001, all of whom personally appeared before me. SHIRLEY BERNSTEIN is personally known to me, Sheila Cusick is personally known to me, and Steven I. Greenwald is personally known to me.



Notary Public
My Commission Expires:



TS000048

FIRST CODICIL TO
LAST WILL AND TESTAMENT OF
SIMON L. BERNSTEIN

ORIGINAL DOCUMENT AT
LAW OFFICES OF
STEVEN I. GREENWALD, P.A.
Boca Raton Professional Plaza
6971 N. Federal Highway
Suite 105
Boca Raton, Florida 33487

I, SIMON L. BERNSTEIN, a resident of the County of Palm Beach, State of Florida, declare that this is the First Codicil to my Last Will and Testament which is dated August 15, 2000.

FIRST: I revoke, in its entirety, Article EIGHTH of my Last Will and Testament. In place of this revoked Article EIGHTH, I substitute the following:

"EIGHTH: I nominate and appoint my wife, SHIRLEY BERNSTEIN, as my Personal Representative. If my wife fails to qualify or ceases to be qualified, I nominate and appoint in her place the following individuals who shall be entitled to qualify, singly and in the order named: STEVEN I. GREENWALD, ESQUIRE; LISA SUE FRIEDSTEIN; PAMELA BETH SIMON.

With respect to any trust created under Article THIRD, Article FOURTH or subdivision (a) of Article FIFTH of this Will, I nominate and appoint my wife, my daughter LISA SUE FRIEDSTEIN, and my daughter PAMELA BETH SIMON as Trustees hereunder.

With respect to any trust created under Article SIXTH or Article SEVENTH of this Will, I nominate and appoint my wife, SHIRLEY BERNSTEIN, and my daughter PAMELA BETH SIMON as Trustees.

If either my wife, or PAMELA BETH SIMON fails to qualify or ceases to be qualified, I nominate and appoint in her place the following individuals who shall be entitled to qualify, singly and in the order named: LISA SUE FRIEDSTEIN; JILL IANTONI.



My Personal Representatives and Trustees at any time qualified hereunder are authorized and empowered to designate a person or persons or a bank or trust company to act with them and, subject to the foregoing, a sole surviving Personal Representative or Trustee at any time qualified hereunder is authorized and empowered to designate a person or persons or a bank or trust company to act with or to succeed him or her; provided, however, that JEANNIE BERNSTEIN shall never be designated as or serve as a Personal Representative or as a Trustee of any trust created hereunder.

At all times at least one Trustee of any trust created hereunder shall not have an interest in the income or principal of such trust.

I direct that no bond or other security shall be required of any Personal Representative or Trustee named herein or designated as herein provided for any reason whatsoever."

SECOND: I hereby confirm and republish my Will dated August 15, 2000, in all respects other than those herein mentioned.

IN WITNESS WHEREOF, I have signed this First Codicil consisting of 4 pages, this and the following pages included, and for the purpose of identification have placed my initials at the bottom of all pages, this 30 day of November, 2001.


SIMON L. BERNSTEIN

We certify that the above instrument was on the date thereof signed and declared by SIMON L. BERNSTEIN, as a First Codicil to his Will dated August 15, 2000, in our presence and that we, in his presence and in the presence of each other, have signed our names as witnesses thereto, believing SIMON L. BERNSTEIN to be of sound mind at the time of signing.

residing at 1344 N.W. 82nd Ave.
Coral Springs, Fl. 33071

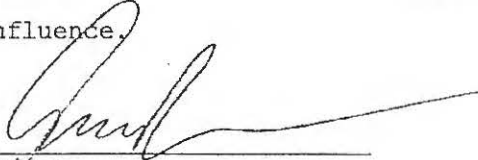
residing at 7239 Ballantrae Court
Boca Raton, Fl. 33496

SELF-PROOF AFFIDAVIT

STATE OF FLORIDA

COUNTY OF PALM BEACH

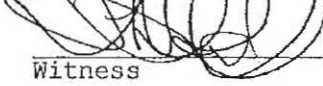
We, SIMON L. BERNSTEIN, the Testator and the witnesses respectively, whose names are signed to the attached or foregoing instrument, having been sworn, declared to the undersigned officer that the Testator signed this instrument as his First Codicil to his Last Will and Testament, and that he signed voluntarily and that each of the witnesses in the presence of the Testator, at his request, and in the presence of each other signed the Codicil as a witness and to the best of the knowledge of each witness the Testator was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.



Testator

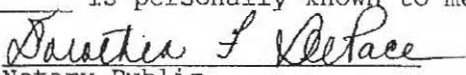


Witness



Witness

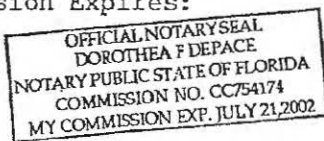
Subscribed and sworn to before me by SIMON L. BERNSTEIN, the Testator, Sheila Cusick and Steven I. Greenwald, the witnesses, on the 30 day of November, 2001, all of whom personally appeared before me. SIMON L. BERNSTEIN is personally known to me, Sheila Cusick is personally known to me, and Steven I. Greenwald is personally known to me.



Notary Public

My Commission Expires:

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TS000052

Florida Probate Fraud, Forgery and Corruption; Simon Bernstein Estate Case

Florida Estate and Probate Case, Forgery, and Alleged Murder, blog written upon information, knowledge and belief of Crystal L. Cox, Investigative Blogger.

Florida Probate Court Florida Estate Case Alan Rose 7020 Lions Head Lane Boca Raton
 Docket Northern Illinois Case Simon Bernstein Trust Heritage Jackson National District Court
 Shirley Bernstein Estate Docket Simon Bernstein Estate Docket 7020 Lions Head Lane Boca Raton Shirley Bernstein
 Simon Bernstein Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case Judge David E. French
 Robert Spallina Mark Manceri Donald Tescher Tescher and Spallina Law Firm Mark Manceri
 Petition to Freeze Estate Assets Estate Fraud Docket Insurance Proceed Scheme Donald Tescher
 Robert Spallina Ted and Deborah Bernstein Life Insurance Concepts Boca Ted Bernstein Fraud

Tuesday, December 8, 2015

Florida Judge, Judge L. Phillips RULES to not disqualify himself? WOW, is that Lawful? Ethical? What is Judge Phillips up to, I mean its been many years right and Ted Bernstein and his Cronies have run off with the money, forged documents and yet all are NOT in Jail and NOTHING happens in the Case.

Yet Judge JOHN L PHILLIPS wants to continue being the Judge in all these cases? Why? He is not doing anything to move them forward and sure seems to be aiding and abetting criminals. Umm and the OBVIOUS is, it is NOT legal for Judge Philips to rule on his disqualification. A higher Judge has to do that, been there many times. So what is the not so honorable Judge John Philips up to? Hmm..

Here is Eliot Bernstein's motion to Disqualify Florida Circuit Judge, Click Below to Read
<https://drive.google.com/file/d/0Bzn2NurXrSkiTVMyMmlwSFpzS1U/view?usp=sharing>

Here is Florida Judge, Judge John Philips ruling on his own disqualification. Gee YEP he ruled to keep himself as judge of a case that has been deliberately, maliciously, unethically, unconstitutionally and illegally stalled for years. All the while the Bad Guys sell off assets and move on with their life, and the Bad Guy attorneys continue to violate the constitutional rights of other clients in Florida. All while Bad Judges, such as Judge Colin and Judge Philips look the other way to aid and abet them.

Click below for this short QUICK, corrupt, SMACKDOWN Denial
<https://drive.google.com/file/d/0Bzn2NurXrSkiT191S2cybUJuVmM/view?usp=sharing>



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

PROBATE DIVISION
CASE NO. 5021012CP004391XXXXSB

IN RE: ESTATE OF SIMON L. BERNSTEIN

**ORDER ON CURATOR'S AMENDED PETITION FOR INSTRUCTIONS
REGARDING KIA AUTOMOBILE**

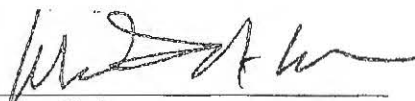
THIS MATTER came before the Court on the Curator's Amended Petition for Instructions Regarding Kia Automobile dated March 14, 2014 ("Motion"), the Court having reviewed the Petition, and the Court being otherwise fully advised in the premises, it is hereby:

ORDERED and ADJUDGED as follows:

- Title to*
The 2013 Kia Soul Automobile, bearing the VIN# KNDJT2A50D7497193 (the "Kia") shall be transferred by the Curator to Candice Bernstein.
Such transfer shall be without prejudice to any interested person seeking to obtain an order deducting the value of the Kia from any distribution eventually payable to Joshua Bernstein from the Simon Bernstein Trust, and Joshua Bernstein shall be entitled to contest such deduction in that event.*

DONE AND ORDERED in Chambers, Delray Beach, Palm Beach County, Florida, on

March 26, 2014.


Circuit Court Judge

Copies furnished to the parties on the attached service list

** The Curator is hereby authorized and directed to take all actions necessary to effectuate this Order.*



ESTATE OF SIMON L. BERNSTEIN

File No. 502012CP004391XXXXSB

Service List

Alan Rose, Esq.
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

IN RE:
ESTATE OF SIMON L. BERNSTEIN

PROBATE DIVISION
CASE NO. 502012CP004391XXXXSB

CURATOR'S AMENDED PETITION FOR INSTRUCTIONS
REGARDING KIA AUTOMOBILE

COMES NOW, Curator, Benjamin P. Brown ("Curator"), by and through undersigned counsel, files this Amended Motion for Instructions Regarding Kia Automobile, and states as follows:

1. On February 25, 2014, this Court entered an Order on "Interested Person" William Stansbury's Motion For the Appointment of a Curator or Successor Personal Representative ("Order Appointing Curator"), appointing Benjamin P. Brown as Curator. On March 11, 2014, this court entered Letters of Curatorship in Favor of Benjamin Brown ("Letters of Curatorship").

2. The Letters of Curatorship authorize the Curator to collect and preserve assets of the Estate and to administer the Estate.

3. There is a dispute among the beneficiaries of the Estate regarding ownership of an automobile, more particularly described as a 2013 Kia Soul, bearing the VIN# KNDJT2A50D7497193 (the "Kia").

4. The Kia is the subject of Eliot Ivan Bernstein's (the decedent's son, hereinafter "Eliot"), Petition to Determine and Release Title of Exempt Property ("Petition to Determine Exempt Property"), which Eliot filed on October 10, 2013. Therein, Eliot alleges the Decedent, before his death, gifted the Kia to Eliot's son, Joshua Bernstein. A copy of the Petition to Determine Exempt Property is attached hereto as Exhibit A.

{00028387.DOC}



5. On October 24, 2013, the former Co-Personal Representatives filed a Motion to Strike the Petition to Determine Exempt Property, therein denying that the Decedent ever gifted the Kia to Eliot's son and alleging the Kia to be property of the Estate.

6. However, on December 21, 2013 the former Co-Personal Representatives filed the Estate's Amended Inventory and did not list the Kia as an asset of the Estate. A copy of the Amended Inventory is attached hereto as Exhibit B.

7. The Curator does not have possession of the Kia. Upon information and belief, the Kia is currently located at Eliot's residence. According to the website www.kbb.com, a used base model 2013 Kia Soul in very good condition in a private party sale has a value of \$12,245.00. The print out from the website is attached hereto as Exhibit C.

8. Upon information and belief, the Kia is still titled in the name of the Decedent, is uninsured and is thus a potential liability to the Estate.

9. Accordingly, the Curator seeks an Order authorizing the Curator to either a) complete the gift of the Kia to Joshua Bernstein by transferring title to him; or b) to take possession of or otherwise secure the Kia.

WHEREFORE, the Curator respectfully requests that this Court enter an Order providing instructions authorizing the Curator to proceed in a manner consistent with the matters described above, and awarding such other relief as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail upon Alan Rose, Esq., Page Mrachek, 505 S. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; John Pankauski, Esq, Pankauski Law Firm, 120 S. Olive Ave., Suite 701, West Palm Beach,

FL 33401, courtfilings@pankauskilawfirm.com, Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, service@feamanlaw.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; William H. Glasko, Esq., Golden Cowan, Palm Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay FL 33157, bill@palmettobaylaw.com, on this 14 day of March, 2014.

MATWICZYK & BROWN LLP
Attorney for Curator
625 N. Flagler Drive, Suite 401
West Palm Beach, FL 33401
Telephone: (561) 651-4004
Fax: (561) 651-4003

By: 

Benjamin P. Brown
Florida Bar No. 841552

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SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF
SIMON L. BERNSTEIN
DECEASED

PROBATE DIVISION
FILE NO. 02012CP004391XXXXB
DIVISION: FRENCH

PETITIONER
ELIOT BERNSTEIN
PRO SE

PETITION TO DETERMINE AND RELEASE TITLE OF EXEMPT PROPERTY

Petitioner, Eliot Ivan Bernstein alleges:

1. Petitioner, whose address is 2753 NW 34th Street, Boca Raton, FL 33434, is the son of the decedent who, on the date of death, was domiciled in Florida.
2. That Petitioner is the father of the minor who is entitled by law to the exempt property is:

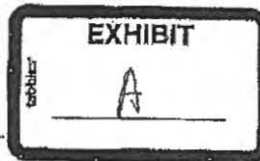
Joshua Bernstein, whose address is 2753 NW 34th Street, Boca Raton, FL 33434, and the grandson of Simon L. Bernstein, whose birthday is August 27, 1997 and is a minor,

3. This petition is filed within the time permitted by Section 732.402(6) of the Florida Probate Court.
4. Petitioner alleges the exempt property and the basis on which it is claimed to be exempt are as follows:

That on August 25, 2012, Simon Bernstein purchased, titled, insured and registered an automobile, in his name, from Delray Kia, 2255 S. Federal Hwy, in Delray Beach FL, for the benefit of his grandson, Joshua Bernstein and paid for the car, title and tags in full. The car is described as:

Silver, 2013 Kia Soul, VIN # KNDJT2A50D7497193, license plate # BGF036

That on August 26, 2012, after Sunday Brunch together, Simon Bernstein, dressed the car in balloons, and gave the car to his grandson Joshua for his birthday as a surprise, of which, there are several witnesses, pictures and a birthday video. The car was then driven home to Joshua and Petitioner's place of residence and driven for the benefit of Joshua thereafter. This was the last time Joshua saw his grandfather alive and will always be a special memory in his heart forever.



TS001684

That Simon's intentions were to transfer the title of ownership to Joshua when he received the car title via US Postal mail. That on September 13, 2012, Simon Bernstein passed away. Given the short time (2 weeks) in between the two events and the original title to the car not being received in the mail yet, on the date of Simon's death the car was still in his name and not transferred to Joshua.

Petitioner notified Robert Spallina, the alleged Personal Representative of the Estate of Simon Bernstein, the circumstances and was guaranteed the issue would be resolved.

That at midnight on December 2, 2012 the issue was still not resolved and the registration for the vehicle expired. Petitioner again contacted Robert Spallina and was informed that for no specified reason the postal mail belonging to Simon Bernstein was being forwarded to Joshua's uncle, Ted Bernstein at 880 Berkeley Street in Boca Raton, Florida and to contact him regarding the title and the expired registration notices that were sent in the mail. Immediately after Simon's death, Ted Bernstein took control and possession of all Simon Bernstein's mail, took control and possession of all Simon Bernstein's files, including personal and business related files, including those related to the purchase of the car and is tampering, suppressing and denying them the same. Ted Bernstein refuses to forward the above information to Petitioner after several requests and is in control, refusing to forward, tampering and suppressing the above information to the alleged Personal Representatives, Robert Spallina and Donald Tescher and their law firm Tescher & Spallina, P.A.

That as of this date, October 10, 2013, and beginning on December 2, 2012, the above mentioned gifted automobile has been sitting on the street at 2753 NW 34th Street, Boca Raton, Florida, unregistered, uninsured (at risk to the estate of the Simon Bernstein) and un-drivable by the rightful owner Joshua Bernstein against the wishes of his grandfather, the decedent, Simon Bernstein. That a sixteen year old boy, Joshua Bernstein, has to walk by his automobile every day and be reminded of his grandfather's special gift and those responsible for preventing him from having it, namely his uncle, Ted Bernstein, who ironically shares the same birthday as Joshua, and Robert Spallina and Donald Tescher.

That Robert Spallina, as Personal Representative and counsel for the estate, has refused to resolve this issue and continues to put the estate at risk and breach their fiduciary duties. Due to the Personal Representatives lack of duty and care and abuse of powers that allow Ted Bernstein control and tampering of Simon Bernstein's mail and documents and therefore aiding in suppression, tampering and mis-handling of original documents and titles is causing severe damages and injury to the beneficiaries of the decedent. This seems to be a conspired effort by Ted Bernstein and the Personal Representatives to interfere with the administration of the estate, create disputes among the beneficiaries, generate more legal fees, and cause harm to all involved as other documents are missing as well, including a Life Insurance Trust that is a beneficiary of a life insurance policy currently in litigation in the State of Illinois where Ted Bernstein is trying to convert the proceeds to himself against the Insurers request to get a court order from this court. Other documents have been admittedly forged and fraudulent in the administration of the estate of Shirley Bernstein and Fraud on the Court before Hon Judge Martin H. Collin and continues by these same named fiduciary conspirators. From all these actions, Petitioner has lost all trust and faith and comes to this court to remedy these wrong-doings as no other option is available.



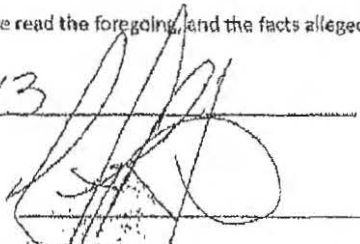
Petitioner prays that this Court can rectify the above matter and resolve this issue and demand the original car title be transferred to Joshua Bernstein so that the automobile can be properly titled, registered, insured and drivable by the rightful owner, Joshua Bernstein and stop the anguish and harm these actions are causing, again to a sixteen year old boy.

Petitioner requests that all current fiduciaries including but not limited to Personal Representatives, Estate Counsel and Trustees be removed for this willful, wanton, reckless, and gross negligent behavior and disregard of law by the alleged fiduciaries of the estate and estate counsel.

Petitioner requests that a court order be entered determining the persons entitled to the above-described property as exempt property under Section 732.402 of the Florida Probate Code and authorizing and directing the Personal Representatives to deliver and transfer the title of ownership.

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

Signed on October 10, 2013



Petitioner
Eliot Bernstein
PRO SE


I CERTIFY that a copy hereof has been furnished to:

Ted Bernstein

Donald Tescher Co-Personal Representative of the Estate of Simon Bernstein

Robert Spallina, Co-Personal Representative of the Estate of Simon Bernstein

Robert Spallina c/o Tescher & Spallina, P.A. counsel for the Estate of Simon Bernstein

By  on October 10, 2013

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF PROBATE DIVISION
SIMON BERNSTEIN File No. 502012CP004391IZXXXXSB
Deceased.

AMENDED INVENTORY

The undersigned co-personal representatives of the estate of SIMON BERNSTEIN, deceased, who died on September 13, 2012, and whose social security number is XXX-XX-5211, submits this Amended Inventory of all the property of the estate, that has come into the hands, possession, control, or knowledge of these personal representatives:

REAL ESTATE IN FLORIDA – Exempt (Protected) Homestead:

Description

NONE

REAL ESTATE IN FLORIDA – Non-Exempt Homestead:

Description

Estimated Fair Market Value

NONE

(Whether homestead property is exempt from the claims of creditors, whether it is properly devised and whether it is a probate asset may have to be determined by appropriate proceedings.)

OTHER REAL ESTATE IN FLORIDA:

Description

Estimated Fair Market Value

NONE

\$

Total Real Estate in Florida – Except Exempt (Protected) Homestead

\$



Estate of Simon Bernstein
File No. 502012CP004391KXXXX SB
AMENDED INVENTORY

PERSONAL PROPERTY WHEREVER LOCATED:

<u>Description</u>	<u>Estimated Fair Market Value</u>
Legacy Bank of Florida - Acct. Ending 2587	\$384.25
Wells Fargo - Acct. Ending 1945	1,599.49
Sabadell Bank - Acct. Ending 9414	15,153.18
JP Morgan (4788015220)	77,491.27
JP Morgan (W32585007)	519,266.37
LIC Holdings, Inc. (33% ownership)	UNDETERMINED
Furniture, furnishings, household goods and personal effects	51,135.00
Jewelry	63,205.00
US Life Proceeds	50,800.08
Monarch Life Proceeds	4,000.00
Cincinnati Life Proceeds	7,685.00
Promissory Note from Bernstein Family Realty, LLC (not including accrued interest)	365,000.00
TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATE \$ <u>1,155,719.40</u>	

All real estate located outside the State of Florida owned by the decedent of which the personal representative is aware, if any, is described on a schedule attached hereto. [If none, so indicate]

NONE

NOTICE: Each residuary beneficiary in a testate estate or heir in an intestate estate has the right to request a written explanation of how the inventory value of any asset was determined, including whether the personal representative obtained an independent appraisal for that asset and from whom the appraisal was obtained. Any other beneficiary may request this information regarding all assets distributed to or proposed to be distributed to that beneficiary.




Estate of Simon Bernstein
File No. 502012CP004391JZXXXX SB
AMENDED INVENTORY

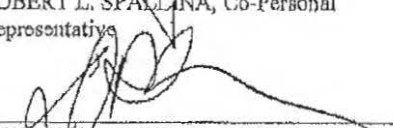
Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief,

Signed on this 22nd day of Dec, 2013.



ROBERT L. SPALLINA, Esq.
Attorney for Personal Representative
Florida Bar No. 497381
Teschler & Spallina, P.A.
4855 Technology Way, Suite 720
Boca Raton, FL 33431
Telephone: (561) 997-7008
Primary: rspallina@tescherspallina.com
Secondary: kmoran@tescherspallina.com



ROBERT L. SPALLINA, Co-Personal
Representative


DONALD R. TESCHER, Co-Personal
Representative

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763 So.2d 482

**Bruce HENDERSHAW, David
Hendershaw, and Dereck Hendershaw,
Appellants,**

v.

**The ESTATE OF David C.
HENDERSHAW, Deceased, Appellee.**

No. 4D99-1458.

**District Court of Appeal of Florida,
Fourth District.**

July 5, 2000.

Rehearing Denied August 9, 2000.

Header ends here.

[763 So.2d 483]

Richard A. Kupfer of Richard A. Kupfer, P.A.,
West Palm Beach, for appellants.

Marjorie Gadarian Graham of Marjorie
Gadarian Graham, P.A., Palm Beach Gardens,
and Michael Jeffries of Neill, Griffin, Jeffries,
Fowler, Tierney & Neill, Fort Pierce, for
Appellee-Doris M. Hendershaw.

SHAHOOD, J.

This is a will contest in which the decedent's three sons ("appellants") sought to invalidate their father's will which disinherits them and leaves his entire \$1.6 million estate to his third wife ("appellee"). Following a hearing at which the appellants attempted to establish that the decedent lacked testamentary capacity due to a declining mental state, the trial court entered an order admitting the will to probate, and making the following findings:

The opponents of the will have made a strong showing questioning the capacity of the

decedent to make a will on the day the will in this case was signed. If the evidence of incapacity were strong enough to shift the burden of proof to the proponents of the will, the Court would find that the proponents had not met that burden because they have been unable to establish by greater weight of the evidence that on the day the will was executed, the decedent was lucid enough to demonstrate a general understanding of the extent of his estate. However, the opponents are unable to cite to the Court any caselaw that supports the position that the burden of proof should shift or that the presumption of capacity vanishes. Because it appears the presumption of capacity is not a bursting bubble presumption, the Court feels compelled to uphold the will.

We affirm the result reached in this case, not because the presumption of capacity is not a bursting bubble presumption, but because the appellants did not meet their burden of proving lack of testamentary capacity. *See generally Dade County School Bd. v. Radio Station WQBA*, 731 So.2d 638 (Fla.1999)(even though a trial court's ruling is based on improper reasoning, the ruling will be upheld if there is any theory or principle of law in the record which would support the ruling).

The burden of invalidating a will because of lack of testamentary capacity is a heavy one and must be sustained by a preponderance of the evidence. *Estate of Bailey*, 122 So.2d 243, 245 (Fla. 2d DCA 1960); *see also In re Donnelly's Estate*, 137 Fla. 459, 188 So. 108 (1938)(It is well established that a last will and testament shall be held valid whenever possible). Testamentary capacity is

determined only by the testator's mental capacity at the time he executed his will. *Estate of Bailey*, 122 So.2d at 245. "[S]ound mind' means the ability of the testator `to mentally understand in a general way the nature and extent of the property to be disposed of, and the testator's relation to those who would naturally claim a substantial benefit from the will, as well as a general understanding of the practical effect of the will as executed.'" *Id.* (citations omitted). The probate court's findings in a will contest shall not be overturned where there is substantial competent evidence to support those findings, unless the probate judge has misapprehended the evidence as a whole. *Id.* at 247; *see also Estate of Parson*, 416 So.2d 513 (Fla. 4th DCA 1982)(The findings of the trial court are to be presumed correct and are to be given the same weight as a jury verdict).

In their briefs on appeal, the parties argue whether the presumption of testamentary capacity is a vanishing or "bursting-bubble" presumption. We do not

[763 So.2d 484]

reach that issue because, based on the court's findings that appellants did not initially meet their heavy burden of proving that the decedent lacked testamentary capacity on the day the will was executed, any discussion of whether the presumption is rebuttable is irrelevant.

Although there was some testimony that on some day in 1986 the decedent would not have been competent to make a will, there was no testimony that in December 1987, when the will was actually executed, the decedent lacked such a capacity. In fact, while there was no evidence to show that the decedent was not lucid, there was some evidence to show that he was lucid on that day. Based on the evidence, the trial court correctly found that while appellants made a "strong showing questioning the capacity of the decedent," they did not establish lack of

testamentary capacity by a preponderance of the evidence. We, therefore affirm the trial court's order admitting the will to probate.

AFFIRMED.

DELL and FARMER, JJ., concur.

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66 So.2d 465
40 A.L.R.2d 1399
In re WILMOTT'S ESTATE.
Supreme Court of Florida, Division A.
June 5, 1953.
Rehearing Denied July 3, 1953.

Header ends here. Alex Akerman, Jr., Orlando, and J. B. Hodges, Lake City, for appellant.

Fishback, Williams & Smith, Orlando, for appellee.

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SEBRING, Justice.

Frederick W. Wilmott died on November 30, 1949. Among his papers and effects were a will dated October 28, 1948, a codicil dated October 29, 1948, a second codicil dated April 27, 1949, a will dated June 24, 1949, and an instrument dated June 29, 1949, which purported to be a republication of the will executed on October 28, 1948.

After his death a petition was filed in the County Judge's Court of Orange County by certain of the devisees under the wills praying for the probate of the republication instrument dated June 29, 1949. William Wilmott, an adopted son of the decedent, filed objections to the probate of this instrument, and all other testamentary instruments found at the death of the decedent, on the ground that at the time of their execution the decedent lacked testamentary capacity.

The county judge, on November 6, 1951, entered an order denying the petition for the probate of the republication instrument dated June 29, 1949, and granting leave to the petitioners to file a petition for the probate of the will dated October 28, 1948, and the codicil dated October 29, 1948. The basis of

this ruling was the finding of the county judge that the decedent had not possessed testamentary capacity from April 27, 1949, to June 29, 1949, inclusive.

The practical effect of this ruling was to render invalid the instrument dated June 29, 1949, which on its face reinstated the will of October 28, 1948, and also to render invalid the will dated June 24, 1949, and the second codicil to the will executed in October 1948.

After the entry of this order the petitioners filed their petition praying that the 1948 will and codicil be admitted to probate and letters testamentary be issued thereon. William Wilmott, the adopted son, filed an answer contesting this proceeding on the ground that at the time the proffered instruments were executed the decedent was mentally incapable of making a will, and furthermore that the instruments were executed as the result of the undue influence of the petitioners.

On December 20, 1951, the county judge entered an order allowing the probate of the 1948 will and the codicil. The basis of this order was the finding by the county judge that the testator possessed testamentary capacity at the time he executed the instruments, and that no undue influence had been exercised by anyone in bringing about their execution.

At a later date, the county judge entered an order denying the application of the adopted son for the allowance of costs and an attorney's fee to his attorney in connection with the contest of the purported republication dated June 29, 1949.

An appeal was taken to the Circuit Court of Orange County from all of these orders.

At final hearing, the circuit court ruled that the order of the county judge denying the probate of the republication instrument dated June 29, 1949, and admitting the 1948 will and codicil to probate, should be affirmed;

that the order with reference to the application for the allowance of attorney's fees and costs should be affirmed insofar as it disallowed an attorney's fee to the protestant, and that the order should be reversed as to the disallowance of costs.

The whole matter is now before this Court on an appeal taken from the order entered by the Circuit Court of Orange County.

The first question with which we shall deal arises from the adjudication in the decree that the decedent was legally capable of making the will and codicil executed in October 1948. The appellant maintains that inasmuch as the finding of the county judge was that the decedent was incapable of making a will during the period extending from April 27, 1949, to June 29, 1949, the finding should have been that the decedent was likewise incompetent in October of 1948, there being no showing that his condition had changed materially from October 1948 until April of 1949, and there being a substantial showing that the probable incompetency was as early as October of 1946.

While it is true that the decedent was not in good health during 1948 and

Page 467

that his condition worsened to such an extent that on April 27, 1949, he was, as found by the county judge, 'so sick in body and mind that he did not possess the testamentary capacity required by law to execute' a will, it does not necessarily follow from this that he was not competent to execute a will on October 28, 1948, the day he executed the instrument that was later admitted to probate. Whether he was or was not lacking in testamentary capacity upon that day was a pure question of fact to be determined by the county judge.

The rule governing appeals in respect to such determinations is that the circuit court,

on consideration of the evidence, should not reverse an order of the county judge sitting in probate unless it is made to appear that the county judge wholly misapprehended the legal effect of the evidence as an entirety, or made a finding when there was no legal substantial evidence to support it. In re Thompson's Estate, 145 Fla. 42, 199 So. 352.

In the case at bar there was substantial evidence to support the finding of the county judge. Upon a review of the order entered by the county judge the circuit court found that while during his long illness 'large quantities of narcotics were administered to [the decedent] and upon many occasions he was under the influence of same so that he was incompetent to make a will, [nevertheless] when he was out from the effect of the drug he was rational and capable of transacting business. There is no showing that at the time of executing the October 28th will or the October 29th codicil he was under the influence of narcotic or otherwise, but on the contrary [there are] facts showing that his mind was clear; that he understood about his property and the disposition he was making of same. The order must be affirmed.'

We agree with the conclusion reached by the circuit court in its order. The making of a will does not depend upon a sound body but upon a sound mind. By 'sound mind' is meant the ability of the testator 'to mentally understand in a general way the nature and extent of the property to be disposed of, and the testator's relation to those who would naturally claim a substantial benefit from the will, as well as a general understanding of the practical effect of the will as executed.' Newman v. Smith, 77 Fla. 633, 82 So. 236, 241; Hamilton v. Morgan, 93 Fla. 311, 112 So. 80; Marston v. Churchill, 137 Fla. 154, 187 So. 762; Miller v. Flowers, 158 Fla. 51, 27 So.2d 667; Neal v. Harrington, 159 Fla. 381, 31 So.2d 391. A sick person may make a valid will in his last illness or even when in a dying condition. 'And, unless the surrounding circumstances are such as to show that not

only was the testator afflicted with an impairment of his senses, such as would ordinarily be occasioned by diseases * * * but is, by reason of the effect of disease on his mind, also unable to comprehend and understand the nature of the undertaking in which he is engaged when he attempts to make his will, it cannot be said as a matter of law that testamentary capacity is shown to be so lacking as to render a will made during one's affliction and last illness invalid for want of sufficient testamentary capacity. If the testamentary requisites are found, the will may be valid, although executed by one of great age, whose mind is enfeebled, whose body is debilitated, whose memory is failing or whose judgment is vacillating, especially where the will appears to have been fairly made, is not an unnatural one, and apparently was made under conditions not inconsistent with the inference that it emanated from a free mind.' *Smith v. Clements*, 114 Fla. 614, 154 So. 520.

The appellant attaches great significance to the evidence which establishes the fact that during the course of his illness narcotics were administered to the decedent and that on the day of the execution of the will an inordinate quantity was delivered to his home. We have given due consideration to this in the light of the whole evidence and are not shaken in our conclusion that the circuit court ruled correctly in affirming that portion of the county judge's order dealing with the question of testamentary capacity. For the law is plain that the fact that one is a user of narcotics does not necessarily deprive him of testamentary capacity. *Fernstrom v. Taylor*,

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107 Fla. 490, 145 So. 208. He may be an addict and yet have the capacity which the law requires for making a will, if, in spite of the use of narcotics, he has sufficient mind and memory to understand the nature and extent of his property, the proper objects of his bounty and the nature of his testamentary act.

Indeed, it is possible that a testator may have testamentary capacity even though it is proven that he was somewhat under the influence of drugs at the time he executes a will. The same is true where the ravages of disease combine with the effects of drugs. In such situations, as in all others, the question to be determined is solely that of the mental capacity of the testator at the time he executes the instrument. Page on Wills, 2nd ed., Vol. 1, section 159.

A second question raised by the appellant is as to the finding of the county judge that no undue influence was exercised in procuring the execution of the will that was admitted to probate. We conclude, upon a consideration of the whole evidence, that the circuit court did not err when it affirmed the county judge on this issue. A third question raised by the appellant is in respect to the ruling of the county judge that the appellant was not entitled to an attorney's fee to be paid out of the assets of the estate for services rendered by his attorneys in the republication proceedings.

In support of his contention that the county judge erred in disallowing an attorney's fee, the appellant takes the following position: In the 1948 will only the two petitioners, sisters of decedent, were named as residuary legatees, while under the terms of the 1949 will not only the petitioners but also one Lillie Mae Sharpe, an adopted daughter of the decedent, would have been entitled to share in the residuum. In the 1948 will one Bessie Sweat was devised two certain lots of real property that were owned by the decedent, while under the terms of the second codicil to the 1948 will, which was dated April 27, 1949, one of these lots was devised to one Edith Dillingham. Due to his efforts in the proceeding instituted to probate the republication instrument dated June 29, 1949, this instrument, as well as the will executed on June 24, 1949, and the second codicil to the 1948 will, dated April 27, 1949, were denied probate because of the lack of

testamentary capacity of the decedent to execute the instruments. By reason of his efforts in this behalf, the appellant benefited the estate by preventing an illegal distribution of the assets under these invalid instruments, thereby assuring to Bessie Sweat two lots of real property instead of one, and also increasing the shares of the petitioners, who were residuary legatees under the 1948 will, from one-third of the residuum of the estate to one-half.

In opposition to this contention the appellees assert that in all the testamentary instruments that were before the county judge for adjudication, the provision made for the appellant was precisely the same, namely, a specific bequest for the sum of one-dollar. The contest made by the appellant in respect to these instruments was not induced by any desire on his part to benefit the estate and the lawful beneficiaries thereof, but was solely for the purpose of destroying all instruments executed by the decedent so as to create a condition of intestacy by virtue of which the appellant would profit handsomely under the statute of descent and distribution.

The appellees assert, further, that the appellant 'is not correct in assuming that he has benefited the estate by increasing the share of proponents from 1/3 to 1/2, because neither contestant or proponents ever took the position that the will of June 24, 1949, was a valid last will and testament * * * and that if said will had been declared by the court of his own motion to be the last will and testament of Frederick W. Wilmott such decision would have been made by the court based on the testimony and not at the urging of either proponent or contestant. * * *

Finally, the appellees assert that if there had been no contest, 'the republication of the October 28, 1948, will with the codicil of October 29, 1948, and the codicil of April 27, 1949, would have been the effective last will and testament. The attack on the republication by the contestant resulted in

canceling only the codicil of April 27, 1949,' which did nothing more

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than change the ownership of one lot of land valued at \$1,400 from Bessie Sweat to Edith Dillingham. Under these circumstances--so the appellees assert--the appellant should not be entitled to an attorney's fee out of the estate, because the cost thereof will have to be borne 'by the residuary legatees from whom William Wilmott, by his contesting of the will, sought [unsuccessfully] to take everything.'

The issue is whether upon the facts shown by the record the services of counsel for appellant in this litigation have been of benefit to the estate so as to entitle him to an attorney's fee out of the estate under the terms of section 734.01(2), Florida Statutes 1951, F.S.A., which provides:

'Any attorney who has rendered services to an estate or the personal representative may apply to the court by petition for an order making an allowance for attorney's fees, and, after notice to persons adversely affected, the court shall make such order with respect thereto as shall be proper.'

In connection with our consideration of section 734.01(2), it should be noticed that section 732.14(3) provides a different standard for allowance of fees to counsel for personal representatives who are proponents of a will, then does section 734.01(2). The decisions under this section, which apply the test of prima facie justification or good faith, are therefore not controlling in the present situation. Compare *Watts v. Newport*, 151 Fla. 209, 9 So.2d 417, and *In re Graham Estate*, 156 Fla. 421, 23 So.2d 485.

The facts of the case under consideration present a question somewhat different from any so far ruled upon in Florida, and the authorities in other states are in conflict on the point. See anno. 10 A.L.R. 805, 69 A.L.R.

possible obstacle in the path of the 1948 will whenever the latter was offered probate as an original instrument; and finally, the second codicil to the 1948 will, dated April 27, 1949, which changed the terms of the 1948 will in at least one particular. It is merely a coincidence that under the terms of the prior will and codicil finally established, after intervening instruments had been set aside, the distribution of the assets of the estate will be similar in most particulars to what the distribution would have been under the invalid republication instrument, and that appellant will receive no greater share than that which he would have received had he remained silent.

The services of counsel in preventing distribution under invalid instruments must be held to confer a benefit upon the estate, and under the terms of section 734.01(2), Florida Statutes 1951, F.S.A., attorneys' fees should be allowed. Upon the same principles, reasonable costs are also allowable under section 732.14(1). Compare *Lewis v. Gaillard*, supra.

From the conclusions reached it follows that the judgment appealed from must be affirmed in part and reversed in part, with directions that the circuit court enter an order commanding the county judge to fix and allow reasonable attorneys' fees to counsel for the contestant in accordance with this opinion, and that costs be allowed in accordance with law.

It is so ordered.

ROBERTS, C. J., and TERRELL and MATHEWS, JJ., concur.

72 So.2d 34
Supreme Court of Florida, Special Division A.

HOUSE OF LYONS, Inc. et al.

v.

MARCUS.

April 13, 1954.

Suit to foreclose a chattel mortgage on corporation's property, wherein mortgagee alleged that Comptroller had caused levy to be made upon mortgaged chattels under warrant for delinquent sales taxes. The Circuit Court, Dade County, Marshall C. Wiseheart, J., denied Comptroller's motion to dismiss and entered a final decree for mortgagee, and Comptroller appealed. The Supreme Court, Sebring, J., held that where signers of chattel mortgage encumbering corporation's chattels designated themselves as officers, and notary who took acknowledgment identified named persons as those who signed instrument, and certificate of acknowledgement stated that such persons acknowledged that they executed instrument for the purposes therein named, certificate met statutory requirement that instrument be acknowledged by party executing same.

Decree affirmed.

West Headnotes (5)

[1] **Mortgages**

⊖ Record of Defective Instruments or Instruments Not Entitled to Record

266 Mortgages

266III Construction and Operation

266III(D) Lien and Priority

266k166 Notice of Mortgage Affecting Priority

266k171 Record of Mortgage as Notice

266k171(4) Record of Defective Instruments or Instruments Not Entitled to Record

A transcription of a mortgage upon the record, without proper proof of the execution of the instrument, is a mere nullity.

Cases that cite this headnote

[2] **Acknowledgment**

⊖ Errors and Defects in Certificate

12 Acknowledgment

12II Taking and Certificate

12k40 Errors and Defects in Certificate

12k41 In General

The whole of the instrument acknowledged may be resorted to for support of the acknowledgment. F.S.A. §§ 695.03, 698.02.

1 Cases that cite this headnote

[3] **Acknowledgment**

⊖ Errors and Defects in Certificate

12 Acknowledgment

12II Taking and Certificate

12k40 Errors and Defects in Certificate

12k41 In General

It is the established policy of the law to uphold certificates of acknowledgment, and, wherever substance is found, obvious clerical errors and all technical omissions will be disregarded, and inartificialness in execution will not be permitted to defeat them, if, looking at them as a whole, either alone or in connection with the instrument, they reasonably and fairly indicate a compliance with the law. F.S.A. §§ 695.03, 698.02.

5 Cases that cite this headnote

[4] **Acknowledgment**

⊖ Errors and Defects in Certificate

12 Acknowledgment

12II Taking and Certificate

12k40 Errors and Defects in Certificate

12k41 In General

Clerical errors will not be permitted to defeat acknowledgments when they, considered either alone or in connection with the instrument acknowledged, and viewed in the light of the controlling statute, fairly show a substantial compliance with the statute. F.S.A. §§ 695.03, 698.02.

3 Cases that cite this headnote

[5] **Acknowledgment**

⊖ Persons Who May Make Acknowledgment

12 Acknowledgment

12II Taking and Certificate

12k11 Persons Who May Make Acknowledgment
Where signers of chattel mortgage encumbering corporation's chattels designated themselves as officers, and notary who took acknowledgment identified named persons as those who signed instrument, and certificate of acknowledgment stated that named persons acknowledged that they executed instrument for the purpose therein named, certificate met statutory requirement that instrument be acknowledged by party executing same. F.S.A. §§ 695.03, 698.02.

1 Cases that cite this headnote

Attorneys and Law Firms

*35 Richard W. Ervin, Atty. Gen., John C. Reed, Sp. Asst. Atty. Gen., and W. R. Culbreath, Asst. Atty. Gen., for appellants.

Gilbert A. Frank, Miami Beach, for appellee.

Opinion

SEBRING, Justice.

Alexander J. Marcus, the owner and holder of a chattel mortgage executed by House of Lyons, Inc., a corporation, filed a suit to foreclose the mortgage, alleging in his complaint that the instrument had been duly recorded in the public records of Dade County, and that subsequent to the date of recordation the Comptroller of the State of Florida had filed a warrant for delinquent sales taxes against the mortgagor corporation, House of Lyons, Inc., and had caused the Sheriff of Dade County to levy upon the personal property covered by the mortgage.

By a motion to dismiss, the Comptroller raised the question of whether or not the chattel mortgage in question had been properly acknowledged so as to entitle it to recordation and thereby give it priority over the tax lien filed at a later date. The trial court denied the motion to dismiss and entered a final decree in favor of the plaintiff.

The only question on the appeal is whether the lien of the mortgage is superior to the tax lien by reason of its prior recordation.

Section 698.02, Florida Statutes 1951, F.S.A., provides in substance, that in order for a chattel mortgage to be entitled to record 'its execution must be acknowledged or proved in the manner provided for mortgages of real property.' The controlling statute in respect to the acknowledgment of mortgages of real property prescribes, so far as material to this case, that 'the execution thereof must be acknowledged by the party executing the same * * *.' Section 695.03, Florida Statutes 1951, F.S.A.

In the case at bar the chattel mortgage was executed on a blank-form for mortgage in the following form:

'House of Lyons, Inc.

'By: /s/ Carrie Lyons,

President (L.S.)

"/s/ Seymour M. Levin,

Secretary (L.S.)'

And the material portion of the notary's certificate of acknowledgment recites 'Personally appeared before me Carrie Lyons & Seymour Levin to me well known as the person described in and who executed the foregoing instrument and acknowledged that they executed the same for the purpose therein expressed * * *.'

[1] It is the settled rule that 'A transcription of a mortgage upon the record, without proper proof of the execution of the instrument, is a mere nullity'. McKeown v. Collins, 38 Fla. 276, 21 So. 103. See also Edwards v. Thom, 25 Fla. 222, 5 So. 707; Keech v. Enriquez, 28 Fla. 597, 10 So. 91; Lassiter v. Curtiss-Bright Co., 129 Fla. 728, 177 So. 201. Consequently, the only problem in the instant case is that of determining whether the acknowledgment by the corporate mortgagor can be considered 'proper proof of the execution of the instrument,' or whether it must be held to be fatally defective.

[2] [3] [4] We find no case directly on point in this jurisdiction. The decisions of the subject in other jurisdictions have been predicated, in many instances, upon specific statutory provisions prescribing the form of certificate to be used, particularly as to corporate acknowledgments. Under such statutory provisions, the courts have made it clear that before an instrument will be entitled to record there must be a substantial compliance with the statutory requirements as

to disclosure of official title, authority to act, and the like, in the certificate of acknowledgment. Annotation 29 A.L.R. at p. 989, and 25 A.L.R.2d p. 1154. However, by the rule in effect in Florida, the whole of the instrument acknowledged may be resorted to for support of the acknowledgment. As pointed out in *36 Sumner v. Mitchell, 29 Fla. 179, 10 So. 562, 14 L.R.A. 815, 'It is the established policy of the law to uphold certificates of acknowledgment * * * and, wherever substance is found, obvious clerical errors and all technical omissions will be disregarded. Inartificialness in their execution will not be permitted to defeat them, if looking at them as a whole, either alone or in connection with the [instrument], we find that they reasonably and fairly indicate a compliance with the law. Clerical errors will not be permitted to defeat acknowledgments when they, considered either alone or in connection with the instrument acknowledged, and viewed in the light of the statute controlling them, fairly show a substantial compliance with the statute.' Rule approved in Cleland v. Long, 34 Fla. 353, 16 So. 272; Jackson v. Haisley, 35 Fla. 587, 17 So. 631; Platt v. Rowand, 54 Fla. 237, 45 So. 32; Investment Co. v. Trueman, 63 Fla. 184, 57 So. 663; Robinson v. Bruner, 94 Fla. 797, 114 So. 556; Peninsular Naval Stores Co. v. Mathers, 96 Fla. 620, 119 So. 333; Harris v. Zeuch, 103 Fla. 183, 137 So. 135.

[5] Under this principle, it appears to us that the certificate on the mortgage involved in this case meets the simple requirement of section 695.03, Florida Statutes 1951, F.S.A., that the instrument be 'acknowledged by the party executing the same'-in this case, House of Lyons, Inc. The notary who took the acknowledgment identified the named individuals as the persons 'described in and who executed the foregoing instrument.' In the instrument the named individuals are described as president and secretary, respectively, of the corporate mortgagor. In the acknowledgment the named individuals further acknowledged that they executed the instrument 'for the purpose therein expressed,' and the purpose expressed in the mortgage is that certain specifically described personal assets of the corporate mortgagor shall be bound as security for the payment of an acknowledged debt of the corporate mortgagor, the instrument being executed for the corporate mortgagor, House of Lyons, Inc., 'By' the officers specified.

An Ohio court, in disposing of a case involving a very similar acknowledgment, had this to say: 'It is claimed that such an

acknowledgment is defective and fails to comply with the statute. It seems to us that the acknowledgment should be read and construed in conjunction with the contents of the entire instrument. The instrument discloses that it is the lease of the corporation signed by the officers of the corporation leasing property of the corporation to the defendant. How can it be said that these officers acknowledged the instrument in any other capacity than as officers of the corporation? No one would contend that these officers * * * could be personally held under this instrument. Under no circumstances could it be claimed that they or any one connected with the transaction intended any individual obligation. There is abundant and respectable authority to uphold the sufficiency of this acknowledgment in the authorities cited by counsel for plaintiff. 29 A.L.R., Annotated, p. 996 et seq.' Anthony Carlin Co. v. Burrows Bros. Co., 54 Ohio App. 202, 6 N.E.2d 761, 763. Accord Tenney v. East Warren Lumber Co., 43 N.H. 343.

Similarly, in Muller v. Boone, 63 Tex. 91, it was held that an acknowledgment by an individual that he executed a deed 'for the purposes * * * therein contained' was equivalent to an acknowledgment that the execution was the act of the corporation, where the deed purported on its face to be the act of the corporation. See also cases cited in 29 A.L.R. at p. 996 for the proposition that 'by the weight of authority, a certificate will be upheld, even though it recites that the one who executed the instrument for the corporation acknowledged it to be 'his' act and deed, instead of that of the corporation, where it is clear from a consideration of the certificate with the instrument that it was the intent to acknowledge for the corporation.'

From the conclusions reached it follows that the decree appealed from should be affirmed.

It is so ordered.

ROBERTS, C. J., TERRELL, J., and ROGERS, Associate Justice, concur.

All Citations

72 So.2d 34

206 N.C.App. 67
Court of Appeals of North Carolina.

In the Matter of the WILL
OF Lewis Manly DURHAM.

No. COA09-274. | Aug. 3, 2010.

Synopsis

Background: After executors presented will for admission to probate, grandson filed petition seeking to have letters testamentary issued to executors revoked, and executors filed motion for sanctions. Grandson later filed a caveat to purported will alleging it was invalid, and the parties stipulated that the revocation petition should be dismissed as moot. Grandson thereafter filed motion for sanctions against executors due to their failure to withdraw their sanctions motion. The Superior Court, Chatham County, Donald W. Stephens, J., granted executors' motion for sanctions and denied grandson's motion, and the Court, Carl R. Fox, J., entered summary judgment for executors. Grandson appealed.

Holdings: The Court of Appeals, Ervin, J., held that:

- [1] appeal from sanctions order was untimely;
- [2] Court would treat appeal as petition for certiorari review;
- [3] Rule 11 applied to trial court proceeding;
- [4] petition to revoke testamentary letters was not well grounded in law;
- [5] failure of notary's affidavit to address whether testator was personally known or produced "satisfactory evidence" of identity did not create a genuine issue of material fact as to whether will was validly executed; and
- [6] will was not the product of undue influence.

Affirmed.

West Headnotes (35)

[1] **Costs**

⇒ Nature and Grounds of Right

102 Costs

102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 In general

There are three parts to a Rule 11 analysis: (1) factual sufficiency, (2) legal sufficiency, and (3) improper purpose. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1.

1 Cases that cite this headnote

[2] **Costs**

⇒ Nature and Grounds of Right

102 Costs

102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 In general

In analyzing whether the filing meets the factual certification requirement of Rule 11, the court must make the following determinations: (1) whether the party undertook a reasonable inquiry into the facts and (2) whether the party, after reviewing the results of his inquiry, reasonably believed that his position was well-grounded in fact. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1.

2 Cases that cite this headnote

[3] **Costs**

⇒ Nature and Grounds of Right

102 Costs

102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 In general

Whether a document complies with the legal sufficiency prong of Rule 11 is determined as of the time it was signed. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1.

Cases that cite this headnote

[4] Costs

↔ Nature and Grounds of Right

102 Costs

102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 In general

To satisfy the legal sufficiency requirement of Rule 11, the disputed action must be warranted by existing law or a good faith argument for the extension, modification or reversal of existing law. Rules Civ.Proc., Rule 11(a), West's N.C.G.S.A. § 1A-1.

2 Cases that cite this headnote

[5] Costs

↔ Nature and Grounds of Right

102 Costs

102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 In general

The improper purpose prong of Rule 11 is separate and distinct from the factual and legal sufficiency requirements. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1.

1 Cases that cite this headnote

[6] Costs

↔ Nature and Grounds of Right

102 Costs

102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 In general

An "improper purpose," for Rule 11 purposes, is any purpose other than one to vindicate rights or to put claims of right to a proper test. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1.

Cases that cite this headnote

[7] Costs

↔ Nature and Grounds of Right

102 Costs

102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 In general

Even if a paper is well grounded in fact and in law, it may still violate Rule 11 if it is served or filed for an improper purpose. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1.

1 Cases that cite this headnote

[8] Costs

↔ Nature and Grounds of Right

102 Costs

102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 In general

The determination of whether a filing was made for an improper purpose for Rule 11 purposes must be reviewed under an objective standard, with the relevant inquiry being whether the existence of an improper purpose may be inferred from the alleged offender's objective behavior. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1.

Cases that cite this headnote

[9] Costs

↔ Nature and Grounds of Right

102 Costs

102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 In general

A violation of any one of the factual sufficiency, legal sufficiency, and improper purpose requirements of Rule 11 mandates the imposition of sanctions. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1.

2 Cases that cite this headnote

[10] Appeal and Error

↔ Cases Triable in Appellate Court

30 Appeal and Error

30XVI Review

30XVI(F) Trial De Novo
 30k892 Trial De Novo
 30k893 Cases Triable in Appellate Court
 30k893(1) In general
 The trial court's decision to impose or not to impose mandatory sanctions under Rule 11(a) is reviewable de novo as a legal issue. Rules Civ.Proc., Rule 11(a), West's N.C.G.S.A. § 1A-1.

Cases that cite this headnote

[11] Appeal and Error

☞ Cases Triable in Appellate Court

30 Appeal and Error
 30XVI Review
 30XVI(F) Trial De Novo
 30k892 Trial De Novo
 30k893 Cases Triable in Appellate Court
 30k893(1) In general

In the de novo review of Rule 11 sanctions, the appellate court will determine (1) whether the trial court's conclusions of law support its judgment or determination, (2) whether the trial court's conclusions of law are supported by its findings of fact, and (3) whether the findings of fact are supported by a sufficiency of the evidence; if the appellate court makes these three determinations in the affirmative, it must uphold the trial court's decision to impose or deny the imposition of mandatory sanctions. Rules Civ.Proc., Rule 11(a), West's N.C.G.S.A. § 1A-1.

3 Cases that cite this headnote

[12] Appeal and Error

☞ Insufficiency of verdict or findings

30 Appeal and Error
 30XVII Determination and Disposition of Cause
 30XVII(D) Reversal
 30k1177 Necessity of New Trial
 30k1177(8) Insufficiency of verdict or findings

A court's failure to enter findings of fact and conclusions of law on Rule 11 sanctions issues is error which generally requires remand in order for the trial court to resolve any disputed factual issues. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1.

Cases that cite this headnote

[13] Appeal and Error

☞ Competent or credible evidence

Appeal and Error

☞ Findings supported by evidence

30 Appeal and Error
 30XVI Review
 30XVI(I) Questions of Fact, Verdicts, and Findings
 30XVI(I)3 Findings of Court
 30k1010 Sufficiency of Evidence in Support
 30k1010.1 In General
 30k1010.1(4) Competent or credible evidence
 30 Appeal and Error
 30XVI Review
 30XVI(I) Questions of Fact, Verdicts, and Findings
 30XVI(I)3 Findings of Court
 30k1011 On Conflicting Evidence
 30k1011.1 In General
 30k1011.1(4) Findings supported by evidence

The trial court's findings of fact are conclusive on appeal if supported by competent evidence, even when the record includes other evidence that might support contrary findings. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1.

Cases that cite this headnote

[14] Appeal and Error

☞ Costs and Allowances

30 Appeal and Error
 30XVI Review
 30XVI(H) Discretion of Lower Court
 30k984 Costs and Allowances
 30k984(1) In general

In reviewing the appropriateness of the particular Rule 11 sanction imposed, an abuse of discretion standard is proper because the rule's provision that the court "shall impose" sanctions for motions abuses concentrates the court's discretion on the selection of an appropriate sanction rather than on the decision to impose sanctions. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1.

Cases that cite this headnote

[15] Appeal and Error

⇨ Effect of Failure to Serve Process or to Give Notice

- 30 Appeal and Error
- 30VII Transfer of Cause
- 30VII(D) Writ of Error, Citation, or Notice
- 30k430 Effect of Failure to Serve Process or to Give Notice
- 30k430(1) In general

Rule 11 sanctions order, which was the last decision made in proceeding for removal of estate's executors, was entered in a separate proceeding from grandson's subsequent caveat action, such that sanctions order could not be challenged as part of an appeal from the summary judgment order in the caveat action, and thus grandson's notice of appeal from sanctions order, filed more than 30 days after trial court entered sanctions order, was untimely warranting dismissal of appeal. West's N.C.G.S.A. §§ 28A-9-1, 31-32; Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1; Rules App.Proc., Rule 3(c)(1).

1 Cases that cite this headnote

[16] Appeal and Error

⇨ Jurisdiction of appellate court

- 30 Appeal and Error
- 30X Record
- 30X(A) Matters to Be Shown
- 30k503 Jurisdiction of appellate court

The record on appeal should contain a showing of the jurisdiction of the appellate court.

Cases that cite this headnote

[17] Certiorari

⇨ Sufficiency of allegations in general

- 73 Certiorari
- 73II Proceedings and Determination
- 73k42 Petition or Other Application
- 73k42(3) Sufficiency of allegations in general

Court of Appeals would exercise its discretion and treat grandson's untimely appeal from sanctions order, entered as part of proceeding for removal of estate's executors, as a petition for writ of certiorari and review the challenge on the merits, where grandson proceeded, albeit

mistakenly, in good faith by waiting until trial court entered a final order in grandson's subsequent caveat proceeding before noting his appeal from the sanctions order, and delay actually prevented court from having to consider multiple appeals arising from the same basic set of facts. West's N.C.G.S.A. §§ 28A-9-1, 31-32; Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1; Rules App.Proc., Rules 3(c)(1), 21(a)(1).

1 Cases that cite this headnote

[18] Costs

⇨ Nature and Grounds of Right

Executors and Administrators

⇨ Application and proceedings thereon

- 102 Costs
 - 102I Nature, Grounds, and Extent of Right in General
 - 102k1 Nature and Grounds of Right
 - 102k2 In general
 - 162 Executors and Administrators
 - 162II Appointment, Qualification, and Tenure
 - 162k32 Revocation of Letters
 - 162k32(2) Application and proceedings thereon
- Rules of Civil Procedure, including Rule 11, applied in grandson's action to revoke letters testamentary issued to estate's executors. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1; West's N.C.G.S.A. §§ 1-393, 28A-9-1.

Cases that cite this headnote

[19] Courts

⇨ Construction and application of particular rules

- 106 Courts
- 106II Establishment, Organization, and Procedure
- 106II(F) Rules of Court and Conduct of Business
- 106k85 Operation and Effect of Rules
- 106k85(3) Construction and application of particular rules

The North Carolina Rules of Civil Procedure govern the procedure in all actions and proceedings of a civil nature except when a differing procedure is prescribed by statute; the phrase "all actions and proceedings of a civil nature" is inclusive of, but not exclusive to, civil actions, and the phrase is broad and encompasses

different types of legal actions, not solely those initiated with a complaint. Rules Civ.Proc., Rule 1, West's N.C.G.S.A. § 1A-1.

Cases that cite this headnote

[20] **Costs**

☞ Nature and Grounds of Right

102 Costs

102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 In general

An estate proceeding is a proceeding of a civil nature in which a Superior Court Judge has the authority to impose Rule 11 sanctions. West's N.C.G.S.A. §§ 1-393, 28A-9-1; Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1.

Cases that cite this headnote

[21] **Costs**

☞ Nature and Grounds of Right

102 Costs

102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 In general

Trial court could hear and decide issue of Rule 11 sanctions against grandson based on his petition to revoke letters testamentary issued to estate's executors, although issues raised by the revocation petition had already been resolved by the filing of a dismissal of the petition, given the suspension of the administration of the estate, which was a process necessarily overseen by the Clerk of Superior Court, the necessity for continued supervision over contested estate-related issues by some component of the General Court of Justice due to grandson's filing of caveat, and the fact that the Superior Court had jurisdiction, in the aftermath of the filing of the caveat, over the whole matter in controversy.

1 Cases that cite this headnote

[22] **Costs**

☞ Nature and Grounds of Right

102 Costs

102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 In general

The filing of a dismissal does not deprive the trial court of jurisdiction to consider a sanctions motion.

Cases that cite this headnote

[23] **Costs**

☞ Nature and Grounds of Right

102 Costs

102I Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 In general

Grandson's petition to revoke testamentary letters issued to estate's executors was not well grounded in law, and thus grandson was subject to Rule 11 sanctions; there was no statutory basis for finding that either executor was disqualified from serving as an executor, grandson's contention that will was not the genuine last will of grandfather did not indicate that letters were obtained by false representation or mistake, unsupported speculation that executors engaged in embezzlement or mismanagement of grandfather's assets prior to her death and the issuance of the letters did not constitute default or misconduct in the execution of office, executors did not labor under any private interest that might tend to hinder or be adverse to a fair and proper administration, and grandson lacked standing to file the petition, as will had been admitted to probate by the time he filed the petition and he was not entitled to share in the estate under that will. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1; West's N.C.G.S.A. §§ 28A-4-2, 28A-9-1(a).

Cases that cite this headnote

[24] **Wills**

☞ Objections to probate, answers to petitions therefor, and caveats

409 Wills

409V Probate or Contest of Will

409V(L) Petitions, Objections, and Pleading

409k277 Objections to probate, answers to petitions therefor, and caveats
The filing of a caveat is the customary and statutory procedure for an attack upon the testamentary value of a paperwriting which has been admitted by the clerk of superior court to probate in common form.

Cases that cite this headnote

[25] **Executors and Administrators**

☞ Revocation of Letters

Wills

☞ Objections to probate, answers to petitions therefor, and caveats

- 162 Executors and Administrators
- 162II Appointment, Qualification, and Tenure
- 162k32 Revocation of Letters
- 162k32(.5) In general
- 409 Wills

409V Probate or Contest of Will
409V(L) Petitions, Objections, and Pleading
409k277 Objections to probate, answers to petitions therefor, and caveats
A caveat, and not a revocation petition, is the proper method for challenging the validity of a disputed will once it has been admitted to probate.

Cases that cite this headnote

[26] **Costs**

☞ Nature and Grounds of Right

- 102 Costs
 - 102I Nature, Grounds, and Extent of Right in General
 - 102k1 Nature and Grounds of Right
 - 102k2 In general
- Good faith reliance on an attorney's advice precludes sanctions against the party under the legal sufficiency prong of Rule 11. Rules Civ.Proc., Rule 11, West's N.C.G.S.A. § 1A-1.

Cases that cite this headnote

[27] **Wills**

☞ Objections to probate, answers to petitions therefor, and caveats
409 Wills

409V Probate or Contest of Will
409V(L) Petitions, Objections, and Pleading
409k277 Objections to probate, answers to petitions therefor, and caveats
A caveat is an attack upon the validity of the instrument purporting to be a will; the will and not the property devised is the res involved in the litigation.

1 Cases that cite this headnote

[28] **Judgment**

☞ Evidence and Affidavits in Particular Cases

- 228 Judgment
 - 228V On Motion or Summary Proceeding
 - 228k182 Motion or Other Application
 - 228k185.3 Evidence and Affidavits in Particular Cases
 - 228k185.3(1) In general
- Failure of notary's affidavit to address whether testator was personally known to the notary or produced "satisfactory evidence" of his identity did not create a genuine issue of material fact for summary judgment purposes as to whether self-proved will was validly executed; will's acknowledgement and oath were in substantial compliance with statutory forms, and issues of personal knowledge or "satisfactory evidence" were simply not addressed in the affidavit. West's N.C.G.S.A. § 10B-3, 31-11.6(a); Rules Civ.Proc., Rule 56(c), West's N.C.G.S.A. § 1A-1.

Cases that cite this headnote

[29] **Wills**

☞ Execution, existence, and genuineness

- 409 Wills
 - 409V Probate or Contest of Will
 - 409V(M) Evidence
 - 409k287 Presumptions and Burden of Proof
 - 409k289 Execution, existence, and genuineness
- In a caveat proceeding, the burden of proof is upon the propounder to prove that the instrument in question was executed with the proper formalities required by law.

1 Cases that cite this headnote

[30] **Wills**

☞ Nature and degree in general

409 Wills

409IV Requisites and Validity

409IV(F) Assent of Testator

409k154 Undue Influence

409k155.1 Nature and degree in general

The four general elements of undue influence in the execution of a will are: (1) decedent is subject to influence, (2) beneficiary has an opportunity to exert influence, (3) beneficiary has a disposition to exert influence, and (4) the resulting will indicates undue influence.

Cases that cite this headnote

[31] **Wills**

☞ Fraud and undue influence in general

409 Wills

409IV Requisites and Validity

409IV(F) Assent of Testator

409k162 Evidence

409k166 Weight and Sufficiency

409k166(1) Fraud and undue influence in general

Undue influence in the execution of a will is generally proved by a number of facts, each one of which standing alone may be of little weight, but taken collectively may satisfy a rational mind of its existence.

Cases that cite this headnote

[32] **Wills**

☞ Nature and degree in general

409 Wills

409IV Requisites and Validity

409IV(F) Assent of Testator

409k154 Undue Influence

409k155.1 Nature and degree in general

Seven factors are traditionally considered in evaluating whether undue influence occurred in the execution of a will, including: (1) old age and physical and mental weakness, (2) that the person signing the paper is in the home of the beneficiary and subject to his constant association and supervision, (3) that others have little or no opportunity to see him, (4) that the will is different from and revokes a prior will, (5) that it is made in favor of one with whom

there are no ties of blood, (6) that it disinherits the natural objects of his bounty, and (7) that the beneficiary has procured its execution.

Cases that cite this headnote

[33] **Wills**

☞ Nature and degree in general

409 Wills

409IV Requisites and Validity

409IV(F) Assent of Testator

409k154 Undue Influence

409k155.1 Nature and degree in general

A caveator need not demonstrate the existence of every factor in order to prove undue influence; instead, there is a need to apply and weigh each factor in light of the differing factual setting of each case.

Cases that cite this headnote

[34] **Wills**

☞ Undue influence

409 Wills

409V Probate or Contest of Will

409V(N) Hearing or Trial

409k315 Submission of Issues to Jury

409k316.3 Undue influence

If a reasonable mind could infer from evidence that the purported last will and testament is not the product of the testator's free and unconstrained act, but is rather the result of overpowering influence sufficient to overcome the testator's free will and agency, then the will contest case must be submitted to the jury for its consideration; such a determination requires the court to engage in a heavily fact-specific inquiry.

Cases that cite this headnote

[35] **Wills**

☞ Consistency of disposition with inclinations and expressed intentions

Wills

☞ Physical and mental condition of testator

409 Wills

409IV Requisites and Validity

409IV(F) Assent of Testator

409k162 Evidence

409k166 Weight and Sufficiency
409k166(6) Consistency of disposition with
inclinations and expressed intentions
409 Wills
409IV Requisites and Validity
409IV(F) Assent of Testator
409k162 Evidence
409k166 Weight and Sufficiency
409k166(8) Physical and mental condition of
testator

Will was not the product of undue influence, although testator suffered from difficulties associated with extreme old age and will revoked prior will which named grandson as a beneficiary; there was no evidence suggesting that his will was actually overborne, many people not aligned with will's executors saw and communicated with testator during the hours surrounding the execution of the will and heard testator expressly state that he wished to disinherit grandson due to dissatisfaction with his conduct, alleged isolation of grandson by estate's executors occurred after the execution of the will and pursuant to testator's express wishes, and beneficiaries under the will were the natural objects of testator's bounty.

Cases that cite this headnote

****116** Appeal by petitioner and caveator from order entered 10 March 2008 by Judge Donald W. Stephens in Chatham County Superior Court and judgment entered 6 November 2008 by Judge Carl R. Fox in Chatham County Superior Court. Heard in the Court of Appeals 16 September 2009.

Attorneys and Law Firms

Stark Law Group, PLLC, Chapel Hill, by Thomas H. Stark and Seth A. Neyhart, for Petitioner/Caveator-Appellant.

Levine & Stewart, Chapel Hill, by James E. Tanner, III, for Respondent/Propounders-Appellees.

Opinion

ERVIN, Judge.

***68** Petitioner and Caveator Gary Dixon¹ appeals from an order imposing sanctions pursuant to N.C. Gen.Stat. § 1A-1, Rule 11 stemming from the filing of a Verified Complaint for Revocation of Letters Testamentary following the appointment of Ida Pharr and Frank Durham as executors² of the estate of Lewis M. Durham. In addition, Caveator appeals the trial court's order granting summary judgment in favor of Executors concerning the validity of Decedent's will. After ***69** careful consideration of the record in light of the applicable law, we conclude that the trial court's orders should be affirmed.

I. Factual Background

On 27 July 1983, Decedent and his wife, Ona Mae Durham, executed mutual and reciprocal wills which provided that, upon the death of either spouse, his or her estate would pass to the surviving spouse. Both wills also provided that, in the event that either spouse died before the other spouse's will became effective, 50% of "any cash on hand," "any cash on deposit," and "any amounts due under any promissory note receivable" would pass to Aldersgate Methodist Church and all remaining real and personal property would pass to Caveator, who was Decedent's adopted grandson.

Caveator claimed that, after Mrs. Durham was diagnosed with cancer, he assisted the couple with dressing, transportation and financial management issues on a daily basis. On 17 February 2006, Mrs. Durham died. According to Caveator, Decedent became very depressed, expressed suicidal thoughts, and became highly susceptible to third party influences following his wife's death. Executors concede that Caveator had a longstanding relationship with the couple and that the same had not been true of them.

On 18 February 2006, Griffin Funeral Home contacted Clarice Jones, sister of Executors and Decedent's niece, to inform her that Caveator had missed several appointments that day regarding Mrs. Durham's funeral arrangements. In response, Ms. Jones telephoned Decedent to apprise him of the situation. During the call, she heard him call out "Help me!" On the following morning, Executors went to investigate the situation, only to discover that Caveator had locked himself in Mrs. Durham's bedroom. Upon entering the residence, Executors found Decedent sitting in his own dried urine. Decedent told Executors that he had not eaten in two days, that he had given Caveator \$10,000 to pay for Mrs.

Durham's funeral, and that Caveator had failed to make the necessary payment.

After leaving Decedent's residence on 19 February 2006, Propounders initially took Decedent to the hospital. At the hospital, Decedent was described as being oriented and alert despite being in a weak and dehydrated condition. A hospital social worker **117 recommended that Decedent contact an attorney to work out certain power of attorney issues.

*70 On 20 February 2006, Executors took Decedent to his attorney's office. Due to the press of other business, Decedent's attorney referred him to the firm of Levine & Stewart for preparation of a power of attorney and a will. According to the drafting attorney, who met with Decedent out of Executors' presence, Decedent "stated quite adamantly that he wanted to draw up a new Will in order to take his [Caveator] out of his Will." After consulting with the drafting attorney, Decedent executed a new will on 20 February 2006 which revoked all of his prior wills, designated Executors to administer his estate, and bequeathed his estate in equal shares to his eight living nieces and nephews, including Executors.

After Executors took Decedent to the funeral home on 19 February 2006, he never lived in his home again. Instead, he resided in Cambridge Hills in Pittsboro. Caveator was not allowed to see Decedent after 19 February 2006. On 21 September 2007, Decedent died.

On 28 September 2007, Executors successfully presented the 20 February 2006 Will for admission to probate to the Clerk of Superior Court of Chatham County. On 1 October 2007, Caveator filed a petition seeking to have the letters testamentary that had been issued to Executors revoked. On 11 October 2007, Executors filed an Answer to Show Cause and Motion for Sanctions pursuant to N.C. Gen.Stat. § 1A-1, Rule 11. On 18 October 2007, Caveator filed a Response in Opposition to Motion.

On 13 November 2007, Caveator filed a Caveat to Purported Will Dated February 20, 2006 in which he alleged that the 20 February 2006 will was invalid because Decedent lacked sufficient testamentary capacity to execute a valid will on 20 February 2006 and because the 20 February 2006 will resulted from undue influence on the part of Executors. A few minutes prior to the filing of the Caveat, the parties filed a Memorandum of Judgment/Order in which they stipulated that, given the filing of the Caveat, the revocation petition

should be dismissed as moot. On 16 November 2007, the Clerk entered an order suspending the administration of Decedent's estate and issued a citation directing all interested parties to appear at the 14 January 2008 session of the Chatham County Superior Court. On 27 February 2008, Caveator filed a Motion for Rule 11 Sanctions seeking sanctions against counsel for Executors due to their failure to withdraw their original sanctions motion.

On 10 March 2008, Judge Stephens entered an Order for Sanctions Pursuant to Rule 11 granting Executors' motion for sanctions *71 against Caveator and denying Caveator's motion for sanctions against Executors' counsel. On 19 September 2008, Executors filed a summary judgment motion directed to the Caveat. On 13 October 2008, Caveator filed a response to Executors' summary judgment motion. On 6 November 2008, Judge Fox entered an order granting Executors' summary judgment motion. On 8 December 2008, Caveator noted an appeal to this Court from both the 10 March 2008 order imposing sanctions and the 6 November 2008 order granting Executors' summary judgment motion.

II. Legal Analysis

A. Sanctions Order

1. Standard of Review

[1] [2] [3] [4] [5] [6] [7] [8] [9] [10] [11]
[12] [13] [14] N.C. Gen.Stat. § 1A-1, Rule 11 provides, in pertinent part, that:

The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief formed after reasonable inquiry that it is well grounded in fact and is warranted by existing law ...; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

"There are three parts to a Rule 11 analysis: (1) factual sufficiency, (2) legal sufficiency, and (3) improper purpose." *Dodd v. Steele*, 114 N.C.App. 632, 635, 442 S.E.2d 363, 365,

disc. review denied, 337 N.C. 691, 448 S.E.2d 521 (1994) (citing *Bryson v. Sullivan*, 330 N.C. 644, 655, 412 S.E.2d 327, 332 (1992)). **118 “In analyzing whether the [filing] meets the factual certification requirement, the court must make the following determinations: (1) whether the [party] undertook a reasonable inquiry into the facts and (2) whether the [party], after reviewing the results of his inquiry, reasonably believed that his position was well-grounded in fact.” *McClerin v. R-M Industries, Inc.*, 118 N.C.App. 640, 644, 456 S.E.2d 352, 355 (1995) (citing *Higgins v. Patton*, 102 N.C.App. 301, 306, 401 S.E.2d 854, 857 (1991), *overruled on other grounds*, *Bryson*, 330 N.C. 644, 412 S.E.2d 327). “The text of [N.C. Gen.Stat. § 1A-1, Rule 11] requires that whether the document complies with the legal sufficiency prong of the Rule is determined as of the time it was signed.” *Bryson*, 330 N.C. at 657, 412 S.E.2d at 334. “To satisfy the legal sufficiency requirement, the disputed action must be warranted by existing law or a good faith argument for the extension, modification or reversal of existing law.” *72 *Dodd*, 114 N.C.App. at 635, 442 S.E.2d at 365 (citing N.C. Gen.Stat. § 1A-1, Rule 11(a), and *Bryson*, 330 N.C. at 656, 412 S.E.2d at 332). Finally, “[t]he improper purpose prong of [N.C. Gen.Stat. § 1A-1,] Rule 11 is separate and distinct from the factual and legal sufficiency requirements.” *Bryson*, 330 N.C. at 663, 412 S.E.2d at 337. “An improper purpose is ‘any purpose other than one to vindicate rights ... or to put claims of right to a proper test.’” *Mack v. Moore*, 107 N.C.App. 87, 93, 418 S.E.2d 685, 689 (1992) (quoting G.P. Joseph, *Sanctions: The Federal Law of Litigation Abuse* § 13(C) (Supp.1992)). “Thus, even if a paper is well grounded in fact and in law, it may still violate [N.C. Gen.Stat. § 1A-1,] Rule 11 if it is served or filed for an improper purpose.” *Brooks v. Giesey*, 334 N.C. 303, 315, 432 S.E.2d 339, 345-46 (1993) (citing *Bryson*, 330 N.C. at 663, 412 S.E.2d at 337). The determination of whether a filing was made for an improper purpose “must be reviewed under an objective standard,” *Id.* (citing *Turner v. Duke University*, 325 N.C. 152, 164, 381 S.E.2d 706, 713 (1989), *disc. review denied*, 329 N.C. 505, 407 S.E.2d 552 (1991)), with “the relevant inquiry [being] whether the existence of an improper purpose may be inferred from the alleged offender’s objective behavior.” *Mack*, 107 N.C.App. at 93, 418 S.E.2d at 689 (citing Joseph, *Sanctions* § 13(A) (1989)). “A violation of any one of these requirements mandates the imposition of sanctions under” N.C. Gen.Stat. § 1A-1, Rule 11. *Dodd*, 114 N.C.App. at 635, 442 S.E.2d at 365.

The trial court’s decision to impose or not to impose mandatory sanctions under [N.C. Gen.Stat.] § 1A-1,

Rule 11(a) is reviewable *de novo* as a legal issue. In the *de novo* review, the appellate court will determine (1) whether the trial court’s conclusions of law support its judgment or determination, (2) whether the trial court’s conclusions of law are supported by its findings of fact, and (3) whether the findings of fact are supported by a sufficiency of the evidence. If the appellate court makes these three determinations in the affirmative, it must uphold the trial court’s decision to impose or deny the imposition of mandatory sanctions under N.C. [Gen.Stat.] § 1A-1, Rule 11(a).

Turner, 325 N.C. at 165, 381 S.E.2d at 714 (1989); *see also* *Static Control Components, Inc. v. Vogler*, 152 N.C.App. 599, 603, 568 S.E.2d 305, 308 (2002); *Polygenex International, Inc. v. Polyzen, Inc.*, 133 N.C.App. 245, 249, 515 S.E.2d 457, 460 (1999). “A court’s failure to enter findings of fact and conclusions of law on [sanctions] issue[s] is error which generally requires remand in order for the trial court to resolve any disputed factual issues.” *73 *McClerin*, 118 N.C.App. at 644, 456 S.E.2d at 355. “The trial court’s findings of fact are conclusive on appeal if supported by competent evidence, even when the record includes other evidence that might support contrary findings.” *Static Control Components*, 152 N.C.App. at 603, 568 S.E.2d at 308 (citing *Institution Food House v. Circus Hall of Cream*, 107 N.C.App. 552, 556, 421 S.E.2d 370, 372 (1992)). “[I]n reviewing the appropriateness of the particular sanction imposed, an ‘abuse of discretion’ standard is proper because ‘[t]he rule’s provision that the court ‘shall impose’ sanctions for motions abuses ... concentrates [the court’s] discretion on the selection of an appropriate sanction rather than on the decision to impose sanctions.’” *Turner*, 325 N.C. at 165, 381 S.E.2d at 714 **119 (quoting *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1174 (D.C.Cir.1985) and citing *Daniels v. Montgomery Mut. Ins. Co.*, 320 N.C. 669, 360 S.E.2d 772 (1987)).

2. Timeliness of Caveator’s Appeal

[15] Before considering Caveator’s challenge to the sanctions order, we must first address the timeliness of his appeal. In essence, Executors argue that the sanctions

order was entered in response to the filing of the removal petition; that a removal proceeding conducted pursuant to N.C. Gen.Stat. § 28A-9-1 is a separate proceeding from a caveat proceeding conducted pursuant to N.C. Gen.Stat. § 31-32 *et seq.*; that the sanctions order was the final order entered in the removal proceeding; and that Caveator's failure to note an appeal to this Court within the time period set out in N.C.R.App. P. 3(c)(1) deprived this Court of jurisdiction to hear Caveator's appeal from the sanctions order. We agree.

The trial court entered the sanctions order on 10 March 2008. Caveator noted an appeal to this Court from the sanctions order on 8 December 2008. Apparently, Caveator believed that he was not entitled to appeal the sanctions order until the caveat proceeding had concluded. However, as Executors note, the sanctions order was the last decision made in the removal proceeding and constituted a final order which Caveator was required to appeal within the 30-day period specified in N.C.R.App. P. 3. *Long v. Joyner*, 155 N.C.App. 129, 134, 574 S.E.2d 171, 175 (2002), *disc. review denied*, 356 N.C. 673, 577 S.E.2d 624 (2003) (stating that, while "defendant's appeal from the sanction order would [ordinarily] be dismissed as interlocutory," "the underlying legal issues in this case have been resolved by the parties in a settlement agreement," leaving the sanction order "appealed in this case ... the only unresolved issue in the case and therefore appealable"). As a result, the sanctions order was entered in a separate *74 proceeding from the caveat case and could not be challenged as part of an appeal from the trial court's summary judgment order in the caveat proceeding.

[16] According to N.C.R.App. P. 3(c), notice of appeal in a civil action or special proceeding must be filed "within thirty days after entry of judgment if the party has been served with a copy of the judgment within the three-day period prescribed by Rule 58 of the Rules of Civil Procedure" or "within thirty days after service upon the party of a copy of the judgment if service was not made within that three day period." Since 8 December 2008 is much more than 30 days after 10 March 2008 and since the record contains no indication that Caveator filed any sort of motion that would have tolled the running of the 30-day period specified in N.C.R.App. P. 3(c), the only way in which Caveator's notice of appeal could have been timely would have been if there had been a substantial delay in the service of the sanctions order. The record is completely silent, however, as to when, if ever, the sanctions order was served upon Caveator, which precludes us from determining that Caveator noted his appeal from the sanctions order in a timely manner. According to well-established North Carolina

law, the record on appeal should "contain a showing of the jurisdiction of the appellate court." *Love v. Moore*, 305 N.C. 575, 582, fn. 1, 291 S.E.2d 141, 147, fn. 1 (1982). "The provisions of Rule 3 are jurisdictional, and failure to follow the rule's prerequisites mandates dismissal of an appeal." *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008). Given the complete absence of any showing in the record on appeal that Caveator appealed the sanctions order in a timely manner, we have no alternative except to dismiss Caveator's appeal from the sanctions order as untimely.

[17] We do, however, have the authority, in the exercise of our discretion, to treat the record on appeal and briefs as a petition for writ of certiorari pursuant to N.C. R.App. P. 21(a)(1), to grant the petition, and to then review Caveator's challenge to the sanctions order on the merits. See *Anderson v. Hollifield*, 345 N.C. 480, 482, 480 S.E.2d 661, 663 (1997) (holding "that Rule 21(a)(1) gives an appellate court the authority to review the merits of an appeal by certiorari even if the party has failed to file notice of appeal in a timely manner"). Although we have concluded **120 that Caveator failed to note a timely appeal from the sanctions order, there is no question but that he proceeded, albeit mistakenly, in good faith in waiting until the trial court entered a final order in the caveat proceeding before noting his appeal from the *75 sanctions order. In view of our preference for deciding appeals on the merits, *Dogwood Development*, 362 N.C. at 198-99, 657 S.E.2d at 365, and the fact that Caveator's delay actually prevented us from having to consider multiple appeals arising from the same basic set of facts, we conclude that we should exercise our discretion and grant certiorari pursuant to N.C.R.App. P. 21(a) in order to reach the merits of Caveator's challenge to the sanctions order.

3. Applicability of Rules of Civil Procedure

[18] Caveator's initial challenge to the sanctions order rests on a contention that the Rules of Civil Procedure do not apply to estate matters pending before the Clerk, so that the trial court erred by sanctioning him pursuant to N.C. Gen.Stat. § 1A-1, Rule 11. According to Caveator, this Court held in *In re Estate of Newton*, 173 N.C.App. 530, 537-38, 619 S.E.2d 571, 575, *disc. review denied*, 360 N.C. 176, 625 S.E.2d 786 (2005), that:

While respondent would have us conclude that any estate matter is subject to the Rules of Civil Procedure by virtue of its nature and similarity to a special proceeding, we note that, as detailed above, trustee removal proceedings are held “in an estate matter and *not in a special proceeding or in a civil action.*” N.C. Gen.Stat. § 36A–26.1 (emphasis added). Although Chapter 36A does not expressly or “otherwise” prescribe “differing [rules of] procedure,” we are not persuaded that, in addition to the duties already placed upon them, clerks of court must also make decisions regarding discovery and other issues of law arising during estate matters. Instead, we conclude that the clerks of our superior courts hear the matters before them summarily, and are responsible for determining questions of fact rather than providing judgment in favor of one party or the other. Thus, where a clerk of superior court is presented with a petition to remove a trustee, the clerk examines the affidavits and evidence of the parties and determines only whether the trustee is qualified or fit to faithfully discharge his or her duties. The process due to the parties during such a determination, having not been expressly prescribed by statute, is only that which is reasonable when applying general principles of law. *See Edwards v. Cobb*, 95 N.C. 5, 12 (1886) (“The statute conferring power on the Clerk to remove executors and administrators, does not prescribe in terms how the facts in such matters shall be ascertained, but it plainly implies that he shall act promptly and summarily. Applying general principles of law, *76 the method of procedure we have above indicated, or one substantially like it, is the proper one.”)

After noting that a proceeding to remove an executor or administrator of an estate “was not a civil action, but a proceeding concerning an estate matter, which was exclusively within the purview of the Clerk’s jurisdiction, and over which the Superior Court retained appellate, not original, jurisdiction,” *In re Parrish*, 143 N.C.App. 244, 251, 547 S.E.2d 74, 78, *disc. review denied*, 354 N.C. 69, 553 S.E.2d 201 (2001); that Executors’ sanctions motion had been filed while the revocation petition was still pending before the Clerk; and that the issues raised by the revocation petition had been resolved by a Memorandum of Judgment that had been entered with the consent of the parties, Caveator argues that, since this matter had never been appealed to the Superior Court, the trial court never obtained jurisdiction to act on the sanctions motion. We disagree.

[19] [20] The North Carolina Rules of Civil Procedure “govern the procedure ... in all actions and proceedings

of a civil nature except when a differing procedure is prescribed by statute.” N.C. Gen.Stat. § 1A–1, Rule 1. The “phrase ‘all actions and proceedings of a civil nature’ [is] inclusive of, but not exclusive to, civil actions; the phrase is broad and encompasses different types of legal actions, not solely those initiated with a complaint.” *In re Estate of Rand*, 183 N.C.App. 661, 663, 645 S.E.2d 174, 175, *disc. rev. denied*, 361 N.C. 568, 650 S.E.2d 601 (2007). According to N.C. Gen.Stat. § 1–393, “[t]he Rules of Civil Procedure and the provisions of this Chapter on civil procedure are applicable to special proceedings, except as otherwise provided.” *See also Virginia Electric and Power Co. v. Tillett*, 316 N.C. 73, 76, 340 S.E.2d 62, 65, *cert. denied*, 317 N.C. 715, 347 S.E.2d 457 (1986) (stating that, “[e]ven where an action is a special proceeding, the Rules of Civil Procedure are made applicable by N.C. [Gen.Stat.] § 1–393 ...”). A proceeding for the revocation of previously-issued letters testamentary initiated pursuant to N.C. Gen.Stat. § 28A–9–1 “constitutes a special proceeding.” *In re Estate of Sturman*, 93 N.C.App. 473, 475, 378 S.E.2d 204, 205 (1989) (citing *Phil Mechanic Construction Co. v. Haywood*, 72 N.C.App. 318, 321, 325 S.E.2d 1, 2 (1985)). As a result, “an estate proceeding is a ‘proceeding of a civil nature’ ” in which a Superior Court Judge has the authority to impose sanctions pursuant to N.C. Gen.Stat. § 1A–1, Rule 11. *In re Estate of Rand*, 183 N.C.App. at 661, 645 S.E.2d at 175.

Although Caveator’s challenge to the trial court’s jurisdiction is understandable given certain language that appears in our prior decisions *77, we conclude that the position advocated by Executors and adopted by the trial court is, on balance, the more persuasive one. We reach this conclusion for several reasons.

First, while *Estate of Newton*, upon which Caveator places principal reliance, clearly states that “trustee removal proceedings are held ‘in an estate matter and *not in a special proceeding or in a civil action*’ ” to which the Rules of Civil Procedure apply and refuses, for that reason, to overturn the Clerk’s decision despite the absence of “discovery as well as twenty days to prepare a responsive pleading following the denial of his motions to dismiss,” 173 N.C.App. at 537–38, 619 S.E.2d at 575, we do not find *Estate of Newton* controlling for several reasons. First, *Estate of Newton* deals with trustee removal proceedings, while at least one other relevant decision involves a proceeding initiated for the purpose of removing an executor or administrator. As a result, we believe that other decisions are more directly on point than *Estate of Newton* despite the fact that *Estate of Newton* certainly

references the removal of executors and administrators. Secondly, *Estate of Newton* does not hold that all components of the Rules of Civil Procedure are irrelevant to trustee removal proceedings; instead, *Estate of Newton* simply held that traditional discovery procedures and the twenty-day period within which a party is allowed to file a responsive pleading following the denial of a dismissal motion were not required in trustee removal proceedings. In other words, *Estate of Newton* does not address the extent to which a remedy for filings that lack an adequate basis in law or fact or which have been filed for an improper purpose should be provided. Thirdly, the statutory provision upon which *Estate of Newton* relies, N.C. Gen.Stat. § 36A-26.1, was repealed effective 1 January 2006. 2005 N.C. Sess. L. c. 192. s. 1. The current statutory provision governing the procedures to be employed in trust-related proceedings contains language that closely tracks that of N.C. Gen.Stat. § 1A-1, Rule 11(a), indicating that relief for the filing of meritless trustee removal petitions is now available. Accepting Caveator's argument, on the other hand, would effectively countenance the filing of frivolous petitions seeking the removal of administrators or executors without any remedy being available for the injured fiduciary, which is not consistent with what we believe to have been the General Assembly's intent. As a result, we do not believe that *Estate of Newton* compels the conclusion that N.C. Gen.Stat. § 1A-1, Rule 11 does not apply in the removal petition context.

*78 Instead of focusing on *Estate of Newton*, we believe that *Estate of Sturman* and *Estate of Rand* are more relevant to the present discussion. As we have already noted, *Estate of Sturman* states that a revocation proceeding is a special proceeding. 93 N.C.App. at 476, 378 S.E.2d at 206. Given that N.C. Gen.Stat. § 1-393 provides that the Rules of Civil Procedure, including N.C. Gen.Stat. § 1A-1, Rule 11, apply in special proceedings, *Estate of Sturman* establishes that relief under N.C. Gen.Stat. § 1A-1, Rule 11, is available in revocation proceedings. Furthermore, without making any mention of *Estate of Sturman* and while citing the very **122 language from *Estate of Newton* upon which Caveator relies, *Estate of Rand* noted "the lack of any authority to suggest the Rules [of Civil Procedure] do not apply to estate proceedings." 183 N.C.App. at 664, 645 S.E.2d at 176. Thus, the weight of authority establishes that relief under N.C. Gen.Stat. § 1A-1, Rule 11, is available in revocation proceedings conducted pursuant to N.C. Gen.Stat. § 28A-9-1.

[21] [22] Finally, Caveator argues that the trial court erred by hearing and deciding the sanctions issue despite the fact the issues raised by the revocation petition had already been resolved and the fact that the Superior Court typically acts in an appellate capacity in estate-related matters. However, according to well-established North Carolina law, the filing of a dismissal does not deprive the trial court of jurisdiction to consider a sanctions motion. *Bryson*, 330 N.C. at 653, 412 S.E.2d at 331 (stating that "[d]ismissal does not deprive the court of jurisdiction to consider collateral issues such as sanctions that require consideration after the action has been terminated") (citing *In re Peoples*, 296 N.C. 109, 146, 250 S.E.2d 890, 911 (1978), cert. denied, 442 U.S. 929, 99 S.Ct. 2859, 61 L.Ed.2d 297 (1979)). Moreover, by the time that the trial court heard the sanctions motion, Caveator had filed a caveat challenging the 20 February 2006 will. Pursuant to N.C. Gen.Stat. § 31-36, upon the filing of a caveat, the "clerk of superior court shall forthwith issue an order that shall apply during the pendency of the caveat to any personal representative, having the estate in charge," suspending the administration of the estate except for the "preserv[ation of] the property of the estate," the "pursu[it] and prosecut[ion of] claims that the estate may have against others," the "fil[ing of] all appropriate tax returns," and the payment of "taxes; funeral expenses of the decedent; debts that are a lien upon the property of the decedent; claims against the estate that are timely filed; professional fees related to administration of the estate, including fees for tax return preparation, appraisal fees, and attorney's fees for estate administration." See also *79 *In re Will of Tatum*, 233 N.C. 723, 729, 65 S.E.2d 351, 355 (1951) (stating that, "[u]nder the provisions of [N.C. Gen.Stat. §] 31-36, the executor is charged with the preservation of the estate pending final determination of the issue raised by the caveat, unless and until he be removed") (citing *Edwards v. McLawhorn*, 218 N.C. 543, 11 S.E.2d 562 (1940); *Elledge v. Hawkins*, 208 N.C. 757, 182 S.E. 468 (1935); and *In re Will of Palmer*, 117 N.C. 133, 23 S.E. 104 (1895)). Furthermore, when the pleadings "raised an issue of *devisavit vel non* and necessitated transfer of the cause to the civil issue docket for trial by jury," "jurisdiction to determine the whole matter in controversy, as well as the issue of *devisavit vel non*, passed to the Superior Court in term." *In re Will of Wood*, 240 N.C. 134, 136, 81 S.E.2d 127, 128 (1954); see also *In re Will of Charles*, 263 N.C. 411, 416, 139 S.E.2d 588, 591 (1965) (stating that, "[w]hen a caveat is filed[,] the Superior Court acquires jurisdiction of the whole matter in controversy"). Based upon these legal principles, we conclude that, given the suspension of the administration of the estate, which is a process necessarily

overseen by the Clerk of Superior Court; the necessity for continued supervision over contested estate-related issues by some component of the General Court of Justice; and the fact that the Superior Court has jurisdiction, in the aftermath of the filing of a caveat, over “the whole matter in controversy,” *Will of Wood*, 240 N.C. at 136, 81 S.E.2d at 128, the Superior Court was the division of the General Court of Justice with jurisdiction to hear and decide the sanctions motion following the filing of the caveat, so that the trial court did not err by hearing and deciding the sanctions motion.

4. Appropriateness of Sanctions Order

[23] The trial court made the following findings of fact in the sanctions order:

1. [Caveator] affirmed by Verified Complaint that [Executors] obtained letters testamentary by falsely representing a purported will to be the genuine last will and testament of [Decedent].

2. Under the terms of this February 20, 2006 Will, the eight living nieces and nephews of [Decedent], including the **123 Co-Executors, inherit equal shares of the estate.

3. Under the provisions of a previous July 27, 1983 Will, [Caveator] was to inherit 50% of the estate, with the other 50% going to Aldersgate Methodist Church.

*80 4. If the Will submitted by Ms. Pharr and Mr. Durham is genuine, [Caveator] and the Church are disinherited. By letter to this Court, the Church has disclaimed any interest in these proceedings.

5. On its face, the 2006 Will appears to be a valid attested written will. It was prepared by the offices of Levine & Stewart, notarized by Patricia F. Clapper, a Notary Public, Certified Paralegal, and staff member of Levine & Stewart. The Will was witnessed by attorney John T. Stewart, and by Catherine L. McLean, who was at that time employed as a receptionist at Levine & Stewart, and is currently a law student attending Wake Forest Law School.

8. [Caveator] affirmed that each of the signatures of [Decedent], appearing on: (1) Resignation of Executor 06 E 296;³ (2) Inventory for Decedent's Estate 06 E 296; (3) Final Account 06 E 296, and (4) Statement of Receipt of Funds 06 E 296, are not the signatures of [Decedent].

Patricia F. Clapper notarized each of these signatures, just like the signature on the Will. Neither [Caveator] nor any representative of [Caveator] has ever contacted Ms. Clapper with respect to the alleged falsification of her Notary Seal.

9. [Caveator] affirmed that each of the signatures of [Decedent] appearing on the Oath of Executor in 06 E 296 and a General Warranty Deed are not the signatures of [Decedent]. Karen W. Wolfe, a Chatham County Notary Public, notarized these signatures. Neither [Caveator] nor any representative of [Caveator] has ever contacted Ms. Wolfe regarding the alleged falsification of her Notary Seal.

10. [Caveator] affirmed that the Co-Executors, Ida Pharr and Frank Durham, were both disqualified under N.C. Gen.Stat. § 28A-4-2. Neither person was or is so disqualified.

11. [Caveator] affirmed that the Co-Executors violated a fiduciary duty through default or misconduct in the execution of their office, but in fact indicates no such default or misconduct with respect to any actions taken in the execution of their office as Executors. The Complaint instead makes numerous allegations concerning activities prior to the death *81 of [Decedent], including the forgery of all the notarized documents listed hereinabove.

12. [Caveator] affirmed that the Co-Executors have a private interest that would be adverse to fair administration of the [Decedent's] Estate, in that a fair administration would require an accounting of their actions as fiduciaries prior to the death of [Decedent]. Unless the 2006 Will is invalidated, [Caveator] is not a beneficiary of the [Decedent's] Estate entitled to such an accounting. Counsel for the Estate has offered to provide such an accounting upon request to any beneficiary of the 2006 Will.

Based upon these findings of fact, the trial court concluded as a matter of law that:

2. Under the application of N.C. Gen.Stat. § 1A-1, Rule 11, by signing a pleading or other paper, a party certifies that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact, warranted by existing law, and not interposed for any

improper purpose. A violation [of] any of these three requirements justifies the Court in awarding sanctions.

3. [Caveator's] affirmations concerning the Will and other notarized documents are not well grounded in fact ****124** based upon knowledge, information or belief that was formed as the result of any reasonable inquiry. Neither [Caveator] nor any representative made any inquiry whatsoever that would provide an adequate factual basis to contend the Will and notarized documents were forgeries requiring the falsification of independent witness signatures or Notary Seals, much less the kind of investigation that would support the contention that all of these documents were executed by some sort of imposter.
4. [Caveator's] Complaint was not warranted by existing law; not one of the grounds to revoke letters testamentary was present under 28A-9-1(a).
5. Given the self-serving nature of [Caveator's] attempt to challenge his disinheritance, combined with the fact that his affirmations in the Complaint were not well grounded in fact or warranted by existing law, and were asserted without inquiry, reasonable or otherwise, the Court strongly infers and ***82** hereby concludes that the Complaint was asserted for an improper purpose.
6. [Caveator] has violated each of the prongs of Rule 11, and is subject to sanction by this Court.
7. The Court concludes that it is fair and reasonable to require [Caveator] to reimburse the costs in attorneys fees incurred by virtue of his violation of Rule 11, in the amount submitted by Affidavit of Counsel for the Estate.

Since Caveator has not challenged any of the trial court's findings of fact, they are binding on us for purposes of appeal. *Static Control Components*, 152 N.C.App. at 603, 568 S.E.2d at 308 (stating that "findings of fact to which plaintiff has not assigned error and argued in his brief are conclusively established on appeal") (citing *Inspirational Network, Inc. v. Combs*, 131 N.C.App. 231, 235, 506 S.E.2d 754, 758 (1998)). As a result, our review of the sanctions order is limited to determining whether the trial court's findings of fact support its conclusions of law and whether its conclusions of

law rest on a correct understanding of the applicable statutory provisions.

N.C. Gen.Stat. § 28A-9-1 (a) provides that "[l]etters testamentary, letters of administration, or letters of collection may be revoked after hearing on any of the following grounds:

1. The person to whom they were issued was originally disqualified under the provisions of [N.C. Gen.Stat. §] 28A-4-2 or has become disqualified since the issuance of letters.
2. The issuance of letters was obtained by false representation or mistake.
3. The person to whom they were issued has violated a fiduciary duty through default or misconduct in the execution of his office, other than acts specified in [N.C. Gen.Stat. §] 28A-9-2.
4. The person to whom they were issued has a private interest, whether direct or indirect, that might tend to hinder or be adverse to a fair and proper administration. The relationship upon which the appointment was predicated shall not, in and of itself, constitute such an interest.

According to N.C. Gen.Stat. § 28A-9-1(b), the issue of whether letters testamentary should be revoked may be raised by a "verified complaint" filed by "any person interested in the estate."

***83** The qualifications required for obtaining or retaining letters testamentary are set out in N.C. Gen.Stat. § 28A-4-2, which provides that:

No person is qualified to serve as a personal representative who:

- (1) Is under 18 years of age;
- (2) Has been adjudged incompetent in a formal proceeding and remains under such disability;
- (3) Is a convicted felon, under the laws of either the United States or of any state or territory of the United States, or of the District of Columbia and whose citizenship has not been restored;
- (4) Is a nonresident of this State who has not appointed a resident agent to accept service of process in all actions or ****125** proceedings with respect to the estate, and caused such appointment to be filed with the court; or

- who is a resident of this State who has, subsequent to appointment as a personal representative, moved from this State without appointing such process agent;
- (5) Is a corporation not authorized to act as a personal representative in this State;
 - (6) Repealed by Session Laws 1999-133, s. 1, effective January 1, 2000.
 - (7) Has lost his rights as provided by Chapter 31A;
 - (8) Is illiterate;
 - (9) Is a person whom the clerk of superior court finds otherwise unsuitable; or
 - (10) Is a person who has renounced either expressly or by implication as provided in [N.C. Gen.Stat. §] 28A-5-1 and 28A-5-2.

The trial court specifically found that neither Ms. Pharr nor Frank Durham was disqualified from serving as a co-executor of Decedent's estate under N.C. Gen.Stat. § 28A-4-2. The only statutory basis for disqualification upon which Caveator relies in challenging the trial court's determination is N.C. Gen.Stat. § 28A-4-2(9), with this contention based on [Frank] Durham's criminal record and "the circumstances *84 of the case." However, N.C. Gen.Stat. § 28A-4-2(3) specifically addresses the ability of a convicted felon to serve as a personal representative and allows such a person to do so as long as his or her rights have been restored. The record contains no indication that Frank Durham's rights have not been restored. Furthermore, Caveator made no reference to "the circumstances of the case" in his original revocation petitions as a basis for seeking the revocation pursuant to N.C. Gen.Stat. § 28A-9-1(a)(1). *State v. Sharpe*, 344 N.C. 190, 195, 473 S.E.2d 3, 6 (1996) (stating that "[i]t is well settled in this jurisdiction that [a party] cannot argue for the first time on appeal [a] new ground for admission that he did not present to the trial court"). As a result, the trial court correctly concluded that Caveator's petition set forth no lawful basis for revocation pursuant to N.C. Gen.Stat. § 28A-9-1 (a)(1).

[24] [25] Secondly, the record contains no indication that the letters testamentary issued to Executors were "obtained by false representation or mistake." N.C. Gen.Stat. § 28A-9-1(a)(2). In seeking to obtain revocation based upon this statutory provision, Caveator argued in the revocation petition that Executors obtained the issuance of the disputed letters testamentary "by the false representation that the [20

February 2006 will] was the genuine last will and testament of Decedent" and that Executors "falsely stated the known value of the estate, in that they were personally aware of assets exceeding the amount she listed." "The filing of a caveat is the customary and statutory procedure for an attack upon the testamentary value of a paperwriting which has been admitted by the clerk of superior court to probate in common form." *In re Will of Spinks*, 7 N.C.App. 417, 423, 173 S.E.2d 1, 5 (1970). As a result, a caveat, and not a revocation petition, is the proper method for challenging the validity of a disputed will once it has been admitted to probate. In addition, there is no evidence that the increase in the value of the assets in Decedent's estate shown in the filings made by Executors constitutes proof of fraudulent concealment of assets. Furthermore, even if Executors falsely and materially understated the value of the assets in the estate in these filings, there is no basis for believing that any such false and material understatement contributed to the Clerk's decision to issue letters testamentary to Executors. As a result, the revocation petition provides no basis in law for the revocation of the letters testamentary issued to Executors pursuant to N.C. Gen.Stat. § 28A-9-1(a)(2).

Thirdly, the record does not establish any basis for a conclusion that Executors "violated a fiduciary duty through default or misconduct *85 in the execution of [their] office, other than acts specified in [N.C. Gen.Stat. §] 28A-9-2." Although the revocation petition alleges that this ground for revocation exists to the extent that "such assets are no longer property of the estate as a result of [Executors'] embezzlements or mismanagement, **126 or insofar as [Executors] have been attempting to abscond with the assets without listing them with the Court," we understand this allegation to refer to events that Caveator believes to have occurred prior to the issuance of the letters testamentary that Caveator seeks to have revoked. Aside from the fact that Caveator has offered no evidence beyond mere speculation that such acts of "embezzlement or mismanagement" occurred, the acts that Caveator hypothesizes do not constitute "default or misconduct in the execution of [Executors'] office." N.C. Gen.Stat. § 28A-9-1(a)(3). As we have already noted, the mere fact that the value of the assets listed on a later filing was substantially higher than the value of the assets listed on the initial application does not, without more, show any breach of fiduciary duty. As a result, the revocation petition does not adequately allege grounds for revocation pursuant to N.C. Gen.Stat. § 28A-9-1(a)(3).

Fourth, the record does not establish that Executors labored under any sort of “private interest, whether direct or indirect, that might tend to hinder or be adverse to a fair and proper administration....” N.C. Gen.Stat. § 28A–9–1(a)(4). According to Caveator, grounds for revocation pursuant to N.C. Gen.Stat. § 28A–9–1(a)(4) exist because “any fair and proper administration of the estate would require legal action to force [Executors] to account for their acts in their fiduciary capacity to [Decedent] and [Decedent’s] estate.” The entire basis for Caveator’s contention is his unsupported belief that Executors engaged in acts of misconduct with respect to Decedent’s property prior to Decedent’s death. In the absence of any ability to prove the existence of such acts of misconduct, Caveator cannot establish the necessary “private interest” required to support a request for removal pursuant to N.C. Gen.Stat. § 28A–9–1(a)(4). Thus, this aspect of the removal petition lacks an adequate basis in law as well.

An even more fundamental problem with the filing of the revocation petition is that Caveator lacked standing to file it. A revocation petition may be filed by a “person interested in the estate.” N.C. Gen.Stat. § 28A–9–1(b). At the time the revocation petition was filed, the 20 February 2006 will had been admitted to probate. Caveator was not entitled to share in Decedent’s estate under the 20 February 2006 will. *86 As a result, Caveator had no standing to seek to have Executors removed as the co-executors of Decedent’s estate at the time that he filed the revocation petition. Thus, although this issue is not specifically mentioned in the trial court’s conclusions of law, the revocation petition lacked any basis in law for this reason as well.

[26] Caveator argues that, to the extent that his “counsel may have erred in his analysis of N.C. Gen.Stat. § 28A–9–1(a), such error is the responsibility of [Caveator’s] counsel and not Caveator, who relied on the advice and analysis in good faith.” Although “good faith reliance on an attorney’s advice preclude[s] sanctions against the party under the legal sufficiency prong” of N.C. Gen.Stat. § 1A–1, Rule 11, *Brooks v. Giesey*, 334 N.C. 303, 309, 432 S.E.2d 339, 342 (1993) (citing *Bryson*, 330 N.C. at 662, 412 S.E.2d at 336), the trial court did not find, as it did in *Bryson*, that Caveator acted in good faith in reliance on advice provided by his attorney. Although Caveator’s argument might have merit in the event that the record reflected that it had been presented to the trial court, *Taylor v. Collins*, 128 N.C.App. 46, 53, 493 S.E.2d 475, 480 (1997) (holding that an award of sanctions against a litigant were inappropriate where the litigant’s counsel “frankly admit[ted] that at all times, [the plaintiff]

relied on his advice as to the legal and factual sufficiencies of the action”), we are unable to find any indication that Caveator advanced this claim in the court below. *In re Estate of Peebles*, 118 N.C.App. 296, 301, 454 S.E.2d 854, 858 (1995) (stating that “caveator argues for the first time on appeal that ... the trial court erred in denying her motion” and that “[b]ecause the trial court never had the opportunity to consider the issue, it is not properly before us on appeal”). As a result, Caveator is not entitled to rely on his “good faith reliance on the advice of counsel” argument on appeal.

Thus, the trial court correctly concluded that the revocation petition was not well-grounded in law. **127 *Jackson v. Jackson*, 192 N.C.App. 455, 467, 665 S.E.2d 545, 553 (2008) (upholding trial court’s decision to sanction litigant for filing a motion requiring that the opposing party show cause why she should not be held in contempt when the alleged violations did not justify a finding of contemptuous behavior). Having reached this conclusion, we need not examine whether the trial court correctly concluded that Caveator was subject to sanctions on the grounds that the revocation petition was factually insufficient or filed for an improper purpose and express no opinion on that subject. In addition, since Caveator has not challenged the actual sanction imposed in the trial court’s order, we need not consider *87 whether the trial court erred by ordering Caveator to pay \$4,255.75 to Executors’ counsel. As a result, for all of the reasons set forth above, the sanctions order is affirmed.

B. Summary Judgment Concerning Caveat

[27] Finally, Caveator appeals from the trial court’s order granting summary judgment in favor of Executors in the caveat proceeding. “A caveat is an ‘attack upon the validity of the instrument purporting to be a will. The will and not the property devised is the *res* involved in the litigation.’ ” *In re Will of Mason*, 168 N.C.App. 160, 162, 606 S.E.2d 921, *disc. review denied*, 359 N.C. 411, 613 S.E.2d 26 (2005) (quoting *In re Will of Cox*, 254 N.C. 90, 91, 118 S.E.2d 17, 18 (1961)). Although the caveat filed by Caveator challenged the validity of the 20 February 2006 will on the grounds that Decedent lacked testamentary capacity and that the 20 February 2006 will had been procured by undue influence on the part of Executors, among other things, Caveator’s challenges to the trial court’s order on appeal are limited to arguments that it erred in granting summary judgment on the execution and undue influence issues.

1. Standard of Review

The extent to which summary judgment is appropriate depends on whether there is any genuine issue of material fact and whether the moving party is entitled to “judgment as a matter of law.” N.C. Gen.Stat. § 1A-1, Rule 56(c); *In re Will of Priddy*, 171 N.C.App. 395, 396, 614 S.E.2d 454, 456 (2005). In ruling on a motion for summary judgment, the court may consider “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits.” N.C. Gen.Stat. § 1A-1, Rule 56(c); *In re Will of McCauley*, 356 N.C. 91, 100, 565 S.E.2d 88, 95 (2002). All of the evidence presented for the trial court's consideration must be viewed in the light most favorable to the non-moving party. *NationsBank of North Carolina, N.A. v. Parker*, 140 N.C.App. 106, 108-09, 535 S.E.2d 597, 599 (2000) (citation omitted).

2. Proper Execution

[28] [29] “In a caveat proceeding, the burden of proof is upon the propounder to prove that the instrument in question was executed with the proper formalities required by law.” *In re Will of Coley*, 53 N.C.App. 318, 320, 280 S.E.2d 770, 772 (1981). On appeal, Caveator contends that the 20 February 2006 will was admitted to probate as a self-proved will and that the requirements for a valid self-proved will *88 include “acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal [.]” N.C. Gen.Stat. § 31-11.6(a). A valid acknowledgment, according to Caveator, requires the person to be either “personally known” to the notary or to be identified through the use of “satisfactory evidence.” N.C. Gen.Stat. § 10B-3 (1)(b). “Satisfactory evidence” is defined in N.C. Gen.Stat. § 10B-3(22) as “[a]t least one current document issued by a federal, state or state-recognized trihal agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual.” According to Caveator, the affidavit of the notary who witnessed the 20 February 2006 will does not state whether she asked Decedent for any of the types of identification required by statute or “administered any oaths or affirmations to persons accompanying [Decedent] who would identify him as” Decedent.

Although Caveator contends that the failure of the notary's affidavit to address the identification question raises an issue of fact **128 sufficient to defeat Propounders' summary judgment motion, we are not persuaded by his logic. The acknowledgment and oath utilized in the 20 February 2006 will are in substantial compliance with the forms set out in N.C. Gen.Stat. § 31-11.6(a). The fact that the notary's affidavit is silent as to whether Decedent was personally known to the notary or produced “satisfactory evidence” of his identity does not show a lack of compliance with N.C. Gen.Stat. § 10B-3(1)(b) given that the issues of personal knowledge or “satisfactory evidence” are simply not addressed in that affidavit. Were we to hold that a genuine issue of material fact as to the validity of the 20 February 2006 will arose from the failure of the notary's affidavit to address the identification issue, no self-proved will would be sufficient to support and sustain a summary judgment motion in a caveat proceeding. Such a result is inconsistent with the very concept of a self-proved will. As a result, the trial court properly granted summary judgment in Executors' favor on the execution issue.

3. Undue Influence

[30] [31] [32] [33] [34] The Supreme Court has defined “undue influence” as:

something operating upon the mind of the person whose act is called in judgment, of sufficient controlling effect to destroy free agency and to render the instrument, brought in question, not *89 properly an expression of the wishes of the maker, but rather the expression of the will of another. “It is the substitution of the mind of the person exercising the influence for the mind of the testator, causing him to make a will which he otherwise would not have made.”

In short, undue influence, which justifies the setting aside of a will, is a fraudulent influence, or such an overpowering influence as amounts to a legal wrong. It is close akin to coercion produced by importunity, or by a silent, resistless power, exercised by the strong over the weak, which could not be resisted, so that the end reached is tantamount to the effect produced by the use of fear or force.

In re Will of Jones, 362 N.C. 569, 574, 669 S.E.2d 572, 574 (2008), (quoting *In re Will of Turnage*, 208 N.C. 130, 132, 179 S.E. 332, 333 (1935)). “The four general elements of undue influence are: (1) decedent is subject to influence, (2) beneficiary has an opportunity to exert influence, (3)

beneficiary has a disposition to exert influence, and (4) the resulting will indicates undue influence.” *In re Will of Smith*, 158 N.C.App. 722, 726, 582 S.E.2d 356, 359 (2003). “[U]ndue influence is generally proved by a number of facts, each one of which standing alone may be of little weight, but taken collectively may satisfy a rational mind of its existence.” *Hardee v. Hardee*, 309 N.C. 753, 757, 309 S.E.2d 243, 246 (1983) (citation and quotation marks omitted). Seven factors are traditionally considered in evaluating whether undue influence occurred, including:

1. Old age and physical and mental weakness.
2. That the person signing the paper is in the home of the beneficiary and subject to his constant association and supervision.
3. That others have little or no opportunity to see him.
4. That the will is different from and revokes a prior will.
5. That it is made in favor of one with whom there are no ties of blood.
6. That it disinherits the natural objects of his bounty.
7. That the beneficiary has procured its execution.

In re Will of Andrews, 299 N.C. 52, 55, 261 S.E.2d 198, 200 (1980) (quoting *90 *In re Will of Mueller*, 170 N.C. 28, 30, 86 S.E. 719, 720 (1915)). A caveator need not demonstrate the existence of every factor named in *Will of Andrews* in order to prove undue influence. *In re Estate of Forrest*, 66 N.C.App. 222, 225, 311 S.E.2d 341, 343, *aff'd and remanded*, 311 N.C. 298, 316 S.E.2d 55 (1984). Instead, there is a “need to apply and weigh each factor in light of the differing factual setting of each case.” *Will of Jones*, 362 N.C. at 575, 669 S.E.2d at 578. If a reasonable mind could infer from such evidence that the purported last will and testament is not the product of the testator’s “free and unconstrained act,” but is rather the result of **129 “overpowering influence... sufficient to overcome [the] testator’s free will and agency,” then “the case must be submitted to the jury” for its consideration. *Will of Andrews*, 299 N.C. at 56, 261 S.E.2d at 200. Such a determination requires us to “engag[e] in a heavily fact-specific inquiry.” *Will of Jones*, 362 N.C. at 575, 669 S.E.2d at 577.

[35] In contending that the trial court erred by granting summary judgment in favor of Executors on the undue influence issue, Caveator argues that, at the time the 20 February 2006 will was executed, Decedent was 96 years old,

distraught over his wife’s death, depressed, in poor health, hard of hearing, and suicidal. In addition, Dr. Dale Bieber indicated in his affidavit that, as of May, 2004, Decedent “demonstrated a tendency to depression and anxiety;” that, “[a]t that time,” his “depressive symptoms included talking about his life ending, talking about going to sleep and not waking up,” and “express[ing] some suicidal thoughts; and that the Ativan that had been prescribed for Decedent’s “distress and agitation often has a tendency to disorient.” As of 28 February 2006, a colleague of Dr. Bieber’s noted that Decedent “demonstrated passive suicidal tendencies, in other words he didn’t care whether his life continued.” According to Dr. Bieber, Decedent “was susceptible to the influence of others and relied on others for constant care toward the end of his treatment” due to his “constant depressive state.” However, while Decedent’s advanced age is undisputed, medical records stemming from a hospital visit on 19 February 2006 indicate that he was “alert” and “oriented X 3.” Furthermore, the affidavit of the attorney who drafted the 20 February 2006 will stated that, despite his age, Decedent was in command of his mental faculties. Thus, although Caveator’s evidentiary forecast does suggest that Decedent suffered from difficulties associated with extreme old age, none of the evidence forecast by Caveator tends to show that Decedent’s condition resulted in his will actually being overborne at the time that the 20 February 2006 will was executed.

*91 Secondly, Caveator argues “that others have [had] little or no opportunity to see” Decedent. According to Caveator, Executors removed Decedent from his residence, obtained exclusive control over him, and prevented Caveator from visiting him. However, the record reveals that the majority of the period during which Caveator claims to have been denied access to Decedent occurred after the execution of the 20 February 2006 will. Executors made initial contact with Decedent on 19 February 2006, some twenty-four hours prior to the execution of the 20 February 2006 will. During the period between Executors’ initial contact with Decedent and the execution of the 20 February 2006 will, Decedent visited the hospital and consulted two different attorneys in two separate offices. In this same general time frame, Decedent informed law enforcement officers that “he was scared of [Caveator] and thought he was going to try and kill him.” As a result, the undisputed evidence indicates that Decedent was in regular contact with people other than Executors during the time prior to the execution of the 20 February 2006 will and expressly indicated to such persons that he did not wish to have contact with Caveator.

Thirdly, Caveator argues that “the [20 February 2006] will is different [from] and revokes a prior will.” While Caveator’s statement is accurate, an affidavit by the drafter of the 20 February 2006 will explains that Decedent “stated quite adamantly that he wanted to draw up a new Will in order to take [Caveator] out of his Will.” According to the drafting attorney, this statement was made out of the presence of Executors. Thus, the undisputed evidence concerning the actual drafting of the 20 February 2006 will establishes that the decision to change the terms of Decedent’s estate plan resulted from Decedent’s unhappiness with specific perceived deficiencies in Caveator’s conduct and that Decedent expressed this sentiment out of Executors’ presence.

In addition, Caveator argues that the 20 February 2006 “will disinherits the natural objects of his bounty.” Admittedly, Caveator was Decedent’s adopted grandson. However, the beneficiaries of the 20 February 2006 Will were Decedent’s relatives as well. Both Caveator and the beneficiaries under the 20 **130 February 2006 will were natural objects of decedent’s bounty.

Finally, Caveator submits that Executors procured the execution of the will. In support of this assertion, Caveator relies on a statement in Dr. Bieber’s affidavit that, “[d]ue to [Decedent’s] consistent depressive state, he was susceptible to the influence of others and relied on *92 others for constant care toward the end of his treatment.” The record indicates, however, that Dr. Bieber merely spoke of “tendencies” and that he had no personal knowledge of the events that occurred at the time that the 20 February 2006 will was executed. All of the evidence concerning Decedent’s attitudes at the time that the 20 February 2006 will was executed indicate that Decedent acted in accordance with his own preferences. At the time the disputed will was executed, Decedent had only been in the presence of Propounders for a twenty-four hour period. During that interval, Decedent “clearly and cogently” expressed his desire to disinherit Caveator outside Executors’ presence and met with the drafting attorney and his staff outside Executors’ presence. Caveator points to no evidence suggesting that the Executors in fact procured the will.

As a result, although Caveator argues that five of the seven evidentiary factors set out in *Will of Andrews* exist in this case, we disagree with his analysis. As we have already noted, the fact that Decedent was elderly should not obscure the fact that the record contains no evidence

suggesting that his will was actually overborne, that many people not aligned with Executors saw and communicated with Decedent during the hours surrounding the execution of the 20 February 2006 will, that a number of people heard Decedent expressly state that he wished to disinherit Caveator due to dissatisfaction with his conduct, and that the alleged isolation of Decedent by Executors occurred after the execution of the 20 February 2006 will. At bottom, the fundamental problem with Caveator’s argument is that he has presented no evidence concerning the events that occurred immediately prior to, at the time of, or immediately after the execution of the 20 February 2006 will that has the effect of countering the evidentiary forecast submitted by Executors to the effect that Decedent’s decision to execute the 20 February 2006 will was his free and voluntary choice motivated, at least in part, by his unhappiness with the treatment he had received at the hands of Caveator. The present record simply lacks the sort of evidence upon which the Supreme Court relied in finding the evidentiary forecast relating to the undue influence issue in *Will of Jones* sufficient to withstand a summary judgment motion, such as the testator’s complete dependence on the propounder wife in the weeks leading up to the execution of the disputed will, the wife’s constant surveillance of the testator’s communications with others, the wife’s failure to let the attorney who drafted the prior will communicate with the testator, the wife’s repeated expressions of dissatisfaction with the prior will, and statements by the testator suggesting that his resistance to changing his will in accordance with *93 his wife’s desires was weakening. 362 N.C. at 579–82, 669 S.E.2d at 579–82. As a result, the record amply supports the trial court’s decision to grant summary judgment in favor of Propounders with respect to the undue influence issue. *In re Will of Mason*, 168 N.C.App. at 165, 606 S.E.2d at 924 (holding that summary judgment may be granted in appropriate instances in caveat proceedings).

III. Conclusion

Thus, we conclude that Judge Stephens had the authority to consider the imposition of sanctions pursuant to N.C. Gen.Stat. 1A–1, Rule 11 against Caveator for filing the revocation petition and that his order sanctioning Caveator for filing the revocation petition because it was not well-grounded in law should be affirmed. In addition, we conclude that Judge Fox correctly granted summary judgment in favor of Propounders in the caveat proceeding. As a result, the orders entered below are affirmed.

AFFIRMED.

All Citations

206 N.C.App. 67, 698 S.E.2d 112

Judges GEER and STROUD concur.

Footnotes

- 1 Although Mr. Dixon was the petitioner in connection with the revocation petition and the caveator in connection with the caveat proceeding, we will refer to him as Caveator in the interests of simplicity throughout the remainder of this opinion.
- 2 Although Ms. Pharr and Frank Durham were the co-executors of Decedent's estate for purposes of the revocation proceeding and propounders for purposes of the caveat proceeding, we will refer to them as Executors in the interest of simplicity throughout the remainder of this opinion.
- 3 File No. 06 E 296 was the file in which Mrs. Durham's estate was being administered.

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The 2015 Florida Statutes

[Title XLII](#)
ESTATES AND
TRUSTS

[Chapter 732](#)
PROBATE CODE: INTESTATE SUCCESSION AND
WILLS

[View Entire
Chapter](#)

732.502 Execution of wills.—Every will must be in writing and executed as follows:

(1)(a) *Testator's signature.*—

1. The testator must sign the will at the end; or
2. The testator's name must be subscribed at the end of the will by some other person in the testator's presence and by the testator's direction.

(b) *Witnesses.*—The testator's:

1. Signing, or
2. Acknowledgment:
 - a. That he or she has previously signed the will, or
 - b. That another person has subscribed the testator's name to it,

must be in the presence of at least two attesting witnesses.

(c) *Witnesses' signatures.*—The attesting witnesses must sign the will in the presence of the testator and in the presence of each other.

(2) Any will, other than a holographic or nuncupative will, executed by a nonresident of Florida, either before or after this law takes effect, is valid as a will in this state if valid under the laws of the state or country where the will was executed. A will in the testator's handwriting that has been executed in accordance with subsection (1) shall not be considered a holographic will.

(3) Any will executed as a military testamentary instrument in accordance with 10 U.S.C. s. 1044d, Chapter 53, by a person who is eligible for military legal assistance is valid as a will in this state.

(4) No particular form of words is necessary to the validity of a will if it is executed with the formalities required by law.

(5) A codicil shall be executed with the same formalities as a will.

History.—s. 1, ch. 74-106; s. 21, ch. 75-220; s. 11, ch. 77-87; s. 961, ch. 97-102; s. 42, ch. 2001-226; s. 5, ch. 2003-154.

Note.—Created from former s. 731.07.

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The 2015 Florida Statutes

[Title XLII](#)[Chapter 733](#)[View Entire Chapter](#)

ESTATES AND TRUSTS PROBATE CODE: ADMINISTRATION OF ESTATES

733.107 Burden of proof in contests; presumption of undue influence.—

(1) In all proceedings contesting the validity of a will, the burden shall be upon the proponent of the will to establish prima facie its formal execution and attestation. A self-proving affidavit executed in accordance with s. [732.503](#) or an oath of an attesting witness executed as required in s. [733.201\(2\)](#) is admissible and establishes prima facie the formal execution and attestation of the will. Thereafter, the contestant shall have the burden of establishing the grounds on which the probate of the will is opposed or revocation is sought.

(2) In any transaction or event to which the presumption of undue influence applies, the presumption implements public policy against abuse of fiduciary or confidential relationships and is therefore a presumption shifting the burden of proof under ss. [90.301-90.304](#).

History.—s. 1, ch. 74-106; s. 50, ch. 75-220; s. 83, ch. 2001-226; s. 5, ch. 2002-82; s. 13, ch. 2010-132; s. 3, ch. 2014-127.

Note.—Created from former s. 732.31.

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253 So.2d 697
In re ESTATE of Coketine Bray
CARPENTER, Deceased.
Ben CARPENTER, II, and William Bary
Carpenter, Petitioners,
v.
Mary Redman CARPENTER,
Respondent.
No. 40359.
Supreme Court of Florida.
June 9, 1971.
Rehearing Denied Nov. 4, 1971.

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Header ends here. F. Perry Odom, LeRoy Collins and N. Sanders Sauls, of Ervin, Pennington, Varn & Jacobs, Tallahassee, and George E. Hovis, Leesburg, for petitioners.

Robert M. Sturrup and Thomas A. Thomas, of sturrup & Della-Donna, Fort Lauderdale, for respondent.

Harlan Tuck, of Giles, Hedrick & Robinson, Orlando, for amicus curiae.

McCain, Justice.

By petition for writ of certiorari, we are asked to review the decision of the District Court of Appeal, Fourth District, 239 So.2d 506 (Fla.App.4th, 1970), which reversed the order of the County Judge's Court of Orange County adjudicating that the will of Coketine Bray Carpenter, deceased, was procured by under influence and was therefore void and not entitled to probate.

Conflict is asserted with In Re Estate of MacPhee, 187 So.2d 679 (Fla.App.2d, 1966), and In Re Estate of Reid, 138 So.2d 342 (Fla.App.3rd, 1962), pursuant to Fla.Const. Art. V, Sec. 4(2), F.S.A., and F.A.R. 4.5, subd. c(6), 32 F.S.A. We have jurisdiction.

By her last will and testament, prepared and executed four days before her death, Mrs. Coketine Bray Carpenter left her entire estate outright to her daughter, Mary Redman Carpenter. She left nothing to her three surviving sons, Ben, Sam and Bill. Ben and Bill contested probate of the will on the ground that it was procured by undue influence.

In his order adjudicating the will in question to have been procured by undue influence, the County Judge made the following findings of fact and conclusions of law:

'1. That that certain purported will of Coketine Bray Carpenter, the above decedent * * * was signed by the said decedent at the end thereof in the presence of two attesting witness who were present at the same time the testatrix signed the said will; * * *

'3. That the decedent was a widow and the mother of a grown daughter, Mary, and three grown sons, Ben, Sam, and Bill; that of all her said children the decedent was most fond of Ben; that Ben substantially assisted the decedent, both financially and otherwise, more than her other children; that on many occasions the decedent expressed a considered intention to leave her estate equally to her four children; that there was no evidence that subsequent to such expressions of intent any event transpired which under normal circumstances would have influenced the decedent to depart from her said intention; that there was no evidence that the decedent had ever had a will other than the said purported will; that in the absence of a will the decedent's estate would, by the law of intestacy, have been divided equally among her four children, which fact the decedent is presumed to have known;

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'4. That a confidential relationship existed between Mary and the decedent;

'5. That Mary was active in procuring the execution of the said purported will; that Mary made all the arrangements for the preparation and execution of the said purported will; that Mary kept the execution of the said purported will by the decedent secret from the sons of the decedent, Ben and Bill; * * * that the decedent's doctor was not consulted regarding the decedent's ability to execute a will and was not informed of the said purported will until after the death of the decedent;

'7. That at the time the said purported will was executed on September 1, 1966, for quite some time prior thereto and until her death thereafter, the decedent was very sick physically, depressed, and mentally impaired; that for quite some time prior to the execution of the said purported will the decedent drank alcohol daily, frequently to excess, and often as much as one-fifth gallon of whiskey per day; that the ultimate cause of the decedent's death was the breakdown of her body due to excessive consumption of alcohol; that the decedent's condition was so poor at the time the said purported will was executed that three days prior thereto her physician had concluded she was a terminal case and that four days after the said execution she expired; that the day before the execution of the said purported will the decedent informed an examining physician that she had been depressed for a long period of time; that from prior to the time Mary testified the decedent instructed her to have the said purported will prepared, to-wit: on August 29, 1966, through her death, the decedent was from time to time being given barbiturates, which drugs impair the mind of a normal person and impair the mind of a sick person even more; that at the time the said purported will was executed, the decedent stated that she was leaving her sons out of her estate because they did not love her; that there was no evidence that the decedent's sons did not love her nor was there any evidence which would lead an

unimpaired mind to believe that they did not love her;

'8. That a presumption has been raised that the said execution of the purported will was procured through undue influence;

'9. That the proponent of the said purported will, Mary Carpenter, has not overcome the presumption nor disproved the existence of undue influence in the execution of the said purported will;

'10. That the execution of the said purported will was procured by Mary Carpenter, the proponent thereof, by undue influence; * * *.'

Mary, the proponent, appealed. The District Court of Appeal restated the facts in its opinion, emphasizing certain testimony not included in the findings of the trial judge, as follows:

'At the time of her death in 1966, Mrs. Carpenter was 52 years of age. Her husband had died in 1953 so that when her four children thereafter became grown and moved away, the decedent was left to live alone in the family home in Winter Garden, Florida. During the several years that she did live alone she handled all of her own business and household affairs. In the summer of 1966, Mrs. Carpenter developed cirrhosis of the liver to such an extent that she became quite ill and required hospitalization by her physician on August 28.

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'Mary, oldest of the four children, was employed as a school teacher in Daytona Beach. In the summer of 1966 she attended a ten-week school session at the University of Georgia, at the completion of which she visited her mother on August 20, 1966. Mary immediately recognized that her mother was quite ill, and when she again visited her mother one week later and saw that there was no improvement, Mary arranged for her

mother to be admitted to a hospital in Daytona Beach on August 28. Mrs. Carpenter had no telephone in her room, nor was one readily accessible to her. On August 30, Mary telephoned her own attorney in Orlando, Russell Troutman, Esquire, advising him that her mother wished to have a will prepared in which Mary was to be named as sole beneficiary and executrix. The following day Mary again telephoned the attorney to impress upon him the urgency of the matter.

Following the second telephone call Mr. Troutman promptly prepared a will in accordance with these instructions and drove from Orlando to Daytona Beach with the document. When he arrived at the hospital, the testatrix recognized him and out of the presence of Mary, Mr. Troutman questioned the testatrix in detail concerning her wishes for disposition of her property, particularly to satisfy himself that she was aware that under the testamentary scheme as relayed to him, Mrs. Carpenter's three sons were being excluded from her will. After this preliminary questioning of the testatrix Mr. Troutman then arranged for two other persons to be present (one of whom was a medical doctor) during the time that Mr. Troutman read the will to the testatrix and again questioned her to satisfy himself and the witnesses that Mrs. Carpenter was aware of the contents of the document and that it was in accord with her desires. The will was then properly executed and retained by Mr. Troutman, none of the children other than Mary being aware of the will's existence until at or just shortly prior to Mrs. Carpenter's death four days later.'

The conclusions of the District Court were: (1) that there was sufficient credible evidence to rebut the presumption of undue influence raised by the county judge's finding that Mary had a confidential relationship with her mother and that she actively procured the will; and (2) that without the presumption, the evidence before the county judge was insufficient as a matter of law to support a finding of undue influence. The order of the

county judge was therefore reversed, and the will reinstated.

We are concerned with four interrelated issues in this case: (1) whether there was sufficient evidence before the county judge to raise a presumption of undue influence; (2) if so, whether the burden of proof, or merely the burden of going forward with the evidence, then shifted to the proponent to prove her case; (3) whether the presumption was rebutted (this issue also involves a consideration of the strength of the showing which must be made to rebut the presumption and whether the county judge or the District Court is empowered to decide this); and finally, (4) whether the evidence before the county judge, aside from the presumption, was insufficient as a matter of law, to permit him to conclude a matter of law, to permit him to conclude these issues in order.

Preliminarily, we note that Fla.Stat. § 732.31, F.S.A., provides that the proponent of a contested will has the burden of proving, prima facie, the formal execution and attestation of the will. When this has been done, the statute shifts the burden of proof to the contestant, 'to establish the facts constituting the grounds upon which the probate of such purported will is opposed or revocation thereof is sought.' As both the county judge's order and the opinion of the District Court noted, the initial burden of proving execution and attestation was satisfied by the proponent

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in the instant case. At that point, therefore, the contestants, Ben and Bill, had the burden of proving the undue influence alleged by them.

Because of the difficulty of obtaining direct proof in case where undue influence is alleged, the majority of courts in the United States, including Florida, have permitted will

contestants to satisfy their burden initially by showing sufficient facts to raise a presumption of undue influence. If this is done, and the presumption remains un rebutted, the county judge is required to find undue influence and deny the will probate.

We now turn to the preliminary problem confronting us: whether there was sufficient evidence before the county judge in the instant case to raise the presumption of undue influence. It is established in Florida that if a substantial beneficiary under a will occupies a confidential relationship with the testator and is active in procuring the contested will, the presumption of undue influence arises. *Zinnsler v. Gregory*, 77 So.2d 611 (Fla.1955); *In Re Palmer's Estate*, 48 So.2d 732 (Fla.1950); *In Re Knight's Estate*, 108 So.2d 629 (Fla.App.1st, 1959); *In Re Estate of MacPhee*, supra; *In Re Estate of Reid*, supra; and *In Re Starr's Estate*, 125 Fla. 536, 170 So. 620 (1935).

The District Court appears to have entertained some doubt as to whether there was sufficient evidence of a confidential relationship and active procurement of the will to raise the presumption. Nevertheless, that Court accepted for purposes of its decision that a sufficient showing had been made. We agree that a sufficient showing was made, but we find it necessary to elaborate somewhat on the treatment of these issues in the opinion of the District Court.

' Active procurement' and 'confidential relationship' are legal concepts operating within a broad sphere of factual situations. Within this sphere, the trier of fact is vested with discretion to determine whether or not the facts show active procurement and/or a confidential relationship. Outside this sphere, the question becomes one to be decided by the trier of law in accord with established rules. The problem posed for our consideration is whether the facts in this case permitted an inference of a confidential relationship and active procurement; if so, we

are bound to uphold the finding of the trier of fact; if not, we must conclude that he erred.

As the District Court noted, the leading case in Florida defining the term 'confidential relationship' is *Quinn v. Phipps*, 93 Fla. 805, 113 So. 419 (1927). In that case we said;

'The term 'fiduciary or confidential relation,' is a very broad one * * * The origin of the confidence is immaterial. The rule embraces both technical fiduciary relations and those informal relations which exist wherever one man trusts in and relies upon another. * * *

"The relation and the duties involved in it need not be legal. It may be moral, social, domestic, or merely personal."

In the case sub judice, Mary Carpenter herself testified that her relationship with her mother was very close, and that her mother relied upon and depended on her very heavily. The fact that the deceased permitted Mary to make all the arrangements regarding her hospitalization and requested hospitalization in Daytona Beach (Mary's home) rather than Orlando (the deceased's home) bears out this conclusion. Nearly all witnesses testifying at the hearing attested to Mary's long-time close relationship with her mother. This testimony is sufficient to permit the conclusion of an inference of a confidential relationship between Mary and the deceased, especially in view of our statement in *Quinn* that the term 'confidential relation' is a very broad one which may embrace informal relations which exist

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wherever one person trusts in and relies upon another.

Several Florida cases have considered the question of 'active procurement'. See *In Re Peters' Estate*, 155 Fla. 453, 20 So.2d 487 (1945); *In Re Knight's Estate*, supra; *Sturm v. Gibson*, 185 So.2d 732 (Fla.App.2d 1966); *In*

Re Estate of MacPhee, *supra*; and In Re Smith's Estate, 212 So.2d 74 (Fla.App.4th 1968). The latest of these cases, In Re Smith's Estate, *Supra*, contains a qualitative discussion and synopsis of the prior cases on the point. Several criteria to be considered in determining active procurement emerge from a study of these cases: (a) presence of the beneficiary at the execution of the will; (b) presence of the beneficiary on those occasions when the testator expressed a desire to make a will; (c) recommendation by the beneficiary of an attorney to draw the will; (d) knowledge of the contents of the will by the beneficiary prior to execution; (e) giving of instructions on preparation of the will by the beneficiary to the attorney drawing the will; (f) securing of witnesses to the will by the beneficiary; and (g) safekeeping of the will by the beneficiary subsequent to execution.

We recognize that each case involving active procurement must be decided with reference to its particular facts. Therefore, the criteria we have set out cannot be considered exclusive; and we may expect supplementation by other relevant considerations appearing in subsequent cases. Moreover, we do not determine that contestants should be required to prove all the listed criteria to show active procurement. We assume that in the future, as in the past, it will be the rare case in which all the criteria will be present. We have troubled to set them out primarily in the hope that they will aid trial judges in looking for those warning signals pointing to active procurement of a will by beneficiary.

The the instant case the testatrix expressed to Mary a desire to have a will drawn leaving the entire estate to Mary. Mary secured an attorney and instructed him as to what the will was to contain. She put the entire project on an 'urgent' basis, met him at the hospital and was in fact present part of the time during which the attorney questioned testatrix concerning the will. Thus, at least four of the factors which have

emerged from the Florida case law were present in this case. This evidence was sufficient to permit the trial judge to infer active procurement. The District Court expressed doubt that Mary's conduct amounted to active procurement because 'her activity was primarily as a messenger on behalf of her mother', but it was the function of the trial court rather than the reviewing court to place such an interpretation on the facts. The trial judge determined that Mary's conduct amounted to active procurement, and we are not inclined to dispute his conclusion.

Having concluded that the evidence before the trial judge was sufficient to raise the presumption of undue influence, it becomes necessary to consider the effect of the presumption on the burden of proof. Does the presumption shift the burden of proof to the proponent, or does it merely shift a burden of going forward with the evidence? Because of conflict in the Florida decisional law on this point, we took jurisdiction of this cause.

This Court has consistently held that the burden of Proof shifts to the proponent when the presumption of undue influence arises. See In Re Palmer's Estate, 48 So.2d 732 (Fla.1950); In Re Estate of Reid, *Supra*; In Re Peters' Estate, *Supra*; Wartmann v. Burlison, 139 Fla. 458, 190 So. 789 (1939); In Re Estate of MacPhee, *Supra*; and In Re Auerbacher's Estate, 41 So.2d 659 (Fla.1949).

Nonetheless, in the instant case, the District Court said:

'Initially, we note that the formal execution and attestation of the will having been established, the burden of proof

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shifted to the contestants to prove the undue influence alleged by them. F.S. Section 732.31, F.S.A. That burden of proof remained

with the contestants at all times.' (Emphasis added)

It is apparent that the prior Florida law is in direct conflict with the quoted language from the decision of the District Court below.

In *Leonetti v. Boone*, 74 So.2d 551 (Fla.1954), we stated the general rule in respect to the effect of presumptions on the burden of proof as follows:

"A presumption of law which arises upon the pleading or during the course of the trial after the introduction of evidence may aid a party in the discharge of the burden of proof cast upon him and shift to his adversary the burden of explanation or of going on with the case, but does not, as a general rule, shift the burden of proof; a presumption simply changes the order of proof to the extent that one upon whom it bears must meet or explain it away, * * *. A presumption which operates in the plaintiff's favor casts upon the defendant the burden of producing evidence to meet the plaintiff's prima facie case, and not the burden of proof in the sense of the risk of nonpersuasion, which remains with the plaintiff throughout the trial * * *"

See also *Gulle v. Boggs*, 174 So.2d 26 (Fla.1965); *Shaw v. York*, 187 So.2d 397 (Fla.App.1st, 1966); and *Seaboard Air Line R. Co. v. Lake Region Packing Ass'n*, 211 So.2d 25 (Fla.App.4th, 1968).

It therefore appears that we have two rules in Florida: a rule applicable where undue influence is alleged which shifts the burden of proof to the proponent of the will when the contestant invokes the presumption of undue influence; and a 'general rule' applicable to other cases which holds that the burden of proof, or risk of nonpersuasion, remains on the party who affirmatively seeks relief throughout the proceedings. We have, in fact, created an exception to the general rule which is applicable only to will contest cases. We have, moreover, done so despite

Fla.Stat. § 732.31, F.S.A., which places the burden of proof in will contests on the contestant once the proponent has proved execution and attestation of the will.

Clearly, since the burden of going forward with the evidence in a given case requires only that the party on whom it rests meet the presumption or explain it away, while the burden of proof requires that a party prove by at least a preponderance of the evidence (some cases say by clear and convincing evidence) the facts alleged by him, the distinction is of considerable importance to litigants. It was important to the proponent, Mary Carpenter, in this case because it placed on Mary the burden of disproving the existence of undue influence by a preponderance of the evidence, in the absence of which the trial judge was required to find undue influence and deny the will probate.

Petitioners urge that policy considerations inherent in the difficulty of proof of undue influence dictate that the burden of proof should shift to Mary. They note that in will contests the testator is not available as a witness to tell his version of such dealings, that in fact usually the only person who is available to testify is the confidential adviser whose self-interest furnishes a motive for him to take advantage of his superior position. This is certainly true and points out the significance of a spectator to certain preambulatory events. We acknowledge that undue influence is rarely susceptible of direct proof, primarily because of the secret nature of the dealings between the beneficiary and the testator, and because of the death of one of the principals to the transaction, the testator.

Nevertheless, we do not think that these considerations require that the burden of proof or risk of nonpersuasion be shifted onto the beneficiary. Because it is frequently as difficult to disprove undue influence as to prove it, the practical effect

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of shifting the burden of proof is to raise the presumption virtually to conclusive status and Require a finding of undue influence, as happened in the case sub judice. Thereby, much of the discretion of the trial judge to evaluate and weigh the evidence before him is lost, and with it one of the most valuable services we call on trial judges to perform in non-jury cases. We are unable to agree with any theory which vests great discretion in the trier of fact in other kinds of cases but ties his hands in will contest cases.

The better rule, enunciated by this Court in *Leonetti v. Boone*, *Supra*, shifts to the beneficiary only the burden of coming forward with a reasonable explanation for his or her active role in the decedent's affairs, and specifically, in the preparation of the will, and we so hold. Such a result comports with what we conceive to be the intent of Fla.Stat. § 732.31, F.S.A., in providing that the burden of proof in will contests shall be on the contestant to establish the facts constituting the grounds upon which the probate of the purported will is opposed.

Our conclusion here has the additional benefit of lending greater credence to the traditional view in Florida that a properly executed will should be given effect unless it clearly appears that the free use and exercise of the testator's sound mind in executing his will was in fact prevented by deception, undue influence, or other means. *Hamilton v. Morgan*, 93 Fla.311, 112 So. 80 (1927); *Parker v. Penny*, 95 Fla. 922, 117 So. 703 (1928); *Newman v. Smith*, 77 Fla. 633, 82 So. 236 (1918), reversed on rehearing on other grounds; *Gardiner v. Goertner*, 110 Fla. 377, 149 So. 186 (1932); *Marston v. Churchill*, 137 Fla. 154, 187 So. 762 (1939). It has been said that mere suspicion and conjecture cannot constitute a basis on which a will may be declared invalid on the ground of undue influence. *Heasley v. Evans*, 104 So.2d 854 (Fla.App.2d, 1958). It is apparent that this

rule is not compatible with the requirement that the proponent of a will Disprove by a preponderance of the evidence the existence of undue influence.

What will a rule shifting to the proponent only the burden of coming forward with the evidence mean in practice? First, the burden will be satisfied when the beneficiary comes forward with a reasonable explanation for his or her active role in the decedent's affairs. The precise nature of the explanation will vary depending on the facts giving rise to the presumption, and the sufficiency of the explanation to rebut the presumption will be for the county judge to determine subject to review by an appellate court. Second, when the burden is satisfied the presumption will vanish from the case and the county judge will be empowered to decide the case in accord with the greater weight of the evidence (see *Rigot v. Bucci*, 245 So.2d 51 (Fla.1971)), without regard to the presumption. Third, since the facts giving rise to the presumption are themselves evidence of undue influence, those facts will remain in the case and will support a permissible inference of undue influence, depending on the credibility and weight assigned by the trial judge to the rebuttal testimony.

Turning to the case sub judice, an examination of the record reveals that Mary Carpenter testified at length concerning both her relationship with her mother, and the reason for her activity in connection with the execution of the will. While this testimony is not binding on the trier of fact, we believe that it constitutes a reasonable explanation of the facts giving rise to the presumption sufficient to satisfy Mary's burden of coming forward with the evidence.

Accordingly, we agree with and affirm the District Court on the following points: (1) there was sufficient evidence before the county judge to raise a presumption of undue influence; (2) when the presumption was raised, the burden of coming forward with a

reasonably credible explanation of the facts giving rise to the presumption shifted to Mary, the proponent of the

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will; (3) Mary satisfied this burden, and the presumption vanished from the case.

We disagree with the District Court in one respect. Having concluded that the presumption vanished from the case, the District Court determined that the evidence was insufficient as a matter of law to sustain a finding of undue influence. In this regard, we conclude that since the facts giving rise to the presumption of undue influence are themselves evidence of undue influence, those facts remain in the case and will support a permissible inference of undue influence. Therefore, it was error for the District Court to hold that no evidence tending to show undue influence was before the trial judge.

Inasmuch as in the first instance the trial judge decided this cause on the basis of the presumption, it will now be necessary for the cause to be remanded to the trial judge for determination of the issue of undue influence in accord with the greater weight of the evidence.

Accordingly, certiorari is granted, the decision of the District Court is affirmed in part and quashed in part and the cause remanded to the District Court of Appeal, Fourth District, with directions to remand to the County Judge's Court of Orange County for further proceedings and entry of an order not inconsistent with the views expressed herein.

It is so ordered.

ROBERTS, C.J., ADKINS and BOYD JJ.,
concur.

DEKLE, J., agrees to conclusion only.