

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH
DISTRICT,
1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

CASE NO.: 4D16-0222
L.T. No.: 2011CP000653XXXXSB
2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN,

Appellant / Petitioners,

**Appellant's Motion for One Day Late Filing
Extension of Time to File Initial Brief**

v.

TED BERNSTEIN, AS TRUSTEE, ET AL.

Appellee / Respondent(s)

Appellant-Petitioner Eliot I. Bernstein, respectfully says and moves this Court as follows:

1. I am the Appellant-Petitioner herein acting pro se after being in indigent status for several years.
2. I make this motion in good faith and mindful of this Court's Orders and ask for a One-day extension of time to file the Initial Brief herein.
3. It is approximately 11:43 pm EST on July 11, 2016 and said motion for extension of time is filed before the deadline to file the Initial Brief.
4. I lost significant time today alone to complete the Initial Brief due to ongoing medical problems of a dental nature causing severe headaches, pain and discomfort and in fact was treated this day by my Dentist in Boca Raton, Florida and have been prescribed and been taking heavy narcotic painkillers and other prescriptions including extra strength Vicodin and flexeril.

5. This condition has gone on and been present for the last several days after this Court granted my additional time to file this brief.

6. It is anticipated that the final Initial Brief will be uploaded, filed and served even prior to the time this Court opens again on Tuesday morning July 12, 2016 but at least move and pray to have until noon time on July 12, 2016 to do so.

7. An updated copy of the Draft brief is attached as Exhibit 1.

WHEREFORE, it is respectfully prayed for an Order directing the Clerk of the 15th Judicial Circuit to prepare and transmit and serve full Indexes and Records for all the named affected cases herein and further extending the time to file and serve the Initial Brief until a reasonable time after said Indexes and Records are produced not less than 15 days and for such other and further relief as to this Court may seem just and proper.

Dated: July 11, 2016

/s/Eliot Ivan Bernstein

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 11th day of July, 2016.

/s/ Eliot Ivan Bernstein

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EXHIBIT 1 - UPDATED INITIAL BRIEF ON APPEAL

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM
BEACH, FL 33401

CASE NO.: 4D16-0222
L.T. No.: 2011CP000653XXXXSB
2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. TED BERNSTEIN, AS
TRUSTEE, ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

DRAFT INITIAL BRIEF OF APPELLANT

On Appeal to the 4th District Court of Appeals from the “FINAL JUDGMENT ON
COUNT II OF THE AMENDED COMPLAINT” of Judge John Phillips dated
December 16, 2015.

TABLE OF CONTENTS

Contents

INITIAL BRIEF OF APPELLANT	1
TABLE OF CONTENTS	1
TABLE OF CITATIONS	3
CASES	3
STATUTES:	5
RULES:	5
PRELIMINARY STATEMENT	5
STATEMENT OF THE CASE AND FACTS	7

Nature of the Appeal and Standard of Review	7
Factual Background	9
SUMMARY OF ARGUMENT.....	14
ARGUMENT.....	15
I. The lower tribunal acted illegally and in violation of Florida Rules of Civil Procedure by Ordering a Trial in a complex case not noticed to be heard, abusing its discretion and violating procedural and substantive due process including but not limited to denying Appellant the fair right and opportunity to be heard at a Case-Management Conference and at trial.	15
II. The lower tribunal abused its discretion by failing to mandatorily Disqualify both pre-trial and at trial.	19
III. The lower tribunal abused its discretion by failing to grant a continuance for Appellant to have Texas counsel admitted pro hac vice for Trial denying counsel to three minor children at the hearing... ..	20
IV. The Trial Record clearly shows the bias and prejudice of the lower tribunal toward the Appellant and the lower tribunal’s abandonment of the truth seeking process.....	23
V. Even the limited Records and Indexes provided and certified by Sharon Bock demonstrate the error and abuse of discretion of the lower tribunal in improperly limiting the Trial to “one-day” in advance which was clearly inadequate for appropriate witnesses and evidence including but not limited to the testimony of Donald Tescher, Karen Moran, Traci Kratish, Lindsay Baxley, Alan Rose,	23
VI. The facts and records show that Ted Bernstein and his attorney Alan Rose sued improper parties that do not exist and thus lack the capacity to be sued depriving the court of subject matter jurisdiction and denying improper Notice to Appellant, Appellant’s minor children and others in violation of procedural and substantive due process.	23
VII. The lower tribunal abused its discretion in failing to grant a new trial particularly where signed statements by the core attorneys involved in other fraud in the case, Tescher and Spallina, signed as attorneys at law and filed with the Court below in the Notice of Administration of the	

Estate of Simon Bernstein showed Appellant is a Beneficiary and where No Minor Children were ever Noticed as Beneficiaries and where Donald Tescher should have been allowed to be Deposed pre-trial but at minimum should have been a Witness at trial.....	24
CONCLUSION.....	26
CERTIFICATE OF COMPLIANCE	26
CERTIFICATE OF SERVICE	27
RECORD APPENDIX.....	33
APPENDIX	36

TABLE OF CITATIONS

Cases

<u>314 So.2d 590</u> (Fla. 1975).....	17
Bainter v. League of Women Voters of Fla., 150 So. 3d (Fla. 2014).....	18
BINGER v. KING PEST CONTROL, So.2d 1310 (1981)	18
Brinkley v. County of Flagler, 769 So.2d (Fla. 5th DCA 2000)	17
<i>Dodson v. Persell</i> , <u>390 So.2d</u> (Fla. 1980).....	18
Minakan v. Husted, 27 So. 3d (Fla. 4th DCA 2010)	17
<i>Spencer v. Beverly</i> , <u>307 So.2d</u> (Fla. 4th DCA 1975).....	17
Tarragon LLC v. Great Divide Insurance Company	19
v. Fla. Dep’t of Children & Families, 66 So. 3d (Fla. 1st DCA 2011).....	17
v. Key Dev. Props., 966 So.2d (Fla. 2 nd DCA 2007)	16
Vollmer v, Key Dev. Props., 966 So.2d 1022, 1027 (Fla. 2nd DCA 2007).....	17

Vollmer v. Key Dev. Props., Inc., 966 So. 2d (Fla. 2d DCA 2007).....17

Statutes

Akins v. Taylor, 314 So. 2d (Fla. 1st DCA 1975).....25

Amador v. Amador, 796 So. 2d (Fla. 3d DCA 2001).....25

Baron v. Baron, 941 So.2d (Fla. 2nd DCA 2006)22

Baron v. Baron, 941 So.2d 1233, 1235-36 (Fla. 2d DCA 2006).....22

Bieleley v. Bieleley, 398 So. 2d (Fla. 3d DCA)25

Dynasty Exp. Corp. v. Weiss, 675 So. 2d (Fla. 4th DCA 1996)26

Estate of Willis v. Gaffney, 677 So. 2d (Fla. 2d DCA 1996).....26

Fla. R. Civ. P. 1.280(b)20

Fleming v. Fleming, 710 So.2d (Fla. 4th DCA 1998)21

Hernandez v. Cacciamani Dev. Co., 698 So. 2d (Fla. 3d DCA 1997);.....25

Kidder v. Hess, 481 So. 2d (Fla. 5th DCA 1986).....26

Myers v. Seigel, 920 So.2d (Fla. 5 th DCA 2006).....22

Register v. State, 718 So. 2d (Fla. 5th DCA 1998)25

Rice v. NITV, LLC, 19 So.3d (Fla. 2nd DCA 2009)22

Robinson v. Kalmanson, 882 So. 2d (Fla. 5th DCA 2004)26

S. Bell Tel. & Tel. Co. v. Welden, 483 So. 2d (Fla. 1st DCA 1986)26

Seal v. Brown, 801 So. 2d (Fla. 1st DCA 2001)26

Stella v. Stella, 418 So. 2d (Fla. 4th DCA 1982).....26

Strader v. Zeide, 796 So.2d (Fla. 4th DCA 2001)21

Surin v. St. Surin, 684 So. 2d (Fla. 2d DCA *782 1996)26

Toomey v. the Northern Trust Co., Etc., (Fla. Dist. Ct. App. 2016)20

Townsend v. Lane, 659 So. 2d (Fla. 5th DCA 1995)26

STATUTES:

Section 733.502 of the Florida Probate Code

F.S. §733.107(2)

RULES:

Florida Rules of Civil Procedure 1.200

September 27, 2012 - Office of the State Courts Administrator - State Courts

System Fraud Policy¹

CONSTITUTIONAL PROVISIONS

US CONSTITUTION 5TH AND 14TH AMENDMENTS

FLORIDA CONSTITUTION - DUE PROCESS

PRELIMINARY STATEMENT

¹<http://www.jud6.org/News/StateCourtsSystemFraudPolicy.pdf>

This is an Appeal of a Final Judgement and Order of Judge John Phillips dated December 16, 2015 deemed a Final Order under Florida Rules of Appellate Procedure 9.170. This Court also has jurisdiction under Florida Rules of Appellate Procedure 9.0309b0(1)(A) and 9.110(a)(1).

The Scope of Review is established by Florida Rules of Appellate Procedure 9.110(h) and 9.170(e).

Appellant Eliot Bernstein is referred herein as “Appellant” and Appellee Ted Bernstein referred as Appellee.

The Record on Appeal consists of 2 parts, ROA1 shall refer to the Record on Appeal in Case No. CASE NO. 502011 CP000653XXXXSB which is the Shirley Bernstein Estate and Trust case while ROA2 shall refer to the Record on Appeal in Case No. 502014CP003698XXXXNB which is a separate case created by Alan Rose for Ted Bernstein at the direction of Judge Colin.

Appellant maintains an objection and claim of prejudice for the record prohibiting Appellant from full and fair litigation for being denied access to the Index and Records on Appeal from the Simon Bernstein Estate case No.

502012CP004391XXXXSB which is the case that was noticed for Case-Management on the date the Trial Order was issued and that while testamentary documents from the Simon Bernstein Estate case and Simon Bernstein Trust case No. 502015CP001162XXXXNB are part of the Final Judgement on Appeal,

Appellant has been denied as an indigent litigant pro se access to these Records and Indexes certified by 15th Judicial Circuit Clerk Sharon Bock despite repeated requests.

Appellant further notes an objection and preservation for the record as set out herein for prejudice on appeal due to the fraud upon the Court in the lower tribunal which has yet to be fully corrected impacting Appellant's rights herein. Appellant seeks full compliance by this Court and all entities with the State Court Fraud Policy herein. See, Office of the State Courts Administrator, September 27, 2012 Memo at

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Florida%20State%20Courts%20System%20Fraud%20on%20the%20Court%20Policy%20Procedure.pdf>

STATEMENT OF THE CASE AND FACTS

Nature of the Appeal and Standard of Review

This is an appeal from a Final Judgment of a One-Count Validity trial entered by Judge John Phillips of the North Branch, 15th Judicial Circuit on December 16th, 2015 which determined after a “pre-judged” and “predetermined” Trial held on the day before on December 15th, 2015 erroneously limited to “one day” the “validity” of certain Testamentary instruments (Wills and Trusts) of Shirley and Simon Bernstein and made other findings regarding Ted Bernstein purporting to act in

various fiduciary capacities herein as Trustee and Personal Representative in the Shirley Trust and Estate case and Trustee in the Simon Bernstein Trust case and his involvement in certain frauds. Attorney Brian O'Connell is the Personal Representative in the Simon Bernstein Estate case who abandoned the Estate of Simon Bernstein at the validity trial and did not appear nor participate in the "validity" Trial whatsoever despite having filed before Trial to remove Ted Bernstein as Trustee claiming Ted was not a "valid" trustee in the Simon Bernstein Trust, see ROA2 #001041 - #001062 (See Affirmative Defense O'Connell #001068.)

Appellant Eliot Bernstein is one of five natural children to the marriage of Shirley and Simon Bernstein and a named Beneficiary in the Shirley Bernstein Estate, Estate of Simon Bernstein, Shirley Bernstein Trust and Simon Bernstein Trust. Appellant Eliot Bernstein was forced to Trial acting pro se as an indigent litigant after repeatedly being denied "interim" distributions by the lower tribunal to afford counsel despite the costs mainly due to fraud on the beneficiaries and the court by the fiduciaries and attorneys at law and then being denied a continuance before Trial to have Texas counsel admitted pro hac vice to represent Eliot Bernstein's three minor children.

The standard of review for the legal conclusions in the Final Judgement on appeal is de novo and lacking in competent substantial evidence to permit a rational trier of fact to reach the conclusion that was reached.

As the scope of review provides for review of other rulings the standard of review abuse of discretion by the lower tribunal.

Factual Background

This is an appeal of a “one-day” validity trial of One Count of a complaint which purported to determine certain testamentary instruments, Trusts and Wills, of Shirley and Simon Bernstein.

Appellant Eliot Bernstein is one of five natural children born to the marriage of Shirley and Simon Bernstein. Shirley Bernstein pre-deceased her husband Simon passing away in December of 2010 while Simon Bernstein passed away in September of 2012.

Simon Bernstein had been a very successful Insurance businessman and Pioneer of Multi-Billion dollar Proprietary Insurance Plans for high net worth individuals for nearly 50 years, a national leader in sales of life insurance and having amassed significant wealth during his lifetime and having created various companies and entities to protect his wealth and provide for estate planning throughout his life.

ROA1 pages _____. COPIES of alleged Financial records produced thus far show Simon’s one company “Life Insurance Concepts” (LIC) earning over \$38 Million

and 39 Million in gross revenue in years 2008, 2009 respectively with Simon drawing over \$4 Million in salary in one year alone. [Appendix 1 Pages](#) .

Simon Bernstein also invested monies and together with Shirley Bernstein owned two multimillion dollar debt free known real properties prior to their passing, a beach-front condo in Boca Raton at the Aragon on Ocean Boulevard listed at nearly \$2 Million dollars ([See Appendix pages](#)) and a homestead estate home at the prestigious Saint Andrews Country Club at 7020 Lions Head Lane, Boca Raton, Fl listed at \$3.2 million prior to his passing. [See Appendix pages ---](#).

Simon Bernstein later became an initial seed funding investor in technologies invented and developed by his son Appellant Eliot Bernstein with patents pending, known as “Iviewit Technologies” which had been valued in the “hundreds of billions” by leading experts in the industry and tested, used and validated at a company called Real3d Inc., (a consortium of Lockheed Martin 70%, Intel 20% and SGI 10%) on property owned by Lockheed Martin located in Orlando, Florida, Real3d Inc., Simon Bernstein was a 30% shareholder in Iviewit Stock and the Intellectual Properties filed worldwide which was handled by the Proskauer Rose law firm. [See, ROA1 pages #000625 - 000650 and #000859 - #000882.](#)

Simon Bernstein undertook specific Estate planning to protect his interests including a Will and Estate Planning performed by Proskauer Rose. Upon his passing in 2012, a copy of a 2000 Will of Simon Bernstein was filed by an

unknown entity in the Palm Beach County Probate Courts. See, Proskauer Will at ROA1 pages #000296 - 000299.

Simon Bernstein's planning also specifically provided for the needs of his son Appellant Eliot Bernstein and wife Candice Bernstein and their 3 minor children contemplating the complexity of the "Iviewit" matters after theft of the technologies and intellectual properties had occurred and Appellant's family mini-van was car-bombed in Boynton Beach, Florida on or around 2005. See, ROA1 Page #000136. The Proskauer Rose law firm was directly implicated in the theft of the technologies and intellectual properties. See, _____ The "Iviewit" thefts and related matters had been reported by Appellant to a variety of federal and state investigative authorities and Appellant had directly worked providing case information to FBI Agent Stephen Luchessi of the West Palm Beach FBI Field Office and another agent as well with certain matters ultimately being elevated to the highest levels in the US Justice Department and USDOJ Inspector General as the "Iviewit" technologies in addition to massive value in the private sector also had a mass of applications for Defense and Space industries as well. See,

This specific planning by Simon Bernstein included but was not limited to an Advanced Inheritance Agreement (AIA). (See ROA1 Pages #000313 - #000318) as well as the formation of certain Trusts in the name of Appellant's minor

children, Josh, Jake and Danny Bernstein and the formation of certain entities such as Bernstein Family Holdings Inc., Bernstein Family Investments, and Bernstein Family Realty. See, Appendix #17. This planning also included the payment for Appellant's home in Boca Raton, Fl at 2753 NW 34th St _____, Boca Raton, Fl owned through Bernstein Family Realty which is owned by Appellant's three minor children, through Trusts held currently at Oppenheimer and subject to related litigation Case Nos.; 502014CP002815XXXXSB; 502010CP003123XXXXSB; 502010CP003125XXXXSB; 502010CP003128XXXXSB.

Prior to Simon's passing, Appellant had been receiving at least \$100,000.00 (one-hundred thousand) per year according to this Advanced Inheritance Agreement.

After Shirley Bernstein passed away in December of 2010, Appellant and others noticed the significant toll this loss had on the life of Simon Bernstein. See _____

Apparently, Simon Bernstein also was having significant pressures from some of Appellant's siblings during this time with Appellant later discovering after Simon's death that Appellant's sister Pamela Bernstein Simon living in the Chicago area had found out through one of Simon Bernstein's other Estate Planners attorney Robert Spallina that Simon and Shirley had disinherited Pamela Simon and her children from taking under Trusts and Wills due to the significant

income her family had received being in business with Simon Bernstein for years.

Cite to Spallina Communication - Pam Letter.

Before Appellant became aware of these facts after Simon's passing, Appellant had previously been contacted by Simon during his lifetime in on or about May of 2012 to join a family conference call attempting to resolve certain family matters by making some changes to certain Trust agreements from Shirley Bernstein who had passed in 2010. Simon was not aware that Appellant had not been receiving any documentation and information from Simon's Estate Planners attorneys Donald Tescher and Robert Spallina of the law firm Tescher & Spallina.

Ultimately, Appellant received some form of "Waiver" from the Tescher & Spallina law firm in relation to the Shirley Bernstein Estate which Appellant had signed Not Notarized and with the attached condition that Appellant receive all the Documentation and records that had not been provided. See, [REDACTED]

Just a few short months later in Sept. 2012, Simon Bernstein was taken to the hospital in Boca Raton, Florida in emergency condition. Appellant spent substantial hours at the hospital speaking to Simon's heart specialist who had cleared Simon of a heart incident but had Simon undergoing other testing. Ted Bernstein had been called about the incident but did not show up to the hospital during the daytime.

Appellant was later called back to the hospital in the late hours on a “Code Blue” and upon arriving at the Hospital was initially restricted from access to Simon by Hospital staff claiming “Security” was involved due to a possible “poison”. Ted Bernstein was now at the hospital and after Simon was declared deceased Ted Bernstein had made claims of possible “murder” of Simon indicating his attorneys would “handle” things with the police and Palm Beach County Sheriffs. Appellant was directed back to Simon’s home at 7020 Lions Head lane where he noticed that Simon’s entire Computer hard drive and computer Records which contained valuable business information including “Iviewit” information had been completely wiped clean. ROA1 See May 2013 Emergency Petition Paragraphs xx pages xxx

Thus beginning at the 7020 Lions Head Lane home of Simon Bernstein on the night of Simon’s passing in Sept. 2012 up to and including the present has been an ongoing and continuous series of actions by Ted Bernstein and parties working in concert with Ted Bernstein to make false claims about who had fiduciary powers in the Estate, deny records and information to Appellant and deny and delay rights of inheritance to Appellant Eliot Bernstein.

SUMMARY OF ARGUMENT

ARGUMENT

- I. **The lower tribunal acted illegally and in violation of Florida Rules of Civil Procedure by Ordering a Trial in a complex case not noticed to be heard, abusing its discretion and violating procedural and substantive due process including but not limited to denying Appellant the fair right and opportunity to be heard at a Case-Management Conference and at trial.**

Florida Rules of Civil Procedure 1.200 provides in part that, “**PRETRIAL PROCEDURE** (a) Case Management Conference. At any time after responsive pleadings or motions are due, the court may order, or a party, by serving a notice, may convene, a case management conference. *The matter to be considered shall be specified in the order or notice setting the conference.*” (emphasis added).

Procedural due process is a constitutional guarantee. See, e.g., Vollmer v. Key Dev. Props., 966 So.2d 1022 (Fla. 2 nd DCA 2007).

In this case, the lower tribunal clearly Ordered a Trial in a case that was not noticed for Case-Management in violation of the Rules of Procedure, procedural

due process and then denying Appellant a fair opportunity to be heard to clarify the matter violating substantive due process. See, Appendix Sept. 15th Transcript

“Fundamental to the concept of due process is the right to be heard. The right to be heard assures a full hearing before a court having jurisdiction of the matter, the right to introduce evidence at a meaningful time and in a meaningful manner, and judicial findings based upon that evidence. It includes also an opportunity to cross-examine witnesses, to be heard on questions of law, and the right to have judgment rendered after trial.” (citations omitted) *Brinkley v. County of Flagler*, 769 So.2d 468 (Fla. 5th DCA 2000).

The right to be heard is so instrumental that error need not be preserved. “[T]he denial of a party's right to be heard — even if unpreserved — constitutes per se reversible error and, therefore, can be raised at any time.” *K.G. v. Fla. Dep’t of Children & Families*, 66 So. 3d 366 (Fla. 1st DCA 2011), citing *Vollmer v. Key Dev. Props., Inc.*, 966 So. 2d 1022, 1027 (Fla. 2d DCA 2007).

"The constitutional guarantee of due process requires that each litigant be given a full and fair opportunity to be heard... The violation of a litigant’s due process right to be heard requires reversal.” *Vollmer v. Key Dev. Props.*, 966 So.2d 1022, 1027 (Fla. 2nd DCA 2007). See also, *Minakan v. Husted*, 27 So. 3d 695 (Fla. 4th DCA 2010)”.

“The goals of these procedural rules are "to eliminate surprise, to encourage settlement, and to assist in arriving at the truth." *Spencer v. Beverly*, 307 So.2d 461, 462 (Fla. 4th DCA 1975) (Downey, J., concurring), *cert. denied*, 314 So.2d 590 (Fla. 1975). We recently reiterated those goals. “*A search for truth and justice can be accomplished only when all relevant facts are before the judicial tribunal. Those relevant facts should be the determining factor rather than gamesmanship, surprise, or superior trial tactics.*

Dodson v. Persell, 390 So.2d 704, 707 (Fla. 1980).”

See, *BINGER v. KING PEST CONTROL*, 401 So.2d 1310 (1981).

A. The lower tribunal abused its discretion and abandoned the truth seeking policy of the Courts and law of the Florida Supreme Court by failing to determine outstanding Discovery and the need for pre-trial Depositions.

Full and fair discovery is essential to the truth-finding function of our justice system, and parties and non-parties alike must comply not only with the technical provisions of the discovery rules, but also with the purpose and spirit of those rules.

The search for truth and justice as our court system and constitution demand can be accomplished only when all relevant facts are before the judicial tribunal. Those relevant facts should be the determining factor rather than gamesmanship, surprise or superior trial tactics.

Courts should not countenance or tolerate actions during litigation that are not forthright and that are designed to delay and obfuscate the discovery process. See, *Bainter v. League of Women Voters of Fla.*, 150 So. 3d 1115, 1129 (Fla. 2014). An orderly trial is most likely to occur when the judge enforces discovery and pretrial orders strictly and requires each party to make full and proper disclosure before trial.

The Fourth District Court of Appeal in *Central Square Tarragon LLC v. Great Divide Insurance Company*, reiterated the need to “strictly enforce” provisions of pretrial stipulations. This prevents last minute gamesmanship, and makes disruption of the trial and error on appeal less likely. Generally, last-minute additions of witnesses and substantial changes to testimony should not be admissible at trial. Failure to exclude such testimony prejudices the opposing party and constitutes reversible error.

In this case, there was no Orderly pre-trial procedures which were abandoned in their entirety by the lower tribunal who Ordered a Trial in a case not even Noticed for Case Management.

B. Pre-Trial Depositions in Trust and Will validity cases are proper.

Pre-trial depositions in Trust and Will construction and validity cases are proper and the lower tribunal abused its discretion by denying these pre-trial Discovery

procedures. Although in the following case there existed the additional factor of witnesses in jeopardy of passing away before trial to also support the pre-trial deposition request, the Court noted, “The depositions were plainly within the general scope of discovery relating to the allegations in the second amended complaint. Fla. R. Civ. P. 1.280(b).” See, *Toomey v. the Northern Trust Co., Etc.*, 15-2813 (Fla. Dist. Ct. App. 2016).

C. The lower tribunal abused its discretion and violated the Statewide Fraud policy of the Courts and Judicial Canons by failing to hold hearings to correct and eliminate the fraud in the cases and remove, sanction and report criminal misconduct of officers and fiduciaries of the court and subsequently failed to protect the litigants that were injured by the fraud, including six minor children.

What?

II. The lower tribunal abused its discretion by failing to mandatorily Disqualify both pre-trial and at trial.

Judicial neutrality is critical to our legal system. Florida judges have the obligation to voluntarily recuse themselves for a variety of reasons, including bias or prejudice regarding a party or an economic interest in the matter. Canon 3E of the Florida Judicial Conduct Code applies to all.

III. The lower tribunal abused its discretion by failing to grant a continuance for Appellant to have Texas counsel admitted pro hac vice for Trial denying counsel to three minor children at the hearing...

“Factors to be considered in determining whether the trial court abused its discretion in denying the motion for continuance include whether the denial of the continuance creates an injustice for the movant; whether the cause of the request for continuance was unforeseeable by the movant and not the result of dilatory practices; and whether the opposing party would suffer any prejudice or inconvenience as a result of a continuance.” Fleming v. Fleming, 710 So.2d 601 (Fla. 4th DCA 1998).

In Strader v. Zeide, 796 So.2d 591 (Fla. 4th DCA 2001) although the trial court granted Plaintiff’s attorney’s motion to withdraw, it denied the request to stay the proceedings until the Plaintiff could obtain new counsel. The Appellate Court found that the “Plaintiff was prejudiced as a result of the trial court’s refusal to grant a continuance or allow the Plaintiff additional time to retain new counsel.” Id at 593.

Without the benefit of counsel, the court found that the Plaintiff was unable to conduct a meaningful cross-examination. “This Court has noted that there are special circumstances which exist where the denial of a motion for continuance

creates an injustice for the moving party and in such cases, it is the court's obligation to rectify the injustice." Strader at 593.

"While trial courts necessarily enjoy broad discretion in deciding whether to grant or deny a motion for continuance, the exercise of that discretion is not absolute."

Rice v. NITV, LLC, 19 So.3d 1095 (Fla. 2nd DCA 2009); Baron v. Baron, 941 So.2d 1233 at 1236 (Fla. 2nd DCA 2006).

In determining whether the trial court has abused this broad discretion, the appellate courts consider the following three factors stated previously:

"1) whether the movant suffers injustice from the denial of the motion; 2) whether the underlying cause for the motion was unforeseen by the movant and whether the motion is based on dilatory tactics; and 3) whether prejudice and injustice will befall the opposing party if the motion is granted. Baron v. Baron, 941 So.2d 1233, 1235-36 (Fla. 2d DCA 2006) (quoting Myers v. Seigel, 920 So.2d 1241, 1242 (Fla. 5th DCA 2006))."

In this case, not only did the lower tribunal abuse its discretion and act outside and in violation of established Florida Civil Procedure law by Ordering a Trial in a case which was not noticed to be heard, the Trial Court further abused its discretion in denying a Continuance where Appellant had outside counsel attempting to come into the case pro hac vice denying Appellant counsel and more importantly, denying counsel to Appellant's minor children.

This is particularly true in a case where over 2 years had gone by from the time Appellant first notified the lower Court, then Judge Martin Colin and Judge David E. French, of direct fraud upon the Court involving the very attorneys and fiduciaries who allegedly prepared the documents sought to be validated until the time that Judge Martin Colin “suddenly” and “mysteriously” “Recused” within 24 hours of denying a Mandatory Disqualification motion.

Clearly there had been no “rush” to validate the alleged testamentary and trust documents for that 2 year period despite knowledge of fraudulent documents having been submitted to the court by fiduciaries and counsel and the brief delay of a 30 day continuance to allow counsel to be admitted pro hac vice for unrepresented minors would not have caused any undue delay or prejudice to the other parties.

The Trial transcript is clear that Appellant and his three minor children were prejudiced by the denial of the continuance in being a non-attorney acting pro se during the complexities of a trial and three parties without representation and there is nothing in the record to show Appellant had engaged in any dilatory tactics nor that any of the other parties would be prejudiced.

Under these circumstances, the denial of the motion for continuance was an abuse of discretion that must now be reversed and a new trial ordered.

IV. The Trial Record clearly shows the bias and prejudice of the lower tribunal toward the Appellant and the lower tribunal's abandonment of the truth seeking process.

What?

V. Even the limited Records and Indexes provided and certified by Sharon Bock demonstrate the error and abuse of discretion of the lower tribunal in improperly limiting the Trial to "one-day" in advance which was clearly inadequate for appropriate witnesses and evidence including but not limited to the testimony of Donald Tescher, Karen Moran, Traci Kratish, Lindsay Baxley, Alan Rose,

What?

VI. The facts and records show that Ted Bernstein and his attorney Alan Rose sued improper parties that do not exist and thus lack the capacity to be sued depriving the court of subject matter jurisdiction and denying improper Notice to Appellant, Appellant's minor children and others in violation of procedural and substantive due process.

What?

VII. The lower tribunal abused its discretion in failing to grant a new trial particularly where signed statements by the core attorneys involved in other fraud in the case, Tescher and Spallina, signed as attorneys at law and filed with the Court below in the Notice of Administration of the Estate of Simon Bernstein showed Appellant is a Beneficiary and where No Minor Children were ever Noticed as Beneficiaries and where Donald Tescher should have been allowed to be Deposed pre-trial but at minimum should have been a Witness at trial.

A. The lower tribunal committed reversible error by failing to hold a hearing to determine the fraud.

Factors the trial court should consider in determining whether to reopen the case to allow presentation of additional evidence include whether the opposing party will be unfairly prejudiced and whether it will serve the best interests of justice.

Amador v. Amador, 796 So. 2d 1212 (Fla. 3d DCA 2001); *Hernandez v.*

Cacciamani Dev. Co., 698 So. 2d 927 (Fla. 3d DCA 1997); *Silber*; *Bieley v.*

Bieley, 398 So. 2d 932 (Fla. 3d DCA), review denied, 411 So. 2d 380 (Fla. 1981);

Akins v. Taylor, 314 So. 2d 13 (Fla. 1st DCA 1975); see also *Register v. State*, 718 So. 2d 350 (Fla. 5th DCA 1998).

“ Moreover, given the allegations of fraud made by Robinson to support her motion, we think an evidentiary hearing was essential for the trial court to properly determine whether to grant the request to present the testimony of Adams. See Robinson v. Kalmanson, 882 So. 2d 1086, 1088 (Fla. 5th DCA 2004) ("A court can seldom determine the presence or absence of fraud without a trial or evidentiary proceeding.")” See,

“This court and others have held that if a party files a motion pursuant to rule 1.540(b)(3), pleads fraud or misrepresentation with particularity, and shows how that fraud or misrepresentation affected the judgment, the trial court is required to conduct an evidentiary hearing to determine whether the motion should be granted.[7]See Seal v. Brown, 801 So. 2d 993, 994-95 (Fla. 1st DCA 2001); St. Surin v. St. Surin, 684 So. 2d 243, 244 (Fla. 2d DCA *782 1996); Estate of Willis v. Gaffney, 677 So. 2d 949 (Fla. 2d DCA 1996); Dynasty Exp. Corp. v. Weiss, 675 So. 2d 235, 239 (Fla. 4th DCA 1996); Townsend v. Lane, 659 So. 2d 720 (Fla. 5th DCA 1995); S. Bell Tel. & Tel. Co. v. Welden, 483 So. 2d 487, 489 (Fla. 1st DCA 1986) (“[W]here the moving party's allegations raise a colorable entitlement to rule 1.540(b)(3) relief, a formal evidentiary hearing on the motion, as well as permissible discovery prior to the hearing, is required.”); Kidder v. Hess, 481 So. 2d 984, 986 (Fla. 5th DCA 1986); Stella v. Stella, 418 So. 2d 1029 (Fla. 4th DCA 1982); see also Robinson. Moreover, the courts have held that the hearing

requirement applies when fraud is asserted as a grounds for relief under either rule 1.530 or 1.540, Florida Rules of Civil Procedure. See Stella. The motion filed by Robinson sufficiently alleges fraud and demonstrates how it affected the judgment, thereby satisfying the requirement for an evidentiary hearing under either rule 1.530 or 1.540.”

CONCLUSION

For all of the foregoing reasons, this Court should reverse the Final Judgment dated December 16, 2015 and remand the proceedings to the lower tribunal Disqualifying Judge John Phillips and ensuring the case is assigned to a non-conflicted Judge or other venue and non conflicted jurisdiction consistent with fundamental due process and for such other and further relief as may be just and proper.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 5th day of July, 2016.

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein
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RECORD APPENDIX

#	Document	Record Page #	Amount
1	January 2012 Pam Simon Handwritten Letter and her Attorney Heriaud & Genin, Ltd. Nov 28, 2011 letter to Simon Placing Pressure on Simon to make changes after being told by Spallina without authorization from Simon that she and her children were cut out of Estate and Trusts of Simon and Shirley.	Shirley Estate Record #002084 - 002090	
2	Pleading Feb 14, 2014 "OBJECTION TO MOTIONS TO BE DISCHARGED AS COUNSEL AND/OR PERSONAL REPRESENTATIVES AND TRUSTEES IN SIMON AND SHIRLEY ESTATES" #35 Simon LIC income	Shirley Estate Record #2071 - in 2007-2008	\$7,875,933.33
3	Zillow Price Listing by Nestler Poletto/Sothebys showing August 12, 2012 Homestead Saint Andrews Country Club - 7020 Lions Head Lane, Boca Raton, FL 33496. Listed by Simon days before his death at value of 3.2M sold for approx 1.1M	Shirley Trust Record #001128	\$3,200,000.00
4	Zillow Price Listing by Nestler Poletto/Sothebys showing listing of	Shirley Estate Record	\$2,195,000.00

	Condominium on Feb 01, 2012 - Aragon Condominium 2494 S Ocean Blvd APT C5, Boca Raton, FL 33432. Sold for approx 1.1M	#001118 - #001121	
5	Advanced Inheritance Agreement	Shirley Estate Record #000313 - #000318	
6	Advanced Inheritance in May 06, 2013 filed "EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT . DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE."	Shirley Estate Record #000650 - #000653	
7	Reference Simon Given Contact information for DOJ Inspector General Glenn Fine	Shirley Estate Record #000146 - 000147	
8	September 12, 2014 "PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE - EXHIBIT C ALLEGED FRAUDULENT INSURANCE CLAIM" SUBMITTED BY ATTORNEY AT LAW ROBERT L. SPALIJNA, ESQ. AND RELATED	Shirley Estate Record #000414 - #000428	

	CORRESPONDENCES		
9	<p>May 06 2013 “EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT . DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE - V. ITEMS REMOVED FROM THE ESTATE POST MORTEM AND MORE” - Computers Simon Wiped Clean - All business records missing.</p>	<p>Shirley Estate Record #000593 - #000595</p>	
10	<p>“MOTION TO COMPEL... - EXHIBIT 8 - INCOMPLETE OPPENHEIMER TRUST PAPERS AND BERNSTEIN FAMILY. REALTY LLC PAPERS SENT TO ELIOT.” Oppenheimer / Colin Fraudulent Documents</p>	<p>Shirley Estate Record #001734 - 001756</p>	
11	<p>“EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF</p>	<p>Shirley Estate Record #000247 - #000266</p>	

	SHIRLEY BERNSTEIN AND MORE EXHIBIT 10-TRIPP SCOTT LETTERS TO SPALLINA FOR DOCUMENTS, ETC.” Tripp Scott Letters		
12	2012 Will of Simon	Shirey Trust Record #001904 - #001912	
	ALL Alan Rose Notice of Witnesses - Exhibits for Trial		

APPENDIX

App#	Document	Reference/Bates #'s	Amount
1	2006 IRS Form 1120S showing Gross Receipts of LIC Holdings	Tescher and Spallina Production Bates #TS000925	6,113,843.00
2	2007 IRS Form 1120S showing Gross Receipts of LIC Holdings	Tescher and Spallina Production Bates #TS002419 -	\$38,419,667.00
3	2008 IRS Form 1120S showing Gross Receipts of LIC Holdings	Tescher and Spallina Production Bates #TS002421	\$39,421,306.00

4	2007 IRS 1099 Simon Bernstein showing income of	Tescher and Spallina Production Bates #TS002961	\$8,795,654.45
5	2008 IRS 1099 Simon Bernstein showing income of	Tescher and Spallina Production Bates #TS002962	\$15,766,018.47
6	Aug 31, 2012 Market Value Simon Wilmington Trust 49.5% owned by Simon Trust and 49.5% owned by Shirley Trust through Bernstein Family Investments. Simon Trust value Total Income and Total Principal =	Tescher and Spallina Production Bates #TS004807- TS004814	\$2 829 962
7	Aug 31, 2012 Market Value Simon Wilmington Trust 49.5% owned by Simon Trust and 49.5% owned by Shirley Trust through Bernstein Family Investments. Shirley Trust value Total Income and Total Principal = Shirley Trust not Accounted for as NO Trust Accounting exists Simon Trust Accounting done by Ted shows no Wilmington accounts. No Simon Trust Accounting by Tescher Spallina in violation of Probate Rules and Statutes.	Tescher and Spallina Production Bates #TS004808- TS004814	\$2 829 962

8	February 18, 2014 "ORDER ON PETITION FOR RESIGNATION AND DISCHARGE" Tescher and Spallina Discharge Order	Simon Bernstein Estate Order Applies to ALL Simon and Shirley Bernstein Estate and Trust Records	
9	May 31, 2012 Tescher & Spallina Billing Record for Heritage Life Insurance Work	TS005879	
10	Docs / Orders showing O'Connell's Office had Inspected, Taken Custody of Items from Lion's Head Lane		
11	NOTICE of ADMIN SIMON showing ELIOT as Beneficiaries and ONLY 5 Children as Beneficiaries		
12	Magically Timed Order of Admin by Unknown Judge from same date		
13	Tescher Deposition Transcript - ELIOT gets NO Opportunity to DEPOSE		
14	Transcript of Management Conference Sept 15, 2015		
15	Transcript of Colin Sept 2013 Hearing - Colin never asks Ted why he wasn't simply doing the Filings IF		

	he was PR etc - Holds off on April 9th and who does Filings etc - No Testimony of Moran EVER before Colin		
16	Tescher & Spallina Production	Tescher & Spallina Production all 7202 Pages Bates #'d included in entirety by reference herein @ http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140602%20PRODUCTION%20OF%20DOCUMENTS%20SIMON%20ESTATE%20BY%20COURT%20ORDER%20TO%20BEN%20BROWN%20CURATOR%20DELIVERED%20BY%20TESCHER%20AND%20SPALLINA.pdf	
17	Corporate Records for Bernstein Family Realty, Bernstein Family Holdings, Bernstein Family Investments		
	General Financial Picture of Simon and Shirley		

APPENDIX 1

Department of the Treasury
Internal Revenue Service (77)

▶ Do not file this form unless the corporation has filed

Form 2553 to elect to be an S corporation.

EXTENSION GRANTED TO 09/15/07

2006

For calendar year 2006, or tax year beginning **SEPTEMBER 1, 2006**, and ending **DECEMBER 31, 2006**

A Effective date of S election 09/01/2006	Use the IRS label. Otherwise, print or type.	Name LIC HOLDINGS INC	C Employer identification number 20-5290314
B Business activity code number (see instructions) 524290		Number, street, and room or suite no. If a P.O. box, see instructions. 950 PENINSULA CORP. CIRCLE, SUITE 3010	D Date incorporated 09/01/2006
		City or town, state, and ZIP code BOCA RATON, FL 33487	E Total assets (see instructions) \$ 3,383,779.
F Check if: (1) <input checked="" type="checkbox"/> Initial return (2) <input type="checkbox"/> Final return (3) <input type="checkbox"/> Name change (4) <input type="checkbox"/> Address change (5) <input type="checkbox"/> Amended return			
G Enter the number of shareholders in the corporation at end of the tax year			13
H Check if Schedule M-3 is required (attach Schedule M-3)			<input type="checkbox"/>

Caution: Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

Income	1 a Gross receipts or sales 6,113,843. b Less returns and allowances c Bal ▶	1c	6,113,843.
	2 Cost of goods sold (Schedule A, line 8)	2	
	3 Gross profit. Subtract line 2 from line 1c	3	6,113,843.
	4 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)	4	
	5 Other income (loss) (attach statement)	5	
	6 Total income (loss). Add lines 3 through 5	6	6,113,843.
Deductions (See instructions for limitations)	7 Compensation of officers	7	200,000.
	8 Salaries and wages (less employment credits)	8	2,007,567.
	9 Repairs and maintenance	9	9,139.
	10 Bad debts	10	
	11 Rents	11	1,688.
	12 Taxes and licenses STATEMENT 1	12	82,280.
	13 Interest	13	6,476.
	14 Depreciation not claimed on Schedule A or elsewhere on return (attach Form 4562)	14	5,127.
	15 Depletion (Do not deduct oil and gas depletion.)	15	
	16 Advertising	16	18,795.
	17 Pension, profit-sharing, etc., plans	17	
	18 Employee benefit programs	18	
	19 Other deductions (attach statement) STATEMENT 2	19	2,302,973.
	20 Total deductions. Add lines 7 through 19	20	4,634,045.
	21 Ordinary business income (loss). Subtract line 20 from line 6	21	1,479,798.
Tax and Payments	22 a Excess net passive income or LIFO recapture tax (see instructions)	22a	
	b Tax from Schedule D (Form 1120S)	22b	
	c Add lines 22a and 22b	22c	
	23 a 2006 estimated tax payments and 2005 overpayment credited to 2006	23a	
	b Tax deposited with Form 7004	23b	
	c Credit for federal tax paid on fuels (attach Form 4136)	23c	
	d Credit for federal telephone excise tax paid (attach Form 8913)	23d	
	e Add lines 23a through 23d	23e	
	24 Estimated tax penalty (see instructions). Check if Form 2220 is attached	24	<input type="checkbox"/>
	25 Amount owed. If line 23e is smaller than the total of lines 22c and 24, enter amount owed	25	
	26 Overpayment. If line 23e is larger than the total of lines 22c and 24, enter amount overpaid	26	
27 Enter amount from line 26 Credited to 2007 estimated tax	27	Refunded ▶	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here

Signature of officer

Date

Title

May the IRS discuss this return with the preparer shown below (see instr. 7)?
 Yes No

Paid Preparer's Use Only

Preparer's signature

Date

Check if self-employed

Preparer's SSN or PTIN
P00127193

Firm's name (or yours if self-employed), address, and ZIP code

GOLDSTEIN LEWIN & CO.
1900 N.W. CORPORATE BLVD. STE E-300
BOCA RATON, FL 33431-8502

EIN

59-2147155

Phone no. **(561)994-5050**

APPENDIX 2

U.S. Income Tax Return for an S Corporation

2007

Department of the Treasury
Internal Revenue Service

▶ Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.
EXTENSION GRANTED TO 09/15/08

For calendar year 2007, or tax year beginning

, and ending

A S election effective date 09/01/2006	Use the IRS label. Otherwise, print or type.	Name LIC HOLDINGS INC	D Employer identification number 20-5290314
B Business activity code number (see instructions) 524290		Number, street, and room or suite no. If a P.O. box, see instructions. 950 PENINSULA CORP. CIR., SUITE 3010	E Date incorporated 09/01/2006
C Check if Sch. M-3 attached <input checked="" type="checkbox"/>		City or town, state, and ZIP code BOCA RATON, FL 33487	F Total assets (see instructions) \$ 10,509,513.

G Is the corporation electing to be an S corporation beginning with this tax year? Yes No If "Yes," attach Form 2553 if not already filed

H Check if: (1) Final return (2) Name change (3) Address change (4) Amended return (5) S election termination or revocation

I Enter the number of shareholders in the corporation at end of the tax year **▶ 13**

Caution: Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

Income	1 a Gross receipts or sales 38,419,667.	b Less returns and allowances	c Bal ▶	1c	38,419,667.
	2 Cost of goods sold (Schedule A, line 8)			2	
	3 Gross profit. Subtract line 2 from line 1c			3	38,419,667.
	4 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			4	<1,520.>
	5 Other income (loss) (attach statement) STATEMENT 1			5	58,945.
	6 Total income (loss). Add lines 3 through 5			▶ 6	38,477,092.
Deductions (See instructions for limitations)	7 Compensation of officers STATEMENT 2			7	5,498,526.
	8 Salaries and wages (less employment credits)			8	4,103,690.
	9 Repairs and maintenance			9	20,041.
	10 Bad debts			10	
	11 Rents			11	201,637.
	12 Taxes and licenses STATEMENT 3			12	167,695.
	13 Interest			13	118,560.
	14 Depreciation not claimed on Schedule A or elsewhere on return (attach Form 4562)			14	61,587.
	15 Depletion (Do not deduct oil and gas depletion.)			15	
	16 Advertising			16	106,971.
	17 Pension, profit-sharing, etc., plans			17	
	18 Employee benefit programs			18	20,350.
	19 Other deductions (attach statement) STATEMENT 4			19	16,576,999.
	20 Total deductions. Add lines 7 through 19			▶ 20	26,876,056.
	21 Ordinary business income (loss). Subtract line 20 from line 6			21	11,601,036.
Tax and Payments	22 a Excess net passive income or LIFO recapture tax (see instructions)	22a		22c	
	b Tax from Schedule D (Form 1120S)	22b			
	c Add lines 22a and 22b				
	23 a 2007 estimated tax payments and 2006 overpayment credited to 2007	23a		23d	
	b Tax deposited with Form 7004	23b			
	c Credit for federal tax paid on fuels (attach Form 4136)	23c			
	d Add lines 23a through 23c				
24 Estimated tax penalty (see instructions). Check if Form 2220 is attached <input type="checkbox"/>			24		
25 Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed			25		
26 Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid			26		
27 Enter amount from line 26 Credited to 2008 estimated tax ▶		Refunded ▶	27		

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here ▶ Signature of officer _____ Date _____ Title _____

May the IRS discuss this return with the preparer shown below (see instr.?) Yes No

Paid Preparer's Use Only	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN P00127193
	Firm's name (or yours if self-employed), address, and ZIP code	EIN		59-2147155
	GOLDSTEIN LEWIN & CO. 1675 N. MILITARY TRAIL, FIFTH FLOOR BOCA RATON, FL 33486		Phone no. (561) 994-5050	

APPENDIX 3

For calendar year 2008 or tax year beginning

, and ending

A S election effective date 09/01/2006	Use the IRS label. Otherwise, print or type.	Name LIC HOLDINGS INC	D Employer identification number 20-5290314
B Business activity code number (see instructions) 524290		Number, street, and room or suite no. If a P.O. box, see instructions. 950 PENINSULA CORP. CIR., SUITE 3010	E Date incorporated 09/01/2006
C Check if Sch. M-3 attached <input checked="" type="checkbox"/>		City or town, state, and ZIP code BOCA RATON, FL 33487	F Total assets (see instructions) \$ 4,151,405.

G Is the corporation electing to be an S corporation beginning with this tax year? Yes No If "Yes," attach Form 2553 if not already filed

H Check if: (1) Final return (2) Name change (3) Address change (4) Amended return (5) S election termination or revocation

I Enter the number of shareholders who were shareholders during any part of the tax year **▶ 13**

Caution: Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

Income	1 a Gross receipts or sales 39,421,306	b Less returns and allowances	c Bal ▶	1c 39,421,306.
	2 Cost of goods sold (Schedule A, line 8)			2
	3 Gross profit. Subtract line 2 from line 1c			3 39,421,306.
	4 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			4
	5 Other income (loss) (attach statement) STATEMENT 1			5 150,154.
	6 Total income (loss). Add lines 3 through 5 ▶			6 39,571,460.
Deductions (See instructions for limitations)	7 Compensation of officers STATEMENT 2			7 9,402,142.
	8 Salaries and wages (less employment credits)			8 5,391,007.
	9 Repairs and maintenance			9 4,295.
	10 Bad debts			10
	11 Rents			11 350,691.
	12 Taxes and licenses STATEMENT 3			12 505,672.
	13 Interest			13 22,222.
	14 Depreciation not claimed on Schedule A or elsewhere on return (attach Form 4562)			14 113,751.
	15 Depletion (Do not deduct oil and gas depletion.)			15
	16 Advertising			16 194,719.
	17 Pension, profit-sharing, etc., plans			17 103,791.
	18 Employee benefit programs			18
	19 Other deductions (attach statement) STATEMENT 4			19 21,637,874.
	20 Total deductions. Add lines 7 through 19 ▶			20 37,726,164.
	21 Ordinary business income (loss). Subtract line 20 from line 6			21 1,845,296.

Tax and Payments	22 a Excess net passive income or LIFO recapture tax (see instructions)	22a		
	b Tax from Schedule D (Form 1120S)	22b		
	c Add lines 22a and 22b			22c
	23 a 2008 estimated tax payments and 2007 overpayment credited to 2008	23a		
	b Tax deposited with Form 7004	23b		
	c Credit for federal tax paid on fuels (attach Form 4136)	23c		
	d Add lines 23a through 23c			23d
	24 Estimated tax penalty (see instructions). Check if Form 2220 is attached <input type="checkbox"/>			24
	25 Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed			25
	26 Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid			26
27 Enter amount from line 26 Credited to 2009 estimated tax ▶	Refunded ▶		27	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here ▶ Signature of officer _____ Date _____ Title _____

May the IRS discuss this return with the preparer shown below (see instr.)? Yes No

Paid Preparer's Use Only	Preparer's signature ▶	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN P00127193
	Firm's name (or yours if self-employed), address, and ZIP code ▶	GOLDSTEIN LEWIN & CO. 1675 N. MILITARY TRAIL, FIFTH FLOOR BOCA RATON, FL 33486		EIN 59-2147155 Phone no. (561)994-5050

APPENDIX 4

9595

VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no. SIMON BERNSTEIN 950 PENINSULA CORPORATE CIRCLE STE 3010 BOCA RATON FL 33487		1 Rents \$	OMB No. 1545-0115 2007 Form 1099-MISC		Miscellaneous Income
PAYER'S federal identification number [REDACTED]		2 Royalties \$	4 Federal income tax withheld \$		
RECIPIENT'S name ARBITRAGE INTERNATIONAL MANAGEMENT		3 Other income \$	5 Fishing boat proceeds \$		Copy A For Internal Revenue Service Center File with Form 1096.
Street address (including apt. no.) 950 PENINSULA CORPORATE CIRCLE SUITE 3010		7 Nonemployee compensation \$ 8795654.45	6 Medical and health care payments \$		
City, state, and ZIP code Boca Raton FL 33487		8 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	9 Substitute payments in lieu of dividends or interest \$		For Privacy Act and Paperwork Reduction Act Notice, see the 2007 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Account number (see instructions) [REDACTED]		10 Crop insurance proceeds \$	11 Excess golden parachute payments \$		
15a Section 409A deferrals \$		12 State tax withheld \$	13 State/Payer's state no. \$		14 Gross proceeds paid to an attorney \$
15b Section 409A income \$		16 State income \$		17 State/Payer's state no. \$	

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

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9595

VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Rents \$	OMB No. 1545-0115 2007 Form 1099-MISC		Miscellaneous Income
PAYER'S federal identification number		2 Royalties \$	4 Federal income tax withheld \$		
RECIPIENT'S name		3 Other income \$	5 Fishing boat proceeds \$		Copy A For Internal Revenue Service Center File with Form 1096.
Street address (including apt. no.)		7 Nonemployee compensation \$	6 Medical and health care payments \$		
City, state, and ZIP code		8 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	9 Substitute payments in lieu of dividends or interest \$		For Privacy Act and Paperwork Reduction Act Notice, see the 2007 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Account number (see instructions)		10 Crop insurance proceeds \$	11 Excess golden parachute payments \$		
15a Section 409A deferrals \$		12 State tax withheld \$	13 State/Payer's state no. \$		14 Gross proceeds paid to an attorney \$
15b Section 409A income \$		16 State income \$		17 State/Payer's state no. \$	

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

DETACH BEFORE MAILING

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LIC-AIM-TB-000033

APPENDIX 5

9595 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no. SIMON BERNSTEIN 950 PENINSULA CORPORATE CIRCLE STE 3010 BOCA RATON FL 33487		1 Rents \$	OMB No. 1545-0115 2008 Form 1099-MISC		Miscellaneous Income
PAYER'S federal identification number [REDACTED]		2 Royalties \$	3 Other income \$	4 Federal income tax withheld \$	
RECIPIENT'S name Arbitrage International Marketing		5 Fishing boat proceeds \$	6 Medical and health care payments \$	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
Street address (including apt. no.) 950 Peninsula Corporate Circle Suite 3010		7 Nonemployee compensation \$ 15766018.47	8 Substitute payments in lieu of dividends or interest \$		
City, state, and ZIP code Boca Raton FL 33487		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$	Form 1099-MISC	
Account number (see instructions) [REDACTED]		11 [REDACTED]	12 [REDACTED]		
15a Section 409A deferrals \$		13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$	18 State income \$	
15b Section 409A income \$		16 State tax withheld \$	17 State/Payer's state no.	18 State income \$	

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

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9595 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Rents \$	OMB No. 1545-0115 2008 Form 1099-MISC		Miscellaneous Income
PAYER'S federal identification number [REDACTED]		2 Royalties \$	3 Other income \$	4 Federal income tax withheld \$	
RECIPIENT'S name		5 Fishing boat proceeds \$	6 Medical and health care payments \$	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
Street address (including apt. no.)		7 Nonemployee compensation \$	8 Substitute payments in lieu of dividends or interest \$		
City, state, and ZIP code		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$	Form 1099-MISC	
Account number (see instructions) [REDACTED]		11 [REDACTED]	12 [REDACTED]		
15a Section 409A deferrals \$		13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$	18 State income \$	
15b Section 409A income \$		16 State tax withheld \$	17 State/Payer's state no.	18 State income \$	

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

DETACH BEFORE MAILING

BMISFED* NY 257479

LIC-AIM-TB-000034

APPENDIX 6



Relationship Summary

088949-000 TT/SIMON L BERNSTEIN IRREVTR

As of August 31, 2012

CONTACTS

Private Client Advisor:

CARECE M. RUFE

302-651-8248

crufe@wilmingtontrust.com

CORPORATE HEADQUARTERS

Rodney Square North

1100 North Market Street

Wilmington DE 19890-0001

877-836-9206

www.wilmingtontrust.com

IMPORTANT INFORMATION

On July 1, 2012, Wilmington Trust converted to a new trust and investment management system. This statement is produced from our new system which reflects information in a slightly different format. Please note that year to date fields will include cumulative data with a start date of July 1, 2012, but will not include data or totals from the first six months of 2012. If you have any questions, please contact your relationship team.

For clients invested in the Wilmington Trust Common Trust Funds, audited financial reports are prepared annually for the funds and are available to you at no charge. If you would like to receive copies of these reports, please contact your Relationship Manager. Wilmington Trust receives an administration fee from the common trust funds equal to 0.10% annually of the market value of the common trust funds held in client accounts.

1602671 02 AT 0.744 **AUTO 9 1 4704 33496 000023999 0001N ■



SIMON L BERNSTEIN
7020 LIONS HEAD LANE
BOCA RATON FL 33496-5931



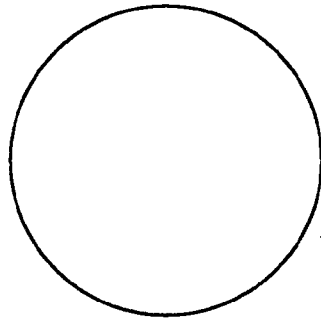
Market Value Summary







088949-000 TT/SIMON L BERNSTEIN IRREV TR

As of August 31, 2012

ASSET ALLOCATION

CURRENT RELATIONSHIP MARKET VALUE: \$2,829,962



	Equity	0%
	Fixed Income	0%
	Inflation Hedges	0%
	Hedged Strategies	0%
	Cash & Currency	
	Other Assets	100%

	MARKET VALUE (M/V) As of 7/31/2012	NET CONTRIBUTIONS (WITHDRAWALS)	MARKET VALUE (M/V) CHANGE	MARKET VALUE (M/V) As of 8/31/2012
TOTAL PRINCIPAL	\$2,842,462	\$0	\$0	\$2,842,462
TOTAL INCOME	(\$12,500)	\$0	\$0	(\$12,500)
TOTAL	\$2,829,962	\$0	\$0	\$2,829,962

Net contribution/withdrawal figures include fees. Market value figures include accruals.



APPENDIX 7



Relationship Summary

088949-000 TT/SIMON L BERNSTEIN IRREVTR

As of August 31, 2012

CONTACTS

Private Client Advisor:

CARECE M. RUFE

302-651-8248

crufe@wilmingtontrust.com

CORPORATE HEADQUARTERS

Rodney Square North

1100 North Market Street

Wilmington DE 19890-0001

877-836-9206

www.wilmingtontrust.com

IMPORTANT INFORMATION

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For clients invested in the Wilmington Trust Common Trust Funds, audited financial reports are prepared annually for the funds and are available to you at no charge. If you would like to receive copies of these reports, please contact your Relationship Manager. Wilmington Trust receives an administration fee from the common trust funds equal to 0.10% annually of the market value of the common trust funds held in client accounts.

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SIMON L BERNSTEIN
7020 LIONS HEAD LANE
BOCA RATON FL 33496-5931



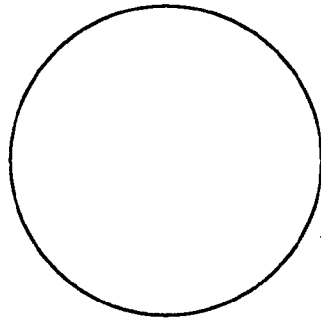
Market Value Summary







088949-000 TT/SIMON L BERNSTEIN IRREV TR

As of August 31, 2012

ASSET ALLOCATION

CURRENT RELATIONSHIP MARKET VALUE: \$2,829,962



	Equity	0%
	Fixed Income	0%
	Inflation Hedges	0%
	Hedged Strategies	0%
	Cash & Currency	
	Other Assets	100%

	MARKET VALUE (M/V) As of 7/31/2012	NET CONTRIBUTIONS (WITHDRAWALS)	MARKET VALUE (M/V) CHANGE	MARKET VALUE (M/V) As of 8/31/2012
TOTAL PRINCIPAL	\$2,842,462	\$0	\$0	\$2,842,462
TOTAL INCOME	(\$12,500)	\$0	\$0	(\$12,500)
TOTAL	\$2,829,962	\$0	\$0	\$2,829,962

Net contribution/withdrawal figures include fees. Market value figures include accruals.



APPENDIX 8

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF SIMON L. BERNSTEIN,

PROBATE DIVISION

Deceased.

CASE NO. 502012CP004391XXXXSB

ELIOT IVAN BERNSTEIN, PRO SE

DIVISION: IY (COLIN)

Petitioner

vs.

TESCHER & SPALLINA, P.A., (and all parties, associates and of counsel); ROBERT L. SPALLINA (both personally and professionally); DONALD R. TESCHER (both personally and professionally); THEODORE STUART BERNSTEIN (as alleged personal representative, trustee, successor trustee) (both personally and professionally); et. al.

Respondents.

ORDER ON PETITION FOR RESIGNATION AND DISCHARGE

This cause was heard by the Court on the co-Personal Representatives' Petition for Resignation and Discharge on February 18, 2014, and the Court, having heard arguments of counsel, and otherwise being fully advised in the premises, ORDERS AND ADJUDGES AS FOLLOWS:

1. The Petitioners' request to accept their resignation is ACCEPTED. The co-Personal Representatives' Letters of Administration are hereby revoked.

2. ~~Within 30 days from the later of the date of this order or the appointment of a successor fiduciary,~~ ^{BY MARCH 4, 2014} ^(MKE) the resigning co-Personal Representatives shall deliver to the successor fiduciary all property of the Estate, real, personal, tangible or intangible, all of the documents and records of the Estate and all records associated with any property of the Estate, regardless of whether such property has been previously distributed, transferred, abandoned or otherwise disposed of.

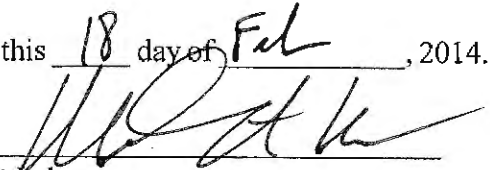
3. The Petitioners' request to reserve ruling on their discharge is ACCEPTED.

4. The resigning co-Personal Representatives shall file an accounting and a Renewed Petition for Discharge within sixty (60) days after the date hereof, which Renewed Petition for Discharge shall be verified and recite that the letters of administration have been revoked, the resigning co-Personal Representatives have surrendered all undistributed Estate assets, records, documents, papers and other property of or concerning the Estate to the successor fiduciary as set forth above, and the amount of compensation paid or to be paid by the resigning co-Personal Representatives pursuant to Probate Rule 5.430(g). Such accounting shall include cash and transactions from the commencement of administration of the Estate and ending as of the date the accounting is submitted.

5. The resigning co-Personal Representatives shall serve notice of filing and a copy of the accounting and Renewed Petition for Discharge on all interested parties and the notice shall state that the objection to the Renewed Petition for Discharge must be filed within thirty days after the later of service of the petition or service of the accounting on that interested person pursuant to Probate Rule 5.430(i).

6. The successor Personal Representative or Curator is authorized to pay a \$ _____ retainer to the accountant whom the Successor Personal Representative or Curator selects to provided the accounting which this Order requires. The accountant's hourly rate and compensation shall be subject to court approval.

DONE AND ORDERED in Delray Beach, Florida, this 18 day of Feb, 2014.


Circuit Judge

cc: Parties on attached service list

late
THE COURT RESENTS JUDICIAL TO ENFORCE THIS ORDER.

SERVICE LIST

Theodore Stuart Bernstein (e-mail)
Life Insurance Concepts
950 Peninsula Corporate Circle, Suite 3010
Boca Raton, Florida 33487

Alan B. Rose, Esq. (E-mail)
Page Mrachek Fitzgerald Rose Konopka &
Dow PA
505 S Flagler Dr Ste 600
West Palm Beach, Florida 33401

Eliot Bernstein (U.S. Mail)
2753 NW 34th Street
Boca Raton, Florida 33434

Lisa Sue Friedstein (U.S. Mail)
2142 Churchill Lane
Highland Park, Illinois 60035

Pamela Beth Simon (U.S. Mail)
950 North Michigan Avenue, Suite 2603
Chicago, Illinois 60611

Jill Iantoni (U.S. Mail)
2101 Magnolia Lane
Highland Park, Illinois 60035

Donald R. Tescher (E-mail)
4855 Technology Way, Suite 720
Boca Raton, Florida 33431

Mark R. Manceri, Esq. (E-mail)
Mark. R. Manceri, P.A.
2929 East Commercial Boulevard, Ste. 702
Fort Lauderdale, Florida 33308

APPENDIX 9

Tescher & Spallina, P.A.

4855 Technology Way
Suite 720
Boca Raton, FL 33431
561-997-7008

EIN: 26-1543894

August 23, 2012

Invoice # 11187.001

Simon Bernstein
7020 Lions Head Lane
Boca Raton, FL 33496

In Reference To: Our File No.11187.001
Estate Planning

Professional services

Amount

FOR LEGAL SERVICES RENDERED through July 31, 2012 in connection with estate planning, including meeting with client to finalize planning items; telephone calls and email correspondence with Diana regarding existing insurance matters and status of GC Trust transfers from Oppenheimer to JP Morgan; finalize EP documents and meet with client to execute same. 1,837.50

For professional services rendered \$1,837.50
Previous balance \$3,975.78

8/1/2012 Payment - Thank You, Check No. 207525930 (\$1,000.00)

Total payments and adjustments (\$1,000.00)

Balance due \$4,813.28

Please make all checks payable to "*Tescher & Spallina, P.A.*" and indicate your File Number on the check. Do not hesitate to contact us with any questions or difficulties. Thank you for the opportunity to be of service to you.

APPENDIX 10

APPENDIX 11

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF PROBATE DIVISION 12

SIMON L. BERNSTEIN, File No. _____
Deceased. 502012 CP00 4391 XXX SB

2012 OCT -2 AM 8:59
SHARON R. BURNS, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH-FILED

PETITION FOR ADMINISTRATION
(testate Florida resident)

Petitioners, ROBERT L. SPALLINA and DONALD R. TESCHER, allege:

1. Petitioners have an interest in the above estate as the named co-personal representatives under the decedent's Will. The Petitioner's addresses are 7387 Wisteria Avenue, Parkland, FL 33076 and 2600 Whispering Oaks Lane, Delray Beach, FL 33445, respectively, and the name and office address of petitioners' attorney is set forth at the end of this Petition.

2. Decedent, SIMON L. BERNSTEIN, whose last known address was 7020 Lions Head Lane, Boca Raton, Florida 33496, whose age was 76, and whose social security number is [REDACTED], died on September 13, 2012, at his home at 7020 Lions Head Lane, Boca Raton, Florida 33496, and on the date of death decedent was domiciled in Palm Beach County, Florida.

3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving spouse, if any, their addresses and relationship to decedent, and the dates of birth of any who are minors, are:

NAME	ADDRESS	RELATIONSHIP	BIRTH DATE (if Minor)
Ted S. Bernstein	880 Berkeley Street Boca Raton, FL 33487	son	adult
Pamela B. Simon	950 North Michigan Ave. Suite 2603 Chicago, IL 60606	daughter	adult
Eliot Bernstein	2753 NW 34 th St. Boca Raton, FL 33434	son	adult
Jill Iantoni	2101 Magnolia Lane Highland Park, IL 60035	daughter	adult



Lisa S. Friedstein

2142 Churchill Lane
Highland Park, IL 60035

daughter adult

Robert L. Spallina and Donald R. Tescher,
co-Trustees of the Simon L. Bernstein
Amended and Restated Trust Agreement
dated July 25, 2012

4855 Technology Way,
Suite 720
Boca Raton, FL 33431

Trust

4. Venue of this proceeding is in this county because decedent was a resident of Palm Beach County at the time of his death.

5. Robert L. Spallina and Donald R. Tescher, whose addresses are listed above, and who are qualified under the laws of the State of Florida to serve as co-personal representatives of the decedent's estate are entitled to preference in appointment as co-personal representatives because they are the persons designated to serve as co-personal representatives under the decedent's Will.

6. The nature and approximate value of the assets in this estate are: tangible and intangible assets with an approximate value of less than \$ Unknown.

7. This estate will not be required to file a federal estate tax return.

8. The original of the decedent's last will, dated July 25, 2012, is being filed simultaneously with this Petition with the Clerk of the Court for Palm Beach County, Florida.

9. Petitioner is unaware of any unrevoked will or codicil of decedent other than as set forth in paragraph 8.


Petitioner requests that the decedent's Will be admitted to probate and that Robert L. Spallina and Donald R. Tescher be appointed as co-personal representatives of the estate of the decedent.

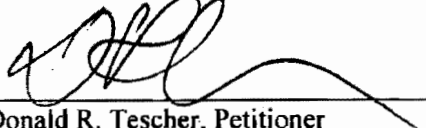
Under penalties of perjury, we declare that we have read the foregoing Petition for Administration, and the facts alleged are true, to the best of our knowledge and belief.

Signed on Oct. 1, 2012.

Respectfully Submitted,
TESCHER & SPALLINA, P.A.

By:
ROBERT L. SPALLINA, ESQUIRE
Attorney for Petitioner
Florida Bar No. 0497381
4855 Technology Way, Ste. 720
Boca Raton, FL 33431
561-997-7008
Email: rspallina@tescherspallina.com


Robert L. Spallina, Petitioner


Donald R. Tescher, Petitioner



APPENDIX 12

APPENDIX 13

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, RPR, 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.

1 APPEARANCES:
2

3 (Via Telephone)

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19 For Molly Simon, Alexandra

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24

25

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21
22 Jill Iantoni

23 Mimi McAndrews

24 Eliot Bernstein

25 Lisa Friedstein

I N D E X

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TESTIMONY OF:	PAGE
DONALD R. TESCHER	
(By Mr. Rose)	13
(By Mr. Feaman)	31
(By Mr. Eliot Bernstein)	106

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Tescher 1	Simon L. Bernstein Amended and Restated Trust Agreement	8
Tescher 2	three-page web printout	8
Tescher 3	two-page letter, 1/14/2014	8
Tescher 4	four-page email, 1/30/13	8
Tescher 5	Will of Simon L. Bernstein	8
Tescher 6	Florida Department of State, Detail by Entity Name, Bernstein Family Realty, LLC	8
Tescher 7	Articles of Organization, Bernstein Holdings, LLC	8
Tescher 8	Certificate of Limited Partnership, Bernstein Family Investments, LLP	8
Tescher 9	Articles of Incorporation, Shirley Bernstein Family Foundation, Inc.	8
Tescher 10	Florida Department of State, Detail by Entity Name, Two Oaks Consulting, LLC	8
Tescher 11-A	Reconciliation Detail, period ending 9/29/2006	8

1	Tescher 11-B	Reconciliation Detail,	8
2		period ending 11/30/2006	
3	Tescher 11-C	Reconciliation Detail,	8
4		period ending 1/31/2007	
5	Tescher 12	Declaratory Action to	9
6		Establish a Lost Trust and	
7		Appoint a Successor Trustee	
8	Tescher 13	TS 001359-367, Will of Simon	9
9		Bernstein	
10	Tescher 14	four-page document,	9
11		12/6/2012	
12	Tescher 15	Florida Department of State,	9
13		Detail by Entity Name, T&S	
14		Registered Agents, LLC	
15	Tescher A	Affidavit of Donald R.	14
16		Tescher	
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 (Tescher 1, Simon L. Bernstein Amended and
2 Restated Trust Agreement.)

3 (Tescher 2, three-page web printout.)

4 (Tescher 3, two-page letter, 1/14/2014.)

5 (Tescher 4, four-page email, 1/30/13.)

6 (Tescher 5, Will of Simon L. Bernstein.)

7 (Tescher 6, Florida Department of State,
8 Detail by Entity Name, Bernstein Family
9 Realty, LLC.)

10 (Tescher 7, Articles of Organization,
11 Bernstein Holdings, LLC.)

12 (Tescher 8, Certificate of Limited
13 Partnership, Bernstein Family
14 Investments, LLP.)

15 (Tescher 9, Articles of Incorporation,
16 Shirley Bernstein Family Foundation, Inc.)

17 (Tescher 10, Florida Department of State,
18 Detail by Entity Name, Two Oaks
19 Consulting, LLC.)

20 (Tescher 11-A, Reconciliation Detail,
21 Period ending 9/29/2006.)

22 (Tescher 11-B, Reconciliation Detail,
23 period ending 11/30/2006.)

24 (Tescher 11-C, Reconciliation Detail,
25 period ending 1/31/2007.)

1 (Tescher 12, Declaratory Action to
2 Establish a Lost Trust and Appoint a
3 Successor Trustee.)

4 (Tescher 13, TS 001359-367,
5 Will of Simon Bernstein.)

6 (Tescher 14, four-page document,
7 12/6/2012.)

8 (Tescher 15, Florida Department of State,
9 Detail by Entity Name, T&S Registered
10 Agents, LLC.)

11 MR. FEAMAN: Alan, you're taking this
12 deposition for the purpose of using it at the
13 hearings that are going to take place on Friday
14 before Judge Colin; and I'd like to stipulate that
15 by this deposition today, I am not waiving -- I
16 assume none of the other parties are waiving their
17 right to take the deposition of Mr. Tescher at some
18 point in the future concerning any issues that are
19 not before the court on Friday.

20 MR. BLOCK: What's before the court on
21 Friday?

22 MR. FEAMAN: Before the court on Friday,
23 according to an order entered by Judge Colin --

24 MR. BLOCK: What date is Friday?

25 MR. FEAMAN: Friday is the 11th.

1 MR. BLOCK: Okay. Good enough.

2 MR. FEAMAN: And the four things that this
3 deposition -- I understand -- is being taken for
4 is, No. 1, Elliot Bernstein's motion to disqualify
5 Alan Rose and the Mrachek law firm and John
6 Pankauski and the Pankauski law firm; No. 2, the
7 various motions/petitions filed in connection with
8 an appointment of a successor personal
9 representative for the estate of Simon Bernstein;
10 No. 3, the various motions and petitions filed in
11 connection with the removal of Ted Bernstein as
12 trustee of the Simon Bernstein Revocable Trust; and
13 the determination of the applicability of the
14 attorney/client privilege regarding an email sent
15 by Ted Bernstein to Eliot Bernstein; and that, by
16 our asking questions of Mr. Tescher today, we do
17 not waive the right to take Mr. Tescher's
18 deposition, if necessary, at some point in the
19 future concerning any other issues that may or may
20 not arise in connection with these matters.

21 MR. ROSE: I have no objection to your
22 stipulation. In fact, I think it's very obvious
23 that this deposition should be limited to four very
24 narrow issues. One of them has nothing to do with
25 Mr. Tescher -- which will be the privileged email.

1 I agree wholeheartedly.

2 I would actually express in advance some
3 concern that your exhibits would seem to go far
4 afield of those issues. But subject to that, I am
5 fine with your stipulation. And I would like to --
6 I think the witness should be sworn in.

7 MR. MORRISSEY: This is John Morrissey.
8 The only addition that I would have to the
9 stipulation is Mr. Feaman made a couple of
10 references to the use of this deposition only at
11 the hearing on the 11th.

12 My understanding is we have a kind of a
13 pour-over hearing on the 16th. So I would add to
14 that stipulation that this deposition could be used
15 on the 16th to the extent necessary as well.

16 MR. FEAMAN: Well, my stipulation doesn't
17 involve use. It involves a waiver on the part of
18 my client to -- if -- that somehow he would not be
19 allowed or anybody else would be allowed to take
20 Mr. Tescher's deposition again because it's already
21 been taken. And the point is, there may be issues
22 that arise in the future in which Mr. Tescher is
23 involved -- either as a witness or in some other
24 capacity -- and, therefore, today's deposition
25 would not be a waiver of any parties' right to take

1 his deposition in the future for other matters.

2 MR. ROSE: Let me take over for a second.
3 This is Alan Rose. Mr. Block, as counsel for Don
4 Tescher, do you agree he can be deposed again in
5 the future?

6 MR. BLOCK: Well --

7 MR. FEAMAN: Subject to the limitation and
8 nobody would ask him the same questions we're going
9 to ask him today.

10 MR. BLOCK: What I agreed to is the
11 stipulation decided by Peter, with the additional
12 of the date of the 16th by John Morrissey. That's
13 what I agree to.

14 MR. ROSE: And for the record, the
15 deposition is going to be used for whatever
16 purposes a deposition can be used under the Florida
17 Rules of Civil Procedure with no limitation.

18 You can swear in the witness.

19 DONALD R. TESCHER, having
20 satisfactorily been identified by
21 the production of a driver's license,
22 and being first duly sworn by the Notary
23 Public, was examined and testified as
24 follows to interrogatories

25 BY MR. ROSE:

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.

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 1 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**

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**

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.

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.

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?**

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

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

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**

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

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?**

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.

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.

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?**

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

1 the sale of the condo, or requiring the furniture
2 to be 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

1 fact that these estates were not going to be
2 subject to federal estate tax liabilities; yes.

3 **Q. As you sit here today, do you have any**
4 **reason you would advise Judge Colin or any**
5 **hesitancy in suggesting that Ted would be a proper**
6 **candidate and could -- and competent and capable of**
7 **doing the job if the judge were to appoint Ted as**
8 **the successor personal representative of his**
9 **father's estate?**

10 MR. FEAMAN: Objection to the form.

11 A. I would have no object -- I would have no
12 problem in recommending Mr. Ted Bernstein to serve
13 in the fiduciary capacity requested.

14 MR. ROSE: That's the end of my
15 examination. I'd like mine ordered on an expedited
16 basis. And I have no further questions; and turn
17 him over to cross-examination by whomever wishes to
18 do so.

19 MR. FEAMAN: Okay if I go next with
20 everybody?

21 THE WITNESS: Is that Peter?

22 MR. FEAMAN: Yeah.

23 THE WITNESS: All right. Let me just get
24 the other set of exhibits there.

25 MR. FEAMAN: Alan Rose, I'm going to

1 object to the admission of the affidavit. So I
2 want to give you the opportunity to ask more
3 questions concerning what's contained in the
4 affidavit so you don't feel like I am sandbagging
5 you in any way.

6 So if you have further questions
7 concerning what's contained in the affidavit of
8 this witness, I want to give you the opportunity to
9 ask.

10 MR. ROSE: That's fine.

11 My -- and just for the record, I believe
12 that once the affidavit is tendered by the witness
13 during a deposition and is subject to
14 cross-examination by all parties, that the
15 affidavit is fully admissible, regardless of
16 whether I asked him every question. But I will
17 also go through -- while you're questioning him --
18 and decide if there are any other questions I wish
19 to ask as a protective measure.

20 MR. FEAMAN: Okay. Very good.

21 MR. MORRISSEY: This is John Morrissey.
22 Just for the record, by allowing Mr. Feaman to ask
23 questions today, I'm certainly not agreeing and --
24 and don't waive any objection to -- to a standing
25 argument.

1 That is to say, his standing to make
2 argument at the upcoming hearings.

3 MR. ROSE: This is Alan Rose. I concur in
4 that, but I also think we need to let him get
5 moving.

6 MR. MORRISSEY: Sure. I just want to make
7 that point or argument for the record.

8 EXAMINATION

9 BY MR. FEAMAN:

10 **Q. All right. Mr. Tescher, this is Peter**
11 **Feaman on behalf of William Stansbury.**

12 A. Yes, sir.

13 **Q. I'd first like to draw your attention to**
14 **one of the exhibits to the affidavit; and I believe**
15 **that it was Exhibit E that you discussed in direct**
16 **examination for Mr. Rose, which is the Simon**
17 **Bernstein Amended and Restated Trust Agreement?**

18 A. Yes, sir.

19 **Q. Can you --**

20 A. I have that in front of me.

21 **Q. -- have that in front of you. Okay.**

22 I'd like to -- now, you said that you
23 **appointed or exercised the power of appointment of**
24 **a successor trustee under this document; and you**
25 **appointed Ted Bernstein.**

1 **Can you find that provision in the trust**
2 **which allows you to do that?**

3 A. Page 16, paragraph 3 -- subparagraph 2 --
4 no, subparagraph 3(a).

5 **Q. Okay. And is it fair to say that under**
6 **paragraph (b) (1) on page 15, the bottom of page 15,**
7 **you and Mr. Spallina were the successor**
8 **cotrustees --**

9 A. That's correct.

10 **Q. -- before you have exercised your power of**
11 **appointment?**

12 A. That's correct.

13 **Q. And when did Mr. Spallina resign as**
14 **successor cotrustee?**

15 A. The day before me.

16 **Q. Did he do that in the form of a letter --**

17 A. He executed --

18 **Q. -- or how did he do that?**

19 A. He executed a resignation form, as I
20 recall.

21 **Q. All right. Do you know what day that --**
22 **what the date of that was?**

23 A. I don't have any of those documents in
24 front of me. I can't tell you.

25 **Q. Okay. And do you have a copy of the**

1 **resignation form?**

2 A. I believe it exists; and I believe it's
3 included somewhere in all the discovery that, you
4 know, you all have from our files.

5 **Q. So then you do have it in your files at**
6 **some point?**

7 A. I believe that we do. I know it exists.
8 I saw it.

9 **Q. Did you excise -- or excuse me -- execute**
10 **a resignation?**

11 A. Yes, I did.

12 **Q. Do you recall the date of your**
13 **resignation?**

14 A. No. I do not, other than to reference it
15 the day after Mr. Spallina's resignation.

16 **Q. All right. Now, in your exercise of what**
17 **you term your "appointment of a successor trustee,"**
18 **what form did that exercise take?**

19 **Did you write a letter? Or what did you**
20 **do?**

21 A. It's a written form. It's "Resignation as
22 Successor Trustee and Appointment of Successor," I
23 believe.

24 Again, I don't have the benefit of having
25 the document in front of me, sir, so I'm at a

1 little bit of a loss.

2 But it was a standard document that we
3 would use in our office to have somebody resign and
4 appoint a successor.

5 **Q. Okay, 'cause I have not seen such a**
6 **document that you describe.**

7 MR. ROSE: I think they've been produced.
8 If you want me to email you a copy, Peter, I'll be
9 glad to do it.

10 MR. FEAMAN: Sure. That will be fine.

11 MR. ROSE: Okay.

12 **Q. All right. Now, the -- I'd like to draw**
13 **your attention to the paragraph that you brought me**
14 **to, which is paragraph 3 on page 16.**

15 A. Yes.

16 **Q. It says that -- it's the last paragraph of**
17 **page 16 -- "A trustee appointed under this**
18 **paragraph shall not be a related or subordinate**
19 **party of the trust."**

20 Do you see that?

21 A. Yeah, but I --

22 **Q. Okay.**

23 A. Go ahead. I'm sorry.

24 **Q. Is Mr. Bernstein -- Ted Bernstein -- a**
25 **related or subordinate party of the trust?**

1 A. Not for purposes of paragraph 3(b) -- not
2 for purposes of paragraph 3(a).

3 For purposes of paragraph 3(b), he would
4 be.

5 **Q. And where does 3(a) start?**

6 A. "The remaining trustees, if any."

7 **Q. All right. And did you not tell me that**
8 **you exercised your power of appointment pursuant to**
9 **the sentence that is actually two lines above that?**

10 A. Well, you probably didn't -- what I said
11 to you was that, if the remaining trustee is the
12 one who's making the appointment, the "flush"
13 language dealing with "related or subordinate
14 party" is not material.

15 It's only material if a beneficiary of the
16 trust picks a related or subordinate person to
17 serve as their trustee.

18 **Q. Let me draw your attention, if I could, to**
19 **the definitional section of this document, which is**
20 **-- I believe begins at page 5, paragraph E.**

21 A. Yes, sir.

22 **Q. Would you go there, please?**

23 A. Okay.

24 **Q. And this is the definitional section of**
25 **the trust; is that correct?**

1 A. This is a definition provision.

2 **Q. All right. And under paragraph E, let me**
3 **call your attention to paragraph 7, which appears**
4 **on page 7.**

5 A. Correct.

6 **Q. It says "A related or subordinate party to**
7 **a trust describes --" could you read that into the**
8 **record?**

9 A. Yes, sir. 7: "Related or subordinate
10 party: A related or subordinate party to a trust
11 describes a beneficiary of the subject trust or a
12 related or subordinate party to a beneficiary of
13 the trust as the terms 'related or subordinate
14 party' are defined under code section 672(c)."

15 **Q. And have you reviewed the code section**
16 **referred to there as to how it's defined?**

17 A. I'm generally familiar with 672(c),
18 although I don't have in front of me.

19 **Q. And does it define a related or**
20 **subordinate party as a child or issue of a grantor?**

21 A. I would not want to comment without having
22 the code provision in front of me.

23 **Q. Okay. So as you sit here today, you don't**
24 **-- you don't know one way or the other whether a**
25 **related party under that code section would include**

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 Bernstein 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

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?**

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

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

1 these as well. I apologize to the others on this
2 call, but due to the nature of this deposition, I
3 wasn't able to provide copies for everybody.

4 **Q. Can you please take a look at what's been**
5 **premarked as Exhibit 2 --**

6 A. Yes, sir.

7 **Q. -- to this deposition.**

8 A. Yes, sir.

9 **Q. Does this appear to be a true and correct**
10 **copy of the three pages of your website for Tescher**
11 **& Spallina, PA?**

12 A. To be honest with you, I haven't looked at
13 that in so long, I'm not sure. But...

14 **Q. All right. Well, let's see if we can**
15 **verify some of the information contained on it.**

16 A. Sure.

17 **Q. It shows the address of Tescher & Spallina**
18 **as 925 South Federal Highway, Suite 500; is that**
19 **correct?**

20 A. That is correct.

21 **Q. How long has Tescher & Spallina been**
22 **located at that address?**

23 A. March 1, 2014.

24 **Q. All right. So then this was at least**
25 **updated within the last couple of months; is that**

1 **fair to say?**

2 A. Yeah, obviously.

3 **Q. Okay.**

4 A. At least the address was updated, sir.

5 **Q. All right. And you represent there in**
6 **your website that your attorneys -- which I assume**
7 **would include you -- have extensive expertise in**
8 **certain areas, including "Wealth transfer planning**
9 **for high-net-worth individuals and families"; is**
10 **that correct?**

11 A. That is correct.

12 **Q. "Business succession planning"; is that**
13 **correct?**

14 A. That's correct.

15 **Q. "Life insurance planning"; is that**
16 **correct?**

17 A. Yes.

18 **Q. "Probate administration"; is that correct?**

19 A. Yes, sir.

20 **Q. Okay. Now, assisting you, it shows --**
21 **there's a picture of you on the second page, Mr.**
22 **Spallina, and then, on the third page, Ms.**
23 **Galvani --**

24 A. Correct.

25 **Q. -- is that correct?**

1 A. Yes.

2 **Q. Are you the managing partner of the firm?**

3 A. I don't know if I still am.

4 I guess I am right now; yes.

5 **Q. Okay. And for how long have you been**
6 **managing partner of Tescher & Spallina?**

7 A. Since its inception in -- would be a
8 little over six years.

9 **Q. So you began Tescher & Spallina in 2008;**
10 **is that correct?**

11 A. We began January 1, 2008; yes. January 1,
12 2008.

13 **Q. Okay. And what firm were you with before**
14 **that?**

15 A. Tescher, Gutter, Chaves, Josepher, Rubin,
16 Ruffin & Forman, PA.

17 **Q. How long were you with that firm?**

18 A. From its inception, going back to 1990.
19 The name changed --

20 **Q. By the way, I forgot to ask you a question**
21 **concerning the Amended and Restated Trust**
22 **Agreement. Could you go back to that document for**
23 **a second?**

24 A. Yes, sir. I've got it.

25 **Q. Okay. It appears that the -- this was**

1 **dated July 25th, 2012; is that correct?**

2 A. July 25, 2012 is the date I see on it.

3 **Q. Okay. And if it was signed by Mr.**
4 **Bernstein, it would have -- can it be assumed then**
5 **that it was signed by him on that day?**

6 A. One could assume that. I think there's a
7 related will that was signed on the same day also.

8 **Q. Okay. That would be July 25th, 2012?**

9 A. I believe that's correct.

10 **Q. It's witnessed by Mr. Spallina and Ms.**
11 **Moran?**

12 A. That's correct.

13 **Q. You were not present when this was signed;**
14 **is that correct?**

15 A. I was not present when that was signed. I
16 was ensconced on Cape Cod.

17 **Q. Now, do you know when that lawsuit that**
18 **you referred to in your direct examination was**
19 **filed by Mr. Stansbury?**

20 A. I said I wasn't sure whether it was before
21 or after that date.

22 **Q. So then, when you testified that you**
23 **believe the litigation had been filed at the time**
24 **that these new documents were executed, you don't**
25 **really know if that's true or not; do you?**

1 A. I'm not certain as to whether, in fact,
2 litigation had commenced.

3 **Q. Okay. Now, on your web page you show**
4 **support staff of Kimberly Moran; correct?**

5 A. Yes, sir.

6 **Q. Okay. And what is her position at the**
7 **firm -- or was her position at the firm?**

8 A. She is a legal secretary.

9 **Q. Does she still work there?**

10 A. She still works there.

11 **Q. Okay. And was she recently accused and**
12 **pled guilty to a crime in connection with work she**
13 **performed while at your firm involving the**
14 **Bernstein estate?**

15 A. Yes.

16 **Q. And what was that crime?**

17 A. She misused her notary seal in notarizing
18 certain documents regarding the Shirley Bernstein
19 estate.

20 **Q. Do you know the statute that she was**
21 **accused of violating and whether it was a felony or**
22 **a misdemeanor?**

23 A. I don't -- I don't know precisely how it
24 ended. I know that she did not and has not served
25 time in jail; that she is apparently currently on

1 probation. And that's all I know.

2 **Q. Is she still a notary?**

3 A. No.

4 **Q. And what document was she accused of**
5 **notarizing falsely?**

6 A. In the Shirley Bernstein estate, when it
7 came time to basically close the probate
8 administration, she sent out to the five children
9 -- and I think to -- to Simon at that time too --
10 waivers, consents, and joinders to the petition for
11 distribution and discharge; and they all came back;
12 everybody signed off -- including Eliot Bernstein;
13 those documents were then filed in the court; and
14 the clerk's office bounced those documents because
15 Judge Colin's division requires that that
16 particular document be signed and notarized; and
17 they had not been notarized.

18 **Q. Okay. And so did she subsequently**
19 **notarize them?**

20 A. She subsequently prepared new ones, and
21 signed them, and notarized them.

22 **Q. And when she prepared the new ones, that**
23 **included a form signed by Simon Bernstein; correct?**

24 A. I believe that's correct.

25 **Q. And Simon --**

1 MR. ROSE: Just for the record -- this is
2 Alan Rose -- I could -- there's no issue for Friday
3 with regard to the document.

4 MR. FEAMAN: Yeah, there is. Yeah, there
5 is.

6 MR. ROSE: There's no issue.

7 MR. FEAMAN: I'm going to tie it in in a
8 minute if you let me finish.

9 MR. ROSE: There's also no issue in the
10 case that the document wasn't properly -- was not
11 properly --

12 MR. FEAMAN: Wait a minute. Wait a
13 minute. Wait a minute. Unless you object to my
14 question, okay, this -- this statement on your part
15 is improper in the middle of my examination.

16 MR. ROSE: Well, I'm not -- the witness
17 answered the question. I'm putting on the record I
18 think this is an irrelevant line of questioning and
19 you are wasting our time on --

20 MR. FEAMAN: And you have no right to
21 interrupt the spontaneity of my examination by
22 making a statement like this at this time. And I
23 would respectfully request that you not do that.
24 And I'd like to finish this line of questioning.
25 I'm almost done.

1 Q. My question, isn't it true that Ms. -- is
2 it Morin or Moran?

3 A. Moran.

4 Q. -- that Ms. Moran notarized Simon
5 Bernstein's signature at a time after he had, in
6 fact, passed away; is that correct?

7 A. In connection with the Shirley Bernstein
8 estate closing.

9 Q. Okay.

10 A. I believe I --

11 Q. And at that time the successor personal
12 representative of the Shirley Bernstein estate was
13 Ted Bernstein; is that correct?

14 A. I believe that's correct.

15 Q. Okay. And at that time the successor
16 trustee to the Shirley Bernstein Trust was Ted
17 Bernstein; is that correct?

18 A. That would be correct.

19 Q. All right. Now, Diane Dustin, what does
20 she do at the firm? Is she still there?

21 A. She is still with me. She is a legal
22 assistant.

23 Q. And then there's Sue Anne Tescher?

24 A. Yes.

25 Q. Is that a relative of yours?

1 A. Happens to be a very close relative of
2 mine. She's my wife.

3 **Q. All right. And what does she do at the**
4 **firm?**

5 A. She manages the firm accounts and books,
6 pays the bills.

7 **Q. Kind of like a -- in the bookkeeper side**
8 **of the office?**

9 A. In the bookkeeper side of the office. She
10 has nothing to do with the legal side of the
11 office.

12 **Q. So she oversees the checks that come into**
13 **the firm; is that correct?**

14 A. That's correct.

15 **Q. Okay. All right.**

16 **Now, how long, Mr. Tescher, have you known**
17 **the Bernstein family -- either professionally or**
18 **personally?**

19 A. I think -- my recollection would be 2007.
20 And when you say "The Bernstein family," that would
21 have -- that would be Ted Bernstein, Simon
22 Bernstein, and Shirley Bernstein.

23 I don't think that I had contact with the
24 other Bernstein family members until subsequent to
25 that.

1 **Q. All right. Oh, I forgot.**

2 **Now, when it came to light that Ms. Moran**
3 **had notarized a signature of a deceased person --**
4 **namely Simon Bernstein -- did you at that time**
5 **resign as the copersonal representative of the**
6 **Simon Bernstein estate?**

7 **A. Not at that time.**

8 What we did was we filed -- because --
9 because the court proceedings were tainted in terms
10 of the documents that had been -- in fact, the
11 estate had been closed. And we -- we moved to have
12 the estate reopened so that the record could be
13 cleaned. And we petitioned the court to reopen the
14 estate, allow us to obtain correct, untainted
15 waivers from those who could give them, and
16 attempted to expunge the -- what were tainted
17 documents.

18 **Q. And when were those documents -- was it**
19 **just one document that was criminally notarized, or**
20 **were there others?**

21 **A. There was one -- to the best of my**
22 **recollection, there was one document -- one form**
23 **document -- the waiver -- I think the waiver,**
24 **consent, and joinder, if I'm not mistaken; and I**
25 **think that only related to the five children and no**

1 one else. I don't think that -- I mean, Si was the
2 personal -- you know, had been the personal
3 representative of the estate.

4 **Q. And how did this come to light?**

5 A. My recollection is that Eliot Bernstein
6 apparently found the discrepancy -- or what he
7 thought appeared to be a discrepancy in the court
8 documents when he reviewed the court files --
9 again, this is supposition on my part; I don't
10 know, you know, for a fact that that was the case.

11 He filed a complaint with the governor's
12 office which administers notary publics in the
13 State of Florida. And apparently they filed --
14 they sent Ms. Moran a -- an inquiry letter asking
15 for, you know, an explanation, etcetera, of what
16 had occurred.

17 **Q. And do you know when -- about -- that was?**

18 A. I don't recall exact dates.

19 **Q. Was that in the year 2013?**

20 A. I believe that it was in the year 2013.

21 **Q. Okay. Was it in the summer of 2013?**

22 A. It might have been -- 'cause in the summer
23 -- if it was the summer, I was not in town. I
24 would have been up here on Cape Cod.

25 **Q. Certainly you didn't bring it to light,**

1 nor did Mr. Spallina bring it to the attention of
2 anybody; is that --

3 A. We couldn't, because we weren't aware of
4 it.

5 Q. Okay. And when you became aware of it in
6 2013, did you think it appropriate at that time to
7 resign as copersonal representative from the estate
8 of Simon Bernstein?

9 A. No.

10 Q. Now, did there come a time, however, when
11 you did resign -- you and Mr. Spallina -- as
12 copersonal representatives of the Simon Bernstein
13 estate; correct?

14 A. That is correct.

15 Q. Do you recall when that was?

16 A. January of 2014.

17 Q. And what was the incident at that time
18 that then caused you to resign as copersonal
19 representatives of the estate of Simon Bernstein?

20 A. It came to light -- it was brought to my
21 attention that the -- there was an amendment --
22 there was an altered document altering the
23 amendment to Shirley Bernstein's revocable trust,
24 which document had been forwarded to Christine
25 Yates, who was then serving as counsel to Eliot

1 Bernstein's children; and that document added a
2 provision.

3 **Q. All right. And how did that document come**
4 **to light -- the altered document?**

5 A. It was brought to my attention by someone
6 in my office.

7 **Q. Okay. Now, the -- you identified the**
8 **altered document as what again -- the Shirley**
9 **Bernstein Trust?**

10 A. The Amendment to Shirley Bernstein's
11 Revocable Trust Agreement.

12 **Q. Okay. And who in your office brought that**
13 **to your attention?**

14 A. Our associate.

15 **Q. And who is that?**

16 A. Lauren Galvani.

17 **Q. And when did that take place?**

18 A. January 2013.

19 **Q. Okay. And there is a document that's**
20 **attached to your affidavit, which is the -- I**
21 **believe an amendment to the Shirley Bernstein**
22 **Trust; is that correct?**

23 A. Hold on one moment. Let me get to that.

24 **Q. Is that Exhibit C?**

25 A. I believe that's C, if I'm not mistaken.

1 Hold on one moment.

2 (Witness reviews document.) Yeah. That's
3 Exhibit C.

4 **Q. Okay. All right.**

5 **Now, Exhibit C, is that the altered**
6 **document or the unaltered document?**

7 A. That is the unaltered document.

8 **Q. And what did the altered first amendment**
9 **to the Shirley Bernstein trust say?**

10 A. I don't have it in front of me, but
11 essentially what it did was there was a -- you see
12 how it's numbered now 1 and 3? There were -- you
13 know, somebody had messed up when it had been
14 originally prepared, and it got numbered --
15 paragraph No. 1, paragraph No. 3.

16 A paragraph No. 2 was inserted between 1
17 and 3.

18 **Q. And when did that take place?**

19 A. I don't know.

20 **Q. Was it -- did it take place sometime in**
21 **2012?**

22 A. I don't know.

23 **Q. Did it take -- well, how did your**
24 **associate suddenly come across it in January of**
25 **2014?**

1 A. You'll have to ask her.

2 **Q. Did you ever ask her how she came across**
3 **it that then subsequently caused you to resign as**
4 **copersonal representative?**

5 A. She noticed that the amendment that had
6 been included in the letter to Christine Yates was
7 different than Exhibit -- the exhibit that's here
8 attached to my affidavit.

9 **Q. And in that letter to Christine Yates,**
10 **what was the date of that letter?**

11 A. I think it was January of 2013 -- I think.

12 **Q. Okay. And so that was after the death of**
13 **Simon Bernstein; correct?**

14 A. Yes, it was.

15 **Q. So then that altered document contained in**
16 **a document dated January 11, 2013 could very well**
17 **have been prepared while Ted Bernstein was the**
18 **successor personal representative and successor**
19 **trustee to the Shirley Bernstein estate and trust;**
20 **correct?**

21 A. No. Probably -- well...

22 Probably -- I'm not sure, to be honest,
23 Peter. I'm not a hundred percent certain on the
24 timing.

25 **Q. Okay. And how did a year go by between**

1 the time of the January 11th, 2013 letter in which
2 the altered document was produced to the attorneys
3 for Eliot Bernstein and then the discovery that it
4 was, in fact, an altered document? What happened
5 in that 12-month time that caused you, or your
6 associate, or your office to discover that, in
7 fact, what had been supplied to counsel for Eliot
8 Bernstein was, in fact, a forged document or
9 altered document?

10 A. I can't answer that question, actually --
11 'cause I don't know.

12 Q. All right. And -- and who in your firm
13 would be in the best position to know that -- if
14 it's not the general manager -- the managing
15 partner of the firm?

16 A. Mr. Spallina or Ms. Galvani.

17 Q. You were the managing partner at that time
18 still; correct?

19 A. I was the president.

20 Q. Okay. And what did the altered document
21 say in paragraph 2?

22 A. I told you that I don't have that in front
23 of me.

24 Q. And the one attached to your affidavit?

25 A. I told you that I don't have that in front

1 of me.

2 **Q. I apologize if I'm being repetitive on**
3 **that score.**

4 A. Yeah, I don't have --

5 **Q. Your best recollection.**

6 A. Yeah. Peter, I don't have it here.

7 It dealt with the definition of children
8 and lineals.

9 MR. ROSE: Peter, I don't want to ruin
10 your momentum that you're building up, but I need
11 to take a bathroom break. Could we take -- we've
12 been going at it for a little more than an hour.
13 Can we take like a five-minute break?

14 MR. FEAMAN: Sure. I'm moving on to the
15 next item anyway.

16 MR. ROSE: No more than five -- maybe as
17 little as two minutes. I'll be right back.

18 MR. FEAMAN: No problem.

19 (Recess was taken.)

20 **Q. Mr. Tescher, I'd like you to take a look**
21 **at what's been premarked as Exhibit 3.**

22 MR. FEAMAN: Madam Court Reporter, would
23 you hand that to the witness.

24 COURT REPORTER: Okay.

25 MR. FEAMAN: Thank you.

1 Q. Now, just to have closure on the subject
2 we were talking about about the altered Shirley
3 Bernstein Trust, Exhibit 3 appears to be a true and
4 correct -- is it a true and correct copy of the
5 letter you wrote on January 14th, 2014 to Ted
6 Bernstein, Eliot Bernstein, Lisa Friedstein, Jill
7 Iantoni, and Pam Simon announcing your resignation
8 as personal representative of the estate of Simon
9 Bernstein?

10 A. Announcing our intent to resign; yes, sir.

11 Q. Your intent to resign.

12 And at that point had -- well, let me back
13 up and lay a predicate.

14 You hired Mr. Manceri as an attorney to
15 represent the Simon Bernstein estate; correct?

16 A. Mr. Manceri was hired -- was brought in by
17 Ted Bernstein -- no, we hired him -- we hired him
18 to assist with regard to the litigation with
19 Stansbury as it related to the estate of Simon
20 Bernstein.

21 Q. All right. And now, as -- do you recall
22 as of January 14th, 2014, whether Mr. Manceri had
23 withdrawn as attorney for the estate in that
24 litigation at this point?

25 A. I do not recall when he specifically

1 withdrew.

2 **Q. I guess we'd have to refer to the court**
3 **records for that; is that correct?**

4 A. Yes, sir.

5 MR. ROSE: Peter, we're here trying to get
6 to the truth. Why don't we just agree it was
7 probably Friday, January the 11th, 2014 when Mr.
8 Manceri filed papers -- that you and I both
9 received -- withdrawing from the case; and ask your
10 next question.

11 MR. FEAMAN: Okay. Good. Thank you for
12 that.

13 **Q. I assume that representation is correct?**

14 A. I have no knowledge.

15 MR. ROSE: To the best of my knowledge,
16 that's correct.

17 MR. FEAMAN: Okay. Very well.

18 MR. ROSE: Because shortly after that, I
19 got a phone call that -- that Mr. Tescher had
20 spoken with Ted Bernstein. So that's my frame of
21 reference.

22 MR. FEAMAN: Okay.

23 **Q. And up until now, had you recommended Ted**
24 **Bernstein to be successor personal representative?**

25 A. I don't recall when I recommended anything

1 to anybody --

2 Q. Okay.

3 A. -- after -- after January 14th.

4 Q. All right. Now, the -- the documents --
5 subsequent to your resignation, you turned over
6 documents to Mr. Brown, the administrator ad litem
7 -- or I should say the curator appointed by the
8 court; is that correct?

9 A. Yes, sir.

10 Q. And Mr. Brown received about -- what --
11 700 pages of documents -- or thousands?

12 A. I have no idea how many pages he received.
13 I know that we completely copied onto disks all of
14 our files.

15 Q. All right. Did you keep copies of what
16 you produced to Mr. Brown?

17 A. Yes, sir.

18 Q. Okay. Do you have originals of any
19 documents in your possession?

20 A. I'm not sure if we have originals of any
21 wills and trusts, for example. Those would have
22 been all turned over or filed in the court.

23 Q. 'Cause I have a copy of the Simon
24 Bernstein last will and testament that appoints Mr.
25 Stansbury as a copersonal representative after

1 Shirley or successor personal representative after
2 Shirley, but I don't have a copy of the original or
3 the original -- nor have I seen one -- I only have
4 a conformed copy.

5 Do you have the original of that document?

6 A. The original will is sitting in the court.

7 Q. No, 2008.

8 A. Oh. I'm sorry. I thought you were
9 referring to the current document.

10 Q. I'm sorry if I was not clear.

11 A. Yeah. I don't know that we had it. If it
12 was there, it got copied.

13 Q. Right. But do you have the original of
14 the 2008 will and trust of Mr. Simon Bernstein?

15 A. If it was there -- I -- I don't know.

16 Q. Okay.

17 A. I don't have my --

18 Q. Do you keep those in a safe deposit box or
19 a vault?

20 A. Not if they're old documents that have
21 been superseded.

22 Q. Okay. And one more question on this, and
23 then I'm going to move on: When Mr. Bernstein
24 allegedly executed his 2012 documents, was that in
25 your office; if you know?

1 A. No, sir; it was not.

2 **Q. Where did that execution take place?**

3 A. In Simon Bernstein's office.

4 **Q. Okay. And have you been told -- since you**
5 **obviously weren't there -- who was present when**
6 **those documents were executed?**

7 A. Well, the only -- the only thing that I
8 know who was present -- and there may have been
9 others present -- is by the executions on the will
10 and trust that were signed that day. And
11 present --

12 **Q. Right. But you don't know anything more**
13 **than I might know by looking at the documents; is**
14 **that correct?**

15 A. That is correct.

16 **Q. Okay. Now, you said that you first met**
17 **some members of the Bernstein family in 2007.**

18 **Who did you meet first, Ted or Si?**

19 A. I think I met Ted before 2007; and we had
20 -- we've had dealings over the years with mutual
21 clients. I think that our first dealings with Ted
22 Bernstein also involved his sister's company up in
23 Chicago. They were doing a -- a life insurance
24 arbitrage program that was kind of interesting; and
25 we -- we had some mutual clients there.

1 **Q.** So you had a professional relationship
2 with Mr. Ted Bernstein before you did with Mr.
3 Simon Bernstein; is that correct?

4 A. I think so.

5 **Q.** Okay. Did you also have a business
6 relationship with Mr. Ted Bernstein?

7 A. In what sense?

8 **Q.** In any sense.

9 A. Well, tell me what businesses. I mean, we
10 had -- we had mutual clients.

11 There were clients who I brought to Ted
12 Bernstein for life insurance needs. There were
13 clients that Ted Bernstein referred to us.

14 **Q.** Okay. Were there any businesses in which
15 you and Ted were both owners?

16 A. No.

17 **Q.** All right. I'd like to draw your
18 attention to Exhibit 6, if I could.

19 A. Okay. Hold on a moment. (Witness reviews
20 documents.)

21 Okay.

22 **Q.** Now, Exhibit 6 is a copy of a printout we
23 got from the Florida Department of State, Division
24 of Corporations. This makes reference to a
25 "Bernstein Family Realty, LLC."

1 **Do you see that?**

2 A. Yes, sir.

3 **Q. Now, it shows the registered agent as "T &**
4 **S Registered Agents."**

5 **Are you familiar with that company?**

6 A. Yes.

7 **Q. What is that company?**

8 A. That is a shell company that we typically
9 use to serve as registered agent for entities that
10 we form for clients.

11 **Q. Okay. And the address of T & S Registered**
12 **Agents, is that 925 South Federal Highway, Suite**
13 **500?**

14 A. It is now. It was the address that's on
15 the Exhibit 6 up until March.

16 **Q. Right. That's your law firm?**

17 A. Yes, sir.

18 **Q. Was your law firm at 4855 Technology Way,**
19 **Suite 720?**

20 A. 7 -- yes, it was.

21 **Q. Okay. Now, it shows that the mailing**
22 **address of the Bernstein Family Realty, LLC was**
23 **changed -- it looks like -- in 2013 to the**
24 **Oppenheimer Trust Company.**

25 **Do you see that on Exhibit 6?**

1 A. (Witness reviews document.) I see
2 Oppenheimer listed there; yeah.

3 **Q. And what was your involvement in the**
4 **change?**

5 A. I didn't have any involvement in the
6 change.

7 **Q. Okay. And did you organize the Bernstein**
8 **Family Realty, LLC, as the attorney?**

9 A. I didn't -- as the attorney.

10 **Q. You did or you did not?**

11 A. I might have filed the articles of
12 organization. I don't recall. I think I was
13 originally named as the registered agent. This was
14 done back in February of '08. At that time it --
15 when I -- when I first withdrew from my prior firm,
16 Peter, we actually shared office space for a year
17 with my former partners -- just, you know, we just
18 continued using our office. It was a friendly --
19 friendly division.

20 And when this company was formed, it was
21 formed February of '08, which would have been
22 roughly a month after -- a little over a month
23 after Robert Spallina and I had set up Tescher &
24 Spallina. We probably didn't even have a new
25 registered agent entity set up yet.

1 Q. All right. And the documents on Exhibit 6
2 shows that the previous mailing address in 2012 was
3 950 Peninsula Corporate Circle, Suite 3010.

4 What address is that?

5 A. I think that was LIC's office.

6 Q. All right. And LIC was the business owned
7 by Simon Bernstein and Ted Bernstein by majority?

8 A. Correct.

9 Q. All right. And if you look at the third
10 page --

11 A. Yes.

12 Q. -- it shows that the managing member was
13 Simon Bernstein.

14 A. Correct.

15 Q. As of January 2012; correct?

16 A. Correct.

17 Q. Now, you are knowledgeable in trust and
18 estates and succession planning, like you said and
19 shown on your website.

20 Once Mr. Bernstein passes away, does the
21 estate then become the managing member?

22 A. No, the estate does not become the
23 managing member.

24 Q. Okay. Well, who then would have been
25 responsible for changing the mailing address of the

1 **Bernstein Family Realty, LLC from the offices of**
2 **LIC -- LIC to Oppenheimer, if it wasn't somebody**
3 **acting on behalf of the estate?**

4 A. I can't answer that question.

5 **Q. All right. And is Bernstein Family Realty**
6 **listed as an asset of the Simon Bernstein estate?**

7 A. No. He didn't own any equity interest in
8 it, other than a mortgage -- a note and mortgage.

9 **Q. Okay. And so normally, as an expert in**
10 **this field, if a person is the only member of an**
11 **LLC, and that person passes away, what is your**
12 **standard operating procedure as to how the**
13 **operations of that LLC are carried out after the**
14 **passing of the only manager?**

15 A. Mr. Feaman --

16 MR. ROSE: Objection to form.

17 A. Mr. Feaman, I'm assuming you meant to say,
18 "manager" and not "member"?

19 Do you want to restate your question?

20 **Q. No, because the electronic signature of**
21 **page 3 of Exhibit 6 is signed by Simon Bernstein,**
22 **as the managing member manager?**

23 A. No, "manager," not "managing member."

24 "Manager," sir.

25 **Q. Okay. Do you know -- as the registered**

1 **agent, do you know where the books and records of**
2 **the Bernstein Family Realty, LLC are maintained?**

3 A. I personally don't know.

4 **Q. Has your office ever maintained them?**

5 A. I don't think so. Remember that the
6 members -- the members of this entity, sir, are
7 three trusts, of which Oppenheimer until recently
8 -- or maybe still is; I don't know -- was the
9 trustee.

10 **Q. And what -- what are those three trusts?**

11 A. They are trusts -- irrevocable trusts
12 created in 2006 by Simon Bernstein for the benefit
13 of Eliot Bernstein's three children.

14 **Q. Okay. Did you create those trusts?**

15 A. No, we did not.

16 **Q. Who did?**

17 A. I don't -- I don't know.

18 **Q. All right.**

19 A. Their prior counsel obviously, not us.

20 **Q. And as copersonal representative of the**
21 **estate of Simon Bernstein, would you have any**
22 **fiduciary responsibility to carry out the intent of**
23 **Mr. Simon Bernstein with regard to the management**
24 **of Bernstein Family Realty?**

25 A. I don't believe so.

1 **Q. Who were the trustees of those three**
2 **trusts that you mentioned that owned it?**

3 A. Oppenheimer.

4 **Q. And who were the trustees before**
5 **Oppenheimer?**

6 A. Stanford.

7 **Q. Stanford?**

8 A. Yes.

9 **Q. Okay. And where are those trusts --**
10 **copies of those trusts located?**

11 A. I don't know.

12 **Q. Do you have possession of the original?**

13 A. Why would I?

14 **Q. I don't know.**

15 MR. ROSE: And I object to this line of
16 questioning as completely irrelevant and
17 immaterial, since the estate has no interest in
18 this, other than the mortgage, which has been
19 unpaid and for which Mr. Eliot Bernstein has been
20 living in the residence without paying any rent, or
21 mortgage, or interest for two years.

22 But other than that, I think this whole
23 line of questioning is wholly irrelevant; and
24 you're wasting valuable time.

25 **Q. Let me ask a follow-up question: What**

1 **conversations have you had with Ted Bernstein**
2 **concerning the Bernstein Family Realty, LLC, since**
3 **the passing of Simon Bernstein?**

4 MR. BLOCK: Well, I ask a question as to
5 whether or not there's a privilege. I have no idea
6 of what you're talking, but just want to throw that
7 out.

8 THE WITNESS: Well, I'm mulling that in my
9 head, Irwin, as to whether it is a privilege issue.

10 **Q. Okay. Let me --**

11 MR. ROSE: The question is, have you had a
12 discussion? And if the -- the answer is either yes
13 or no; and then we can deal with the privilege
14 issue.

15 MR. FEAMAN: Yeah. Right.

16 A. Yeah. I think tangentially there has been
17 -- there had been discussion regarding Bernstein
18 Family Realty.

19 **Q. Between you and Mr. Ted Bernstein; is that**
20 **correct?**

21 A. That's correct.

22 **Q. Okay. And has there been email traffic**
23 **between you and Mr. Ted Bernstein concerning**
24 **Bernstein Family Realty, LLC?**

25 A. Not me, I don't believe.

1 **Q. I mean, to your knowledge, on paper Mr.**
2 **Ted Bernstein has no involvement with Bernstein**
3 **Family Realty, LLC; correct?**

4 A. Well, he has no direct involvement in
5 Bernstein Family Realty, LLC. He does have -- or
6 potentially has involvement vis-a-vis -- no, he
7 does not have involvement; that's correct.

8 **Q. Okay. And so --**

9 A. That I'm aware of.

10 **Q. Therefore, what would the nature of any --**
11 **why would you be having any correspondence or**
12 **conversation with Mr. Ted Bernstein concerning**
13 **Bernstein Family Realty if he has no apparent**
14 **involvement in that entity?**

15 A. Well, Bernstein Family Realty -- if I'm
16 not mistaken -- was also named as a defendant in
17 the Stansbury litigation.

18 **Q. Okay.**

19 A. And certainly in that regard there was
20 discussion.

21 **Q. Okay. Is Bernstein Family Realty still a**
22 **defendant in the Stansbury litigation?**

23 A. Is it still? I don't know. I -- those
24 are issues that I'm not necessarily privy to.

25 **Q. All right. Let me draw your attention to**

1 **premarked Exhibit 7 --**

2 A. Yes, sir.

3 **Q. -- for the deposition --**

4 A. Yes, sir.

5 **Q. -- which is a --**

6 MR. ROSE: Is it still a defendant in the
7 lawsuit, Peter, since it's your lawsuit?

8 MR. FEAMAN: Yes, it is.

9 **Q. Marked as Exhibit 7 is a copy of Articles**
10 **of Incorporation for Bernstein Holdings, LLC.**

11 Do you see that?

12 A. Yes, sir.

13 **Q. You are shown as the registered agent of**
14 **Bernstein Holdings, LLC; is that correct?**

15 A. That's correct.

16 **Q. All right. And the manager is shown as**
17 **Simon Bernstein under article 5 on page 2; correct?**

18 A. That is correct.

19 **Q. Now, the -- this looks like a different**
20 **address altogether than the ones we identified**
21 **before under article 4. It shows an address for**
22 **you of 2101 Corporate Boulevard, Suite 107.**

23 Do you know what was located at that
24 address at that time?

25 A. Yes. That was in the first year of our --

1 of our firm. Starting January 1 of '08, that was
2 our office address.

3 Q. Okay. Very good.

4 And it shows a manager as Simon Bernstein;
5 is that correct?

6 A. That's correct.

7 Q. There's also a signature of a member,
8 Robert Spallina.

9 Do you know what his involvement in the
10 corporation was or is?

11 A. He didn't sign as a member. He signed as
12 an authorized representative of a member.

13 MR. ROSE: Object to form.

14 Q. All right. Well, let me draw your
15 attention to page 3 of Exhibit 7, document dated by
16 the Secretary of State April 12th, 2013. It shows
17 the manager as Robert Spallina.

18 That would be your law partner; correct?

19 A. That is -- yes, he is my law partner.

20 Q. Okay. And how did your law partner, Mr.
21 Spallina, come to be the manager of Bernstein
22 Holdings, LLC?

23 A. The manager died.

24 Q. Okay.

25 A. The interest in this entity was owned by,

1 I believe, the Shirley Bernstein Trust and the
2 Simon Bernstein Trust. They owned a majority
3 interest -- those two trusts -- in Bernstein
4 Holdings, LLC, which was the general partner of a
5 limited partnership.

6 Q. All right. So the manager died. And
7 somehow Robert Spallina became manager.

8 But you told me with regard to Bernstein
9 Family Realty, Exhibit 6, we identified Simon
10 Bernstein as the manager. But then you said nobody
11 became the manager after that as far as you knew.

12 How did Mr. Spallina become the manager of
13 Bernstein Holdings, LLC?

14 A. I don't recall.

15 Q. Who are the members -- did you say -- of
16 Bernstein Holdings, LLC?

17 A. I don't have those documents in front of
18 me, Peter. But I believe that it would have been
19 the Simon Bernstein Trust and the Shirley Bernstein
20 Trust; and there may have been some minor interest
21 held for other family members. I'm not certain.

22 Q. Which trusts would you be referring to --
23 'cause we've identified a number of trusts here
24 today?

25 A. The 2012 -- July 25, 2012 Simon Bernstein

1 Amended and Restated Trust Agreement and --

2 **Q. Okay. And that's -- go ahead.**

3 A. -- and assumedly the family trust under --
4 that was established for the benefit of Simon after
5 Shirley's death under the Shirley Bernstein Trust
6 Agreement from '08.

7 **Q. Okay. And the members designated you, as
8 the managing member --**

9 A. They didn't designate me, Peter.

10 **Q. I mean -- sorry -- designated Mr. Spallina
11 as the managing member. And the members were
12 acting through Ted Bernstein as the successor
13 trustee; is that right?**

14 MR. ROSE: Object to the form.

15 A. I --

16 **Q. Do you remember --**

17 A. I have no personal knowledge.

18 **Q. Okay. Who would know?**

19 A. Mr. Spallina --

20 **Q. Okay.**

21 A. -- or perhaps Mr. Bernstein. I don't
22 know.

23 **Q. Let's take a look at Exhibit 8, if we
24 could.**

25 A. Okay. Yes, sir.

1 Q. Exhibit 8 is a copy of a Certificate of
2 Limited Partnership for the Bernstein Family
3 Investments, LLLP.

4 Do you see that?

5 A. Yes, sir.

6 Q. Now, you're shown as the registered agent
7 for that entity; is that correct?

8 A. Yes. Again, February of 2008; that's
9 correct.

10 Q. Okay. And the general partner is shown as
11 Bernstein Holdings, LLC.

12 Is that the entity we just identified --

13 A. Yes, sir.

14 Q. -- that Mr. Spallina is now the managing
15 partner of?

16 A. Yes, sir.

17 Q. Okay. And your shell company that you
18 created is now the registered agent for that
19 company rather than you individually; is that
20 correct?

21 A. Yes, sir. Yes, sir.

22 Q. Okay. And 950 Peninsula Corporate Circle,
23 Suite 3010, what's located at that address?

24 A. I presume that to be what was Simon
25 Bernstein's office.

1 Q. And now I guess Ted Bernstein's office;
2 right?

3 A. I guess; yes.

4 Q. Okay. All right.

5 Let's take a look at Exhibit 9, if we
6 could.

7 A. Yes, sir.

8 Q. Now, this is a copy of Articles of
9 Incorporation for the Shirley Bernstein Family
10 Foundation, Inc.?

11 A. Yes.

12 Q. Do you see that?

13 A. Yes, sir.

14 Q. Okay. You're shown as, again, the
15 registered agent. Did you -- are you the one that
16 created this entity?

17 A. Yes, sir.

18 Q. And what is the purpose or the business of
19 the Shirley Bernstein Family Foundation, Inc.?

20 A. It has no purpose today. It's an inactive
21 entity, as far as I know.

22 It was formed back in 2008 at a time when
23 Shirley had -- Bernstein had expressed an interest
24 in setting up a foundation to carry on some of her
25 charitable desires.

1 **Q. All right. Let me draw your attention to**
2 **Exhibit 10.**

3 A. Yes, sir.

4 **Q. Exhibit 10 is a printout from the Florida**
5 **Department of State Division of Corporation for an**
6 **entity known as "Two Oaks --"**

7 MR. FEAMAN: That's O-a-k-s, Madam Court
8 Reporter, T-w-o, Oaks -- oh, you have it there in
9 front of you --

10 **Q. "-- Consulting, LLC."**

11 **Do you see that?**

12 A. Yes, sir.

13 **Q. Okay. It shows it's currently inactive,**
14 **but it was apparently active from 2006 through**
15 **2011.**

16 **What is your understanding of what Two**
17 **Oaks Consulting, LLC is?**

18 A. Geeze. I'm trying to remember now.

19 I set this up for -- principally for my
20 wife and I to use for purposes of trying to develop
21 some additional consulting business on our own.

22 **Q. What kind of consulting?**

23 A. All types of business consulting.

24 She is a pretty good bookkeeper. You
25 know, we could provide -- looking to provide, like,

1 bookkeeping services and office administration
2 services.

3 Q. All right. And 2600 Whispering Oaks Lane,
4 is that your home address?

5 A. Yes, it is, sir.

6 Q. All right. And your wife Sue Anne, that's
7 -- she's shown -- is she the only -- was she the
8 only manager?

9 A. She was the manager.

10 Q. Okay. And did Two Oaks Consulting do any
11 business for any entities owned or controlled by
12 the Bernsteins?

13 A. I believe that it might have. I don't
14 recall. I'm looking at your Exhibit 11-A for the
15 first time. So obviously there were some payments
16 that were made to Two Oaks.

17 Q. Okay. Let's take a look at Exhibit 11-A.
18 It's a copy of a reconciliation detail report for
19 Arbitrage International Management, LLC.

20 First, what is your understanding of what
21 Arbitrage International Management, LLC is?

22 A. I'm not 100 percent certain. It was one
23 -- it was part of the overall insurance business of
24 the Bernsteins.

25 Q. So is it fair to say, though, you do

1 understand that this company is -- was or is owned
2 and controlled by majority by Simon and Ted
3 Bernstein?

4 A. I believe I do understand that.

5 Q. Okay. Now, Simon's ownership interest in
6 Arbitrage International Management, LLC, did that
7 exist at the time of Mr. Bernstein's death in 2012?

8 A. I don't recall.

9 Q. Do you know if his ownership interest in
10 this company is shown on the inventory of the
11 estate?

12 A. I don't recall it being listed on the
13 inventory of the estate, because if it were owned
14 still, it might have been owned through his trust
15 and not through his -- him individually.

16 Q. Okay. I guess we have to do further
17 discovery on that. But you would agree that both
18 Ted and Simon Bernstein controlled that entity;
19 correct?

20 A. My knowledge -- to the best of my
21 knowledge.

22 Q. Yeah. That's all I can ask is to the best
23 of your knowledge. Yeah. Yeah.

24 Okay. Let me draw your attention to page
25 1 of Exhibit 11-A, to about two-thirds of the way

1 down the page.

2 There's a check that's listed there dated
3 11/1/2006, No. 2047.

4 Do you see that, sir?

5 A. Yes, sir.

6 Q. And it's a check payable to Two Oaks
7 Consulting for \$55,000.

8 Do you see that?

9 A. Yes, sir.

10 Q. Okay. And what work was performed by Two
11 Oaks Consulting that caused a delivery of that
12 payment from Arbitrage International Management to
13 Two Oaks for \$55,000 at or around October or
14 November of 2006?

15 A. This is seven-and-a-half years ago. To be
16 honest with you, I don't know, without going back
17 and trying to find out.

18 I don't have any immediate knowledge.

19 Q. All right. Then just below that is an
20 entry for 11/1/2006 --

21 A. Yes, sir.

22 Q. -- check No. 2046 for Tescher Gutter.
23 That's your firm before Tescher &
24 Spallina; correct?

25 A. That is correct, sir.

1 Q. That's the Chaves firm I guess you
2 referred to.

3 Now, there's a check for \$45,000 on the
4 same day, which totaled a payment of \$100,000 on
5 November 1st, 2006.

6 Do you recall what that was for?

7 A. Again, no, I'm not a hundred percent
8 certain. But, obviously, if it's paid -- the
9 payment -- I'm -- no, I do not know without
10 checking.

11 Q. All right. Well, let me draw your
12 attention to the next page --

13 A. Yes, sir.

14 Q. -- which is a reconciliation detail.

15 And about a quarter of the way down --
16 also on 11/1/2006 -- this is marked as Exhibit
17 11-B, by the way --

18 A. Yes, sir.

19 Q. There's a check by -- a different check
20 number, 2045, payable to Two Oaks Consulting for
21 the same amount, \$55,000.

22 Do you know what that was for?

23 A. No. This looks like a duplication of
24 11-A, frankly. I mean, I --

25 Q. Yeah. That's what I thought too, except

1 **that it's a different check number.**

2 A. Yeah, I can't explain it. Obviously, it's
3 not my reconciliation. But it certainly looks like
4 the same things here.

5 **Q. Yeah. Okay. And then, finally, on page**
6 **11-C --**

7 A. Yes, sir.

8 **Q. -- there's a check in 2007 -- January**
9 **22nd, 2007 -- payable to your wife's company from**
10 **Arbitrage International Management for \$30,000 --**
11 **check No. 2247.**

12 **Do you know what that was for?**

13 A. No, sir, not without, you know, trying to
14 go back and see if I can find it -- find out what
15 it was.

16 **Q. As you sit here today, any idea**
17 **whatsoever?**

18 A. No.

19 **Q. All right, sir.**

20 **Now, the -- when you do estate planning**
21 **documents for clients, I assume that you also ask**
22 **them about life insurance?**

23 A. Generally, we would ask them about --

24 **Q. As part of your due diligence; is that**
25 **correct?**

1 A. Yes, we would generally ask them about
2 life insurance. Yes, sir.

3 **Q. Okay. And when you did your estate**
4 **planning for Simon Bernstein and Shirley Bernstein**
5 **in 2008, I assume then you asked them about life**
6 **insurance; is that correct?**

7 A. I would presume that we did.

8 **Q. Okay. And are you aware that there's**
9 **presently pending in Chicago litigation concerning**
10 **a life insurance trust?**

11 A. Yes, sir.

12 **Q. And are you aware that the litigation**
13 **makes reference to a lost life insurance trust**
14 **instrument?**

15 A. Yes. Yes, sir.

16 **Q. Okay. Have you ever seen it -- or a copy**
17 **of it?**

18 A. No, sir.

19 **Q. Ever?**

20 A. No, sir.

21 **Q. All right. Do you know if Shirley**
22 **Bernstein was ever a trustee of that document that**
23 **you've never seen?**

24 A. It's my understanding but -- at some point
25 that she was, but I -- I could not tell you for

1 sure.

2 **Q. All right. And do you know who would be**
3 **the alleged trustee of the alleged trust is today?**

4 A. I believe that -- that it is Ted
5 Bernstein.

6 **Q. Okay. And --**

7 A. Now, you --

8 **Q. And what's the basis of your belief that**
9 **Ted Bernstein is the trustee of the trust that you**
10 **have never seen?**

11 A. Just, you know, information related to us,
12 either from Pam Simon, or her husband, or Ted
13 Bernstein, or the insurance companies.

14 **Q. So --**

15 A. And you understand -- you understand that
16 the policy itself was owned by Simon Bernstein.

17 **Q. Yes.**

18 A. The alleged trust was only the alleged
19 beneficiary.

20 **Q. Okay. Now, I'm not an expert in this**
21 **area, but if Simon Bernstein was the owner of the**
22 **trust --**

23 A. Owner of the policy, sir.

24 **Q. I mean -- of the policy -- would that make**
25 **that a potential asset of the estate if the**

1 **beneficiary can't be located?**

2 A. You're -- you're mixing -- you're mixing
3 ownership and beneficiary.

4 **Q. Right.**

5 A. The fact that he was an owner only means
6 that, at least for federal estate tax purposes, the
7 life insurance proceeds would be includable as part
8 of his federal gross estate.

9 **Q. Okay. Now, other than what Pam might have**
10 **told you or Pam's husband, do you have any other**
11 **reason why you say you believe that Mr. Ted**
12 **Bernstein is currently the successor trustee?**

13 A. My recollection -- and, again, this is
14 without the benefit of looking at documents -- at
15 one point in time the -- Simon and Shirley
16 Bernstein were being represented by the Proskauer
17 firm in Boca. And Al Gortz, in that firm --
18 G-o-r-t-z -- was doing some legal work for them;
19 and I believe he prepared -- it may be a 2000
20 trust; I don't remember precisely.

21 He had prepared a new life -- irrevocable
22 life insurance trust, I believe. And I think -- I
23 think my understanding is -- and I could be wrong
24 -- was that he was -- he had prepared that to have
25 Simon transfer the ownership of the policy into

1 this trust so as to keep it out of his estate for
2 estate tax purposes.

3 I don't know that to be 100 percent. You
4 know, that's just what my understandings are. And
5 I don't have specific knowledge. But that would --
6 would make some sense and --

7 **Q. To your knowledge, that was never done;**
8 **correct?**

9 A. That was never done as far as I know. And
10 we --

11 **Q. Now, did your law partner, Mr. Spallina,**
12 **represent that, in fact, he was the cotrustee -- I**
13 **mean, successor trustee of that trust at one point?**

14 A. I -- I find that -- I can't -- I saw some
15 document somewhere in all of the minutia of
16 paperwork that has occurred in the last six months
17 here where supposedly he signed something as a
18 trustee.

19 I don't think he ever represented himself
20 to anybody really as being a trustee of a trust
21 that was to receive the proceeds of that \$1.6
22 million policy.

23 **Q. Well, take a look at Exhibit 14, if you**
24 **would.**

25 A. Yeah. No. I said there is a document

1 floating around; and I didn't know what -- what
2 documents you -- I hadn't seen these in advance, so
3 I wasn't sure.

4 **Q. Okay.**

5 A. Okay. I'm looking at 14 now.

6 **Q. Yeah. It's a composite exhibit?**

7 A. Right.

8 **Q. And it's a letter dated under your**
9 **letterhead of Tescher & Spallina dated December 6,**
10 **2012.**

11 Do you see that?

12 A. Yes.

13 **Q. And it's directed to the claims department**
14 **of Heritage Union Life Insurance Company; is that**
15 **correct?**

16 A. Yes, it is.

17 **Q. He states that he wants -- under the fifth**
18 **bullet point -- the proceeds from the policy**
19 **released so that, quote, "We can make distributions**
20 **amongst the five Bernstein children," unquote.**

21 Do you see that?

22 A. Yes, sir.

23 **Q. Okay. Have you ever seen the Heritage**
24 **policy itself?**

25 A. I'm not a hundred percent certain that I

1 have.

2 **Q. Do you know if it exists?**

3 A. I have no direct knowledge. I presume it
4 exists. Somebody paid 1.6 million into the
5 registry of the court. So there's some life
6 insurance policy that existed.

7 **Q. Well, maybe they should have paid 2.6**
8 **million.**

9 A. Well...

10 **Q. Has a request ever been made, to your**
11 **knowledge -- either on behalf of the state or**
12 **otherwise -- to get a copy of the policy?**

13 A. I'm not aware.

14 **Q. Did you and Mr. Spallina have discussions**
15 **at or about the time that this letter dated**
16 **December 6, 2012, marked as Exhibit 14 was written**
17 **about under what authority Mr. Spallina made the**
18 **demands that the proceeds should be paid to the**
19 **five Bernstein children?**

20 A. It doesn't really read like a demand.
21 But, you know, if you want to characterize it that
22 way...

23 I'm seeing this letter for the first time.

24 **Q. Did you have discussions with Mr. Spallina**
25 **concerning the request made by him that he would**

1 **like the distributions amongst the five Bernstein**
2 **children?**

3 A. Well, my conversations with Robert
4 Spallina included relating conversations he had had
5 with Simon Bernstein regarding the policy and the
6 overall plan that Simon Bernstein wished to have
7 occur upon his demise.

8 **Q. Are there emails between Mr. Bernstein --**
9 **Simon -- and your office concerning any expressions**
10 **of intent about the distribution of insurance**
11 **proceeds upon his demise?**

12 A. I'm not certain. Again, we provided all
13 of that documentation to everybody. There may have
14 been notes. There may have been file notes.

15 MR. ROSE: For the record, Peter, before
16 you ask your next question -- and I hate to break
17 your momentum -- but it's 4:30 p.m.

18 There are a number of other people that
19 might have questions. And you are, in my view,
20 taking discovery in a case that you're not involved
21 in that Mr. Stansbury has counsel, and is
22 representing, as administrator ad litem, the
23 interests of the estate in unrelated litigation;
24 and I think this is far afield of the issues we
25 have Friday. And I think you're being a little

1 unfair to the other participants.

2 MR. ELIOT BERNSTEIN: Perfectly fine.
3 This is Eliot Bernstein; and it's relevant to the
4 matters at hand as to the qualifications of Ted and
5 the qualifications of Mr. Tescher.

6 Q. Did Mr. Spallina, to your knowledge, have
7 the consent of Mr. Eliot Bernstein to request that
8 the distributions of the life insurance policy be
9 made to him instead of the estate?

10 A. I don't know.

11 Q. Okay. Do you recall that there were two
12 other life insurance policies that were, in fact,
13 paid to the Simon Bernstein estate?

14 A. Yes, I believe so. I don't recall. They
15 were relatively modest policies, if I'm not
16 mistaken.

17 Q. Would you agree with me that, if the lost
18 trust instrument cannot be established, that the
19 proceeds of the insurance policy would be then
20 payable to the estate of Simon Bernstein?

21 MR. ROSE: Objection. Calls for a legal
22 conclusion. Beyond the witness's knowledge, scope,
23 information. Irrelevant. Immaterial. And
24 improper question for the purposes of this
25 deposition.

1 MR. ELIOT BERNSTEIN: Are you representing
2 Don Tescher?

3 MR. ROSE: No. He's representing Ted
4 Bernstein.

5 MR. ELIOT BERNSTEIN: Are you putting that
6 objection on for Ted or...

7 MR. FEAMAN: Don Tescher is represented
8 by --

9 THE WITNESS: Irwin Block.

10 MR. FEAMAN: -- Mr. Irwin Block, a very
11 well-respected attorney here in Palm Beach County.

12 MR. ELIOT BERNSTEIN: Okay. Is he making
13 the objections for Mr. Tescher?

14 MR. ROSE: No. He's making the objections
15 on behalf of Mr. Ted Bernstein, which he has the
16 right to do.

17 **Q. Okay. So you can answer.**

18 A. Could you repeat the question, please?
19 I'm sorry.

20 MR. FEAMAN: Sure. I would ask the court
21 reporter to read it back.

22 THE WITNESS: Sure.

23 (Question read: Question: "Would you
24 agree with me that, if the lost trust
25 instrument cannot be established, that the

1 proceeds of the insurance policy would be
2 then payable to the estate of Simon
3 Bernstein?")

4 A. I think it may depend upon the terms and
5 conditions contained in the insurance policy. So I
6 can't say absolutely that that would be the case.

7 **Q. Okay. But it seems nobody can find the**
8 **insurance policy. So in a default provision,**
9 **wouldn't it, in fact, then go to the estate --**

10 A. I --

11 **Q. -- the -- Bernstein as the owner of the**
12 **policy?**

13 A. I -- I --

14 MR. ROSE: Objection to the form. Calls
15 for a legal conclusion. Beyond the scope of the
16 witness's knowledge.

17 A. I don't have an answer.

18 **Q. All right. Well, as the copersonal**
19 **representative, what effort did you take to**
20 **ascertain whether the proceeds of this policy**
21 **should, in fact, be payable to the estate?**

22 A. Well, the first -- what we attempted to
23 first do was to go into court in Palm Beach County
24 and have a declaratory action to establish a lost
25 trust and appoint a successor trustee, which is a

1 -- you know, not an uncommon proceeding.

2 We, in fact, had drafted a pleading, which
3 is your Exhibit 12.

4 The family, for whatever reasons -- and
5 I'm not certain what all the reasons were --
6 decided that they wanted to remove the action to
7 Federal District Court in Illinois. So the matter
8 was removed to federal district court in Illinois.

9 **Q. And --**

10 A. We are not a party any longer in that
11 proceeding and have not been involved in that for
12 quite some time.

13 **Q. Well as a PR, did you think you had any**
14 **fiduciary obligations to creditors -- interested**
15 **persons of the estate to marshal the assets of the**
16 **estate for the benefit of not only the**
17 **beneficiaries but the creditors too?**

18 A. The best information that was given to us
19 that we acted upon was to attempt to see if the '95
20 trust could either be located or reestablished
21 through -- through appropriate testimony.

22 **Q. All right. Let's get back, if we could,**
23 **to Exhibit 14, and then we'll get to my Exhibit 12.**

24 A. Okay. I've got 14. Okay.

25 **Q. So you can identify the letter written by**

1 **Mr. Spallina; is that correct?**

2 A. It is a letter that appears to have been
3 written by Mr. Spallina.

4 **Q. Now, let me draw your attention to the**
5 **claimant's statement that is on page 2 of Exhibit**
6 **14 --**

7 A. Yes, sir.

8 **Q. -- do you see that?**

9 **Do you know who filled that out?**

10 A. It looks to me like it is Mr. Spallina's
11 signature for sure.

12 **Q. Pardon me?**

13 A. It looks to me like it is Mr. Spallina's
14 signature for sure; that would be his signature.

15 **Q. Okay.**

16 A. And apparently he wrote "Personal rep and
17 trustee."

18 **Q. Did you and Mr. Spallina have discussion**
19 **about this document at any time?**

20 A. No, sir.

21 **Q. Is it your understanding that he's**
22 **representing himself to be the trustee of the lost**
23 **insurance trust?**

24 A. No. It's my understanding that he was
25 representing himself to be the trustee of Simon's

1 trust and also personal representative of Simon's
2 estate.

3 Q. Well, let's go to the next page, which is
4 Bates stamped No. JCK 001273.

5 A. Yeah, I see it.

6 Q. Do you see that where it says "Name of
7 Trust: Simon Bernstein Irrevocable Insurance
8 Trust," dated 6/1/95. And it looks like "Printed
9 name of trustee: Robert Spallina."

10 Do you see that?

11 A. I see that.

12 Q. Did you have any discussions with Mr.
13 Spallina concerning his authority to represent
14 himself to the insurance company as the trustee of
15 the 1995 revocable trust?

16 A. No, sir. I'm seeing this document
17 probably for the first time.

18 Q. Okay.

19 MR. ROSE: Object to the form of the last
20 one.

21 Q. And then you mentioned the action that was
22 then filed --

23 A. I didn't say it was filed. I said it was
24 contemplated to be filed.

25 Q. No, in Illinois?

1 A. Oh. I'm sorry. Go ahead.

2 Q. Okay. Now, there -- are you aware that
3 the trustee of the lost trust -- that Mr. Ted
4 Bernstein represents himself as the successor
5 trustee?

6 Are you aware of that?

7 A. Yes, sir.

8 Q. Okay. Do you know by what authority Mr.
9 Bernstein represented himself as successor trustee?

10 A. No.

11 Q. Are you aware that there were discussions
12 and email traffic between your office and counsel
13 in Chicago concerning whether an action should be
14 filed in Palm Beach County -- as you mentioned --
15 or in Illinois?

16 A. I believe there was correspondence back
17 and forth; and there were also telephone
18 discussions.

19 Q. Are you aware that in that correspondence
20 Mr. Spallina represented to counsel in Chicago that
21 the life insurance proceeds were, in fact, an asset
22 of the Simon Bernstein estate; therefore, it should
23 be litigated in Palm Beach County?

24 MR. ROSE: Object to the form.

25 A. I don't recall.

1 Q. All right. And now, take a look at
2 **Exhibit 12.**

3 A. Yes, sir.

4 Q. That's a draft of a complaint; correct?

5 A. Yes.

6 Q. Was that prepared in your office?

7 A. Yes, sir.

8 Q. Okay. And who prepared it?

9 A. I believe that I did.

10 Q. And this is a draft of a complaint
11 prepared by you entitled "Declaratory Action to
12 Establish a Lost Trust and Appoint a Successor
13 Trustee"; correct?

14 A. Yes, sir.

15 Q. You prepared that on behalf of Ted
16 Bernstein; is that correct?

17 A. "Comes now Ted Bernstein, son of Simon
18 Bernstein"; that's correct.

19 Q. Okay. So -- now, then you said earlier in
20 your testimony that the family -- quote, "the
21 family," close quote -- decided that it should be
22 -- this action should be filed in Chicago?

23 Was Eliot Bernstein a member of the family
24 that you referred to?

25 A. Eliot Bernstein is a member of the family.

1 As to whether Eliot Bernstein's opinion was
2 elicited, I would seriously doubt.

3 **Q. Okay. And, in fact, Eliot Bernstein is**
4 **mentioned in paragraph 5 as one of the five**
5 **surviving children of Simon Bernstein.**

6 A. That is -- that is correct.

7 **Q. Okay. And how did the decision come about**
8 **that the action instead was filed in Chicago -- in**
9 **Illinois state court, rather than in the county**
10 **where the decedent resided, in Palm Beach County;**
11 **if you know?**

12 A. I don't know.

13 **Q. And who would be most knowledgeable about**
14 **that?**

15 MR. ROSE: Objection. Relevance.
16 Materiality. It's 4:42. You're trying the wrong
17 case. The judge has already determined that Mr.
18 Stansbury, at his own expense, can pursue the
19 litigation in Illinois. And you're not supposed to
20 use this deposition for discovery in that case.
21 And, otherwise, everything you're asking is
22 irrelevant and wasting the time of everyone,
23 including the people that haven't yet had a chance
24 to ask questions.

25 MR. ELIOT BERNSTEIN: Okay. This is Eliot

1 Bernstein. I'll put back on the record that it's
2 very relevant to the qualifications of Mr. Tescher
3 to act in any capacity on this.

4 THE WITNESS: I'm not being asked to act
5 in any capacity, Mr. Bernstein.

6 MR. ELIOT BERNSTEIN: Are you objecting on
7 behalf of Ted or on behalf of --

8 Q. I mean, I'm laying a predicate here,
9 because my next question is, in recommending Ted
10 Bernstein as successor personal representative to
11 the estate of Simon Bernstein, what are you
12 recommending what action Ted Bernstein takes -- if
13 he's appointed by the court as successor personal
14 representative -- to protect the estate in trying
15 to obtain the assets -- excuse me -- the proceeds
16 of this insurance policy?

17 A. I'm not your lawyer anymore.

18 Q. Well, you were never my lawyer.

19 A. Well, I'm no longer Ted Bernstein's lawyer
20 either.

21 Q. And would you expect him to take action to
22 protect the estate?

23 MR. ROSE: Objection to the form in light
24 of Judge Colin's prior ruling.

25 I think you understand it's an improper

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

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.

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.**

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

1 question, Irwin, in his capacity as personal
2 representative.

3 MR. BLOCK: Does that mean he wasn't a
4 lawyer?

5 MR. FEAMAN: Well, when you're a personal
6 representative --

7 MR. BLOCK: Go ahead, Peter.

8 A. I will answer it this way: We were all
9 obviously aware -- everybody was aware that if the
10 proceeds came into the estate they would be exposed
11 to a successful prosecution of Mr. Stansbury's
12 lawsuit if he got a judgment.

13 **Q. Did you talk to Mr. Stansbury at any time**
14 **about his claim -- or your attorney, Mr. Manceri?**

15 A. I don't recall ever talking to Mr.
16 Stansbury about it.

17 MR. FEAMAN: Okay. All right. I think
18 that's all I have at this point.

19 THE WITNESS: Thank you, Peter.

20 MR. ROSE: Does anybody else wish to ask
21 questions of Mr. Tescher?

22 MR. MORRISSEY: John Morrissey. I have no
23 questions.

24 MR. ROSE: Anybody else?

25 MR. ELIOT BERNSTEIN: This is Eliot

A		
\$1.6 87:21	15:11 16:17 30:1	announcing 58:7,10
\$100,000 82:4	30:4,7,12,15	answer 20:19 38:14
\$30,000 83:10	31:14 39:13	56:10 67:4 70:12
\$45,000 82:3	53:20 55:8 56:24	92:17 93:17
\$55,000 81:7,13	afield 11:4 90:24	104:23 105:8
82:21	104:8	answered 47:17
ability 20:24	agent 64:3,9 65:13	answers 15:1
24:20	65:25 68:1 72:13	anybody 11:19 52:2
able 41:3 102:19	76:6,18 77:15	60:1 87:20
absolutely 93:6	Agents 7:14 9:10	105:20,24
accounts 49:5	64:4,12	anymore 100:17
accurate 16:8,17	ago 14:14 81:15	anyway 57:15
23:11,17 25:18	agree 11:1 12:4,13	apologize 41:1
accused 45:11,21	27:21 59:6 80:17	57:2
46:4	91:17 92:24	apparent 20:21
acquire 22:25	103:22	71:13
act 20:24 100:3,4	agreed 12:10	apparently 17:15
acted 94:19	agreeing 30:23	45:25 51:6,13
acting 67:3 75:12	agreement 6:5 8:2	78:14 95:16
action 7:5 9:1	15:22 16:5,10	appear 41:9
24:8 93:24 94:6	17:24 19:6 21:9	APPEARANCES 2:1
96:21 97:13	31:17 43:22	3:1 4:1
98:11,22 99:8	53:11 75:1,6	appeared 51:7
100:12,21 103:10	ahead 34:23 75:2	appears 17:13,14
103:21	97:1 105:7	36:3 43:25 58:3
active 78:14	Al 86:17	95:2
activity 21:10	Alan 2:16 9:11	applicability
ad 60:6 90:22	10:5 12:3 29:25	10:13
add 11:13	31:3 40:25 47:2	applicable 1:18
added 53:1	Alexandra 3:19	apply 38:7
addition 11:8	alive 16:24	appoint 7:7 9:2
additional 12:11	alleged 85:3,3,18	29:7 34:4 93:25
78:21	85:18	98:12
address 41:17,22	allegedly 40:3,15	appointed 31:23,25
42:4 64:11,14,22	61:24	34:17 38:19 39:8
66:2,4,25 72:20	allocate 28:15	60:7 100:13
72:21,24 73:2	allocation 27:24	appointment 10:8
76:23 79:4	28:10	31:23 32:11
adequately 38:4	allow 50:14	33:17,22 35:8,12
administrators 51:12	allowed 11:19,19	38:7
administration	allowing 30:22	appoints 60:24
42:18 46:8 79:1	allows 32:2	appropriate 52:6
administrator 60:6	altered 52:22 53:4	94:21
90:22	53:8 54:5,8	April 73:16
admissible 30:15	55:15 56:2,4,9	arbitrage 62:24
admission 30:1	56:20 58:2	79:19,21 80:6
advance 11:2 40:23	altering 52:22	81:12 83:10
88:2	altogether 72:20	area 85:21
advice 24:7,11,14	Amended 6:4 8:1	areas 42:8
advise 25:8 29:4	17:24 19:5 31:17	argument 30:25
advised 25:10,11	43:21 75:1	31:2,7 39:10
affairs 20:25 22:1	amendment 16:4,9	Arose@mrachek- ...
affect 20:23	17:4,5 52:21,23	2:21
affidavit 7:15	53:10,21 54:8	arraignments 22:15
14:2,8,13,18,20	55:5	article 72:17,21
14:25 15:2,4,6	amount 82:21	articles 6:13,18
	Anne 48:23 79:6	8:10,15 65:11
		72:9 77:8
		ascertain 93:20
		aside 22:16
		asked 14:24 30:16
		84:5 100:4
		asking 10:16 51:14
		99:21 101:1
		104:25
		asset 24:22 67:6
		85:25 97:21
		assets 22:15 23:6
		26:15 94:15
		100:15 101:9,23
		assist 58:18
		assistant 48:22
		assisting 42:20
		associate 53:14
		54:24 56:6
		assume 9:16 42:6
		44:6 59:13 83:21
		84:5
		assumed 44:4
		assumedly 25:19
		75:3
		assuming 67:17
		attached 15:4
		16:17 53:20 55:8
		56:24
		attempt 94:19
		attempted 50:16
		93:22
		attempting 26:13
		attend 39:21 40:8
		attention 31:13
		34:13 35:18 36:3
		37:12 39:15 52:1
		52:21 53:5,13
		63:18 71:25
		73:15 78:1 80:24
		82:12 95:4
		attorney 13:4
		58:14,23 65:8,9
		92:11 105:14
		attorney/client
		10:14
		attorneys 42:6
		56:2
		authority 89:17
		96:13 97:8
		authorized 73:12
		aware 16:22 17:5
		18:20 25:24
		26:20,24 52:3,5
		71:9 84:8,12
		89:13 97:2,6,11
		97:19 102:4
		105:9,9

B				
b 2:16 6:1 15:6,21 16:21 17:3 32:6 38:1	10:11,12,15,15 15:12,14,21 16:1 16:5,9,18,24 17:6,9,21,24 18:5,13,21 19:5 19:21,21 20:10 20:12,13,21 21:9 21:12,25 22:6,6 22:17,21 23:24 23:25 25:22,23 26:4,5 27:5,9 29:12 31:17,25 34:24,24 37:4,7 38:1,2 39:7 40:4 40:15 44:4 45:14 45:18 46:6,12,23 48:7,12,13,16,17 49:17,20,21,22 49:22,24 50:4,6 51:5 52:8,12,19 53:9,21 54:9 55:13,17,19 56:3 56:8 58:3,6,6,9 58:15,17,20 59:20,24 60:24 61:14,23 62:17 62:22 63:2,3,6 63:12,13,25 64:22 65:7 66:7 66:7,13,20 67:1 67:5,6,21 68:2 68:12,21,23,24 69:19 70:1,2,3 70:17,19,23,24 71:2,2,5,12,13 71:15,21 72:10 72:14,17 73:4,21 74:1,2,3,8,10,13 74:16,19,19,25 75:5,12,21 76:2 76:11 77:9,19,23 80:3,18 84:4,4 84:22 85:5,9,13 85:16,21 86:12 86:16 88:20 89:19 90:1,5,6,8 91:2,3,7,13,20 92:1,4,5,12,15 93:3,11 96:7 97:4,9,22 98:16 98:17,18,23,25 99:3,5,25 100:1 100:5,6,10,11,12 101:2,6,8,11,14 101:15 103:7,25 104:11,14 105:25	17:18 22:22 23:3 48:5 52:23 53:1 53:10 62:3 68:13 76:25 77:1 80:7 99:1 100:19 103:9 Bernsteins 40:2 79:12,24 best 27:2 50:21 56:13 57:5 59:15 80:20,22 94:18 Beyond 91:22 93:15 bills 49:6 bit 34:1 bleeds 37:18 Block 3:4 9:20,24 10:1 12:3,6,10 70:4 92:9,10 103:15 104:5,6 104:20,23 105:3 105:7 Blvd 2:6 Boca 3:7 4:11,18 86:17 bookkeeper 49:7,9 78:24 bookkeeping 79:1 books 49:5 68:1 bottom 32:6 Boulevard 72:22 bounced 46:14 box 15:18 17:17 61:18 Boynton 2:6,7 break 57:11,13 90:16 bring 51:25 52:1 broad 23:21 brought 34:13 52:20 53:5,12 58:16 63:11 Brown 60:6,10,16 building 57:10 bullet 88:18 business 26:12 42:12 63:5 66:6 77:18 78:21,23 79:11,23 101:7 businesses 63:9,14 businessman 20:8	59:19 called 1:17 14:2 16:4 Calls 91:21 93:14 candidate 29:6 capable 29:6 capacity 11:24 21:20 23:15,23 24:3,20 29:13 100:3,5 105:1 Cape 44:16 51:24 carried 67:13 carry 68:22 77:24 case 21:18 37:3 47:10 51:10 59:9 90:20 93:6 99:17 99:20 cause 34:5 51:22 56:11 60:23 74:23 caused 21:24 52:18 55:3 56:5 81:11 cautious 25:11 ceasing 21:10 certain 20:22 21:6 22:4 42:8 45:1 45:18 55:23 74:21 79:22 82:8 88:25 90:12 94:5 102:9 certainly 13:22 21:6 30:23 37:8 51:25 71:19 83:3 Certificate 6:15 8:12 76:1 chance 99:23 change 65:4,6 changed 40:16 43:19 64:23 changing 66:25 characterize 89:21 charitable 77:25 Chaves 43:15 82:1 check 81:2,6,22 82:3,19,19 83:1 83:8,11 checking 82:10 checks 49:12 Chicago 62:23 84:9 97:13,20 98:22 99:8 103:20 child 36:20 37:1 children 19:24 22:22 23:3 37:14 38:1,18 39:4,6,7 39:19 46:8 50:25 53:1 57:7 68:13	
based 101:15 basically 46:7 basis 29:16 85:8 Bates 96:4 bathroom 57:11 Beach 1:7 2:6,7,19 3:16 13:14,24 92:11 93:23 97:14,23 99:10 began 43:9,11 beginning 37:22 begins 35:20 behalf 1:17 31:11 67:3 89:11 92:15 98:15 100:7,7 101:18 belief 85:8 believe 15:3 16:14 20:7 21:11 22:3 23:7 30:11 31:14 33:2,2,7,23 35:20 40:18,25 44:9,23 46:24 48:10,14 51:20 53:21,25 68:25 70:25 74:1,18 79:13 80:4 85:4 86:11,19,22 91:14 97:16 98:9 102:12,14 belonged 101:24 beneficiaries 28:7 28:8 38:22 94:17 beneficiary 20:5 35:15 36:11,12 85:19 86:1,3 102:13 benefit 33:24 68:12 75:4 86:14 94:16 Bernstein 1:12,18 2:22 3:20,20,21 4:16,24 5:9 6:4 6:9,12,14,16,19 7:9 8:1,6,8,11 8:13,16 9:5 10:9	Bernstein's 10:4			
		C		
		C 15:6 16:3,8,22 17:3 53:24,25 54:3,5 CA-CSR 1:20 call 36:3 41:2		

88:20 89:19 90:2 99:5 103:24 chips 101:19 choice 19:22 Christine 52:24 55:6,9 Circle 66:3 76:22 CIRCUIT 1:6,7 circumstance 24:9 Civil 1:19 12:17 claim 25:17,21 103:25 104:15 105:14 claimant's 95:5 claims 88:13 cleaned 50:13 clear 61:10 clearly 40:5 Clematis 3:14 clerk's 46:14 client 11:18 clients 62:21,25 63:10,11,13 64:10 83:21 close 46:7 49:1 98:21 closed 50:11 closing 48:8 closure 58:1 Cod 44:16 51:24 code 36:14,15,22 36:25 37:9 Colin 9:14,23 29:4 Colin's 46:15 100:24 come 24:6 49:12 51:4 52:10 53:3 54:24 73:21 99:7 Comes 98:17 commenced 22:5 45:2 commencing 1:25 comment 36:21 104:9 Commonwealth 1:22 companies 85:13 company 22:24 23:2 62:22 64:5,7,8 64:24 65:20 76:17,19 80:1,10 83:9 88:14 96:14 competent 20:8,8 29:6 complaint 51:11 98:4,10 completely 60:13 69:16	composite 88:6 Concepts 22:7 concern 11:3 concerning 9:18 10:19 25:2 30:3 30:7 43:21 70:2 70:23 71:12 84:9 89:25 90:9 96:13 97:13 concluded 19:22 conclusion 91:22 93:15 concur 31:3 conditions 93:5 condo 27:13 28:1,2 28:16 condominium 27:6,7 27:22 conformed 17:14 61:4 connection 10:7,11 10:20 20:14 21:13 22:13 40:9 45:12 48:7 consent 50:24 91:7 consents 46:10 consideration 20:9 considered 26:2 consulting 6:23 8:19 78:10,17,21 78:22,23 79:10 81:7,11 82:20 consume 104:1 CONT'D 3:1 4:1 contact 49:23 contained 30:3,7 41:15 55:15 93:5 contemplated 96:24 contents 27:6,13 context 39:1 continued 26:8 65:18 control 23:6 102:18,19 controlled 79:11 80:2,18 conversation 71:12 conversations 70:1 90:3,4 copersonal 27:17 27:20 50:5 52:7 52:12,18 55:4 60:25 68:20 93:18 copied 60:13 61:12 copies 41:3 60:15 69:10	copy 16:8,12,17 17:14 32:25 34:8 41:10 58:4 60:23 61:2,4 63:22 72:9 76:1 77:8 79:18 84:16 89:12 Corporate 66:3 72:22 76:22 corporation 73:10 78:5 Corporations 63:24 correct 15:20 19:6 21:21,22 23:18 27:15,18 28:12 32:9,12 35:25 36:5 37:1 40:12 40:17,20 41:9,19 41:20 42:10,11 42:13,14,16,18 42:24,25 43:10 44:1,9,12,14 45:4 46:23,24 48:6,13,14,17,18 49:13,14 50:14 52:13,14 53:22 55:13,20 56:18 58:4,4,15 59:3 59:13,16 60:8 62:14,15 63:3 66:8,14,15,16 70:20,21 71:3,7 72:14,15,17,18 73:5,6,18 76:7,9 76:20 80:19 81:24,25 83:25 84:6 87:8 88:15 95:1 98:4,13,16 98:18 99:6 correctly 39:23,24 correspondence 71:11 97:16,19 costs 104:4 cotrustee 18:16 32:14 87:12 cotrustees 18:12 32:8 counsel 12:3 39:22 40:8 52:25 56:7 68:19 90:21 97:12,20 103:20 county 1:7 13:15 13:24 92:11 93:23 97:14,23 99:9,10 couple 11:9 41:25 court 1:6 9:19,20	9:22 15:19 17:18 19:20 40:22 46:13 50:9,13 51:7,8 57:22,24 59:2 60:8,22 61:6 78:7 89:5 92:20 93:23 94:7 94:8 99:9 100:13 104:6 courthouse 13:18 13:19,20 courthouses 13:24 cover 25:16 CP 1:9 create 68:14 created 22:21 23:5 68:12 76:18 77:16 creating 22:20 creditor 104:16 creditors 94:14,17 crime 45:12,16 criminally 50:19 cross-examination 29:17 30:14 CRR 1:20 curator 60:7 current 13:17 22:25 61:9 currently 13:5 45:25 78:13 86:12
D			
			D 5:1 15:6 17:8 date 9:24 12:12 16:12 17:15 32:22 33:12 44:2 44:21 55:10 dated 15:22 16:15 16:15 17:13,25 44:1 55:16 73:15 81:2 88:8,9 89:15 96:8 dates 51:18 day 19:7 25:7 32:15,21 33:15 44:5,7 62:10 82:4 deal 70:13 dealing 22:15 35:13 dealings 62:20,21 dealt 57:7 death 17:18 18:6 18:13 55:12 75:5 80:7

deceased 50:3	8:20,22,24 9:9	19:11 21:16	either 11:23 27:25
decedent 99:10	79:18 82:14	31:24 33:25 34:2	49:17 70:12
Decedents 37:15	determination	34:6 35:19 37:10	85:12 89:11
December 88:9	10:13 102:3	39:2 43:22 46:4	94:20 100:20
89:16	determined 99:17	46:16 47:3,10	104:11
decide 30:18	determining 38:21	50:19,22,23	elaborate 23:4
decided 12:11 94:6	develop 78:20	52:22,24 53:1,3	electronic 67:20
98:21	Diane 48:19	53:4,8,19 54:2,6	elicit 14:24
deciding 19:9	died 20:3 37:5	54:6,7 55:15,16	elicited 99:2
decision 18:20,25	73:23 74:6	56:2,4,8,9,20	eligible 38:19
19:2,15 99:7	difference 28:14	61:5,9 65:1	39:8
101:22	different 17:2	73:15 84:22	Eliot 4:16,24 5:9
decisions 101:20	55:7 72:19 82:19	87:15,25 95:19	10:15 20:10,13
declaratory 7:5	83:1	96:16	20:22,22 21:2,9
9:1 93:24 98:11	diligence 83:24	documentation	21:12 22:16,22
deemed 38:3	direct 20:4 31:15	90:13	23:3,5 38:2
default 93:8	37:12 40:18	documents 14:3	46:12 51:5 52:25
defendant 25:13	44:18 71:4 89:3	15:5 16:21,23	56:3,7 58:6
71:16,22 72:6	directed 88:13	20:6 21:19 27:10	68:13 69:19 91:2
define 36:19	directly 19:1 28:4	32:23 44:24	91:3,7 92:1,5,12
defined 36:14,16	disagreement 103:8	45:18 46:13,14	98:23,25 99:1,3
definition 36:1	disagreements	50:10,17,18 51:8	99:25,25 100:6
37:13,17 38:20	103:19	60:4,6,11,19	101:2 103:7
57:7	discharge 46:11	61:20,24 62:6,13	105:25,25
definitional 35:19	discover 56:6	63:20 66:1 74:17	Elliot 10:4
35:24	discovery 33:3	83:21 86:14 88:2	email 6:8 8:5
delivery 81:11	56:3 80:17 90:20	doing 29:7 62:23	10:14,25 34:8
demand 89:20	99:20	86:18	70:22 97:12
demands 89:18	discrepancy 51:6,7	Don 12:3 92:2,7	104:11
demise 90:7,11	discussed 31:15	104:20	emails 90:8 103:20
department 6:10,21	discussion 14:7	Donald 1:16 5:5	ended 45:24
7:12 8:7,17 9:8	28:5 70:12,17	7:15 12:19 13:3	enjoy 21:3
63:23 78:5 88:13	71:20 95:18	14:2,8	ensconced 44:16
depend 93:4	discussions 18:24	doubt 99:2	entered 9:23
Deponent 3:10	19:1 25:2,7	draft 98:4,10	entire 39:2
deposed 12:4	89:14,24 96:12	drafted 94:2	entities 22:7 64:9
deposit 15:18	97:11,18	drafting 15:25	79:11
17:17 61:18	disks 60:13	draw 31:13 34:12	entitled 15:11
deposition 1:16	dismissed 25:23	35:18 39:15	98:11
9:12,15,17 10:3	dispositions 37:25	63:17 71:25	entity 6:11,22
10:18,23 11:10	38:9	73:14 78:1 80:24	7:13 8:8,18 9:9
11:14,20,24 12:1	disqualify 10:4	82:11 95:4	65:25 68:6 71:14
12:15,16 14:6	distribution 25:3	Drive 2:17	73:25 76:7,12
30:13 41:2,7	25:9,18 26:2,18	driver's 12:21	77:16,21 78:6
72:3 91:25 99:20	26:21 46:11	due 41:2 83:24	80:18
describe 34:6	90:10	duly 12:22	entry 81:20
describes 36:7,11	distributions	duplication 82:23	equity 67:7
DESCRIPTION 6:2	25:12 26:22	Dustin 48:19	Eric 3:20
designate 19:13	88:19 90:1 91:8		especially 24:19
75:9	district 94:7,8	E	Esq 2:5,16 3:4,13
designated 18:12	dividing 20:6	e 5:1 6:1 15:6	4:7
75:7,10	division 46:15	17:23 31:15	essence 23:2
designed 23:5	63:23 65:19 78:5	35:20 36:2 37:13	essentially 54:11
desire 104:13	document 7:10 9:6	37:22	establish 7:6 9:2
desires 77:25	15:10,23 16:4,6	earlier 98:19	93:24 98:12
detail 6:11,22,24	16:14,16 17:12	editing 14:21	established 75:4
7:1,3,13 8:8,18	18:1,5,11 19:8	effort 93:19	91:18 92:25

estate 1:12 10:9 22:13 23:4,10,16 23:25 25:22 26:4 27:8,14,18 28:8 28:17,21 29:2,9 39:20,25 40:1,3 45:14,19 46:6 48:8,12 50:6,11 50:12,14 51:3 52:7,13,19 55:19 58:8,15,19,23 66:21,22 67:3,6 68:21 69:17 80:11,13 83:20 84:3 85:25 86:6 86:8 87:1,2 90:23 91:9,13,20 93:2,9,21 94:15 94:16 96:2 97:22 100:11,14,22 101:11,13,18,23 102:24 103:6,8 104:4,14,19 105:10	73:15 74:9 75:23 76:1 77:5 78:2,4 79:14,17 80:25 82:16 87:23 88:6 89:16 94:3,23,23 95:5 98:2 exhibits 1:3 11:3 17:3 29:24 31:14 40:22 exist 80:7 existed 89:6 102:1 exists 33:2,7 89:2 89:4 expect 100:21 expedited 29:15 expense 28:9,23 99:18 expert 67:9 85:20 expertise 42:7 explain 83:2 explanation 51:15 exposed 105:10 express 11:2 103:7 104:11 expressed 77:23 expressions 90:9 expunge 50:16 extensive 42:7 extent 11:15 extra 22:14	76:2 77:9,19 94:4 98:20,21,23 98:25 102:3 far 11:3 16:16 17:2,20 18:3 26:24 74:11 77:21 87:9 90:24 104:8 Fargo 4:8 fashion 20:24 father's 19:25 29:9 Feaman 2:4,5 5:8 9:11,22,25 10:2 11:9,16 12:7 17:1 20:18 22:2 23:19,21 24:25 25:20 26:6 27:1 28:3,24 29:10,19 29:22,25 30:20 30:22 31:9,11 34:10 40:25 47:4 47:7,12,20 57:14 57:18,22,25 59:11,17,22 67:15,17 70:15 72:8 78:7 92:7 92:10,20 104:9 104:25 105:5,17 fearful 103:25 February 65:14,21 76:8 federal 3:5 4:9 29:2 41:18 64:12 86:6,8 94:7,8 feel 30:4 felony 45:21 felt 101:24 fiduciary 20:13 23:15,23 24:3,21 29:13 68:22 94:14 101:12,16 field 67:10 FIFTEENTH 1:6 fifth 88:17 file 90:14 filed 10:7,10 15:18 44:19,23 46:13 50:8 51:11 51:13 59:8 60:22 65:11 96:22,23 96:24 97:14 98:22 99:8 files 17:17 33:4,5 51:8 60:14 filing 103:20 filled 95:9	final 18:3 finally 83:5 financing 22:25 find 32:1 81:17 83:14,14 87:14 93:7 fine 11:5 22:12 30:10 34:10 91:2 finish 40:13 47:8 47:24 firm 10:5,6 13:6 15:25 22:19 24:2 24:10 25:8 43:2 43:13,17 45:7,7 45:13 48:20 49:4 49:5,13 56:12,15 64:16,18 65:15 73:1 81:23 82:1 86:17,17 first 12:22 15:10 16:4,9,13 19:12 31:13 40:5 54:8 62:16,18,21 65:15 72:25 79:15,20 89:23 93:22,23 96:17 FITZGERALD 2:14 five 15:5 39:19 46:8 50:25 57:16 88:20 89:19 90:1 99:4 five-minute 57:13 FL 2:7,19 3:7,16 4:11,18 Flagler 2:17 floating 88:1 Florida 1:7,19 6:10,21 7:12 8:7 8:17 9:8 12:16 13:5,20 51:13 63:23 78:4 flush 35:12 follow 24:11,14 follow-up 69:25 follows 12:24 foregoing 37:24 38:11,16 forged 56:8 forgot 43:20 50:1 form 17:1 20:18 22:2 23:19 25:20 26:6 27:1 28:3 28:24 29:10 32:16,19 33:1,18 33:21 46:23 50:22 64:10 67:16 73:13
	F		
estates 29:1 66:18 etcetera 51:15 everybody 29:20 41:3 46:12 90:13 105:9 evidence 101:25 exact 51:18 examination 29:15 31:8,16 44:18 47:15,21 examined 12:23 example 60:21 exchange 21:11 excise 33:9 excuse 33:9 100:15 execute 21:10 33:9 executed 15:15 17:15 32:17,19 44:24 61:24 62:6 execution 62:2 executions 62:9 exercise 33:16,18 exercised 31:23 32:10 35:8 exhibit 6:2 14:6 14:10 15:10,21 16:3,8 17:8,23 17:23 31:15 41:5 53:24 54:3,5 55:7,7 57:21 58:3 63:18,22 64:15,25 66:1 67:21 72:1,9	fact 10:22 19:23 21:8 26:14 29:1 45:1 48:6 50:10 51:10 56:4,7,8 86:5 87:12 91:12 93:9,21 94:2 97:21 99:3 102:1 fair 32:5 42:1 79:25 104:9,9 fall 101:19 falsely 46:5 familiar 14:10 15:13,23 16:6 18:1,8 36:17 64:5 families 42:9 family 6:12,17,19 8:8,13,16 20:21 21:2,7 49:17,20 49:24 62:17 63:25 64:22 65:8 67:1,5 68:2,24 70:2,18,24 71:3 71:5,13,15,21 74:9,21 75:3	76:2 77:9,19 94:4 98:20,21,23 98:25 102:3 far 11:3 16:16 17:2,20 18:3 26:24 74:11 77:21 87:9 90:24 104:8 Fargo 4:8 fashion 20:24 father's 19:25 29:9 Feaman 2:4,5 5:8 9:11,22,25 10:2 11:9,16 12:7 17:1 20:18 22:2 23:19,21 24:25 25:20 26:6 27:1 28:3,24 29:10,19 29:22,25 30:20 30:22 31:9,11 34:10 40:25 47:4 47:7,12,20 57:14 57:18,22,25 59:11,17,22 67:15,17 70:15 72:8 78:7 92:7 92:10,20 104:9 104:25 105:5,17 fearful 103:25 February 65:14,21 76:8 federal 3:5 4:9 29:2 41:18 64:12 86:6,8 94:7,8 feel 30:4 felony 45:21 felt 101:24 fiduciary 20:13 23:15,23 24:3,21 29:13 68:22 94:14 101:12,16 field 67:10 FIFTEENTH 1:6 fifth 88:17 file 90:14 filed 10:7,10 15:18 44:19,23 46:13 50:8 51:11 51:13 59:8 60:22 65:11 96:22,23 96:24 97:14 98:22 99:8 files 17:17 33:4,5 51:8 60:14 filing 103:20 filled 95:9	

75:14 93:14	43:22 55:25 75:2	81:16	instrument 84:14
96:19 97:24	83:14 93:9,23	hour 57:12	91:18 92:25
100:23 103:15	96:3 97:1 105:7	hundred 22:4 55:23	insurance 22:7
Forman 43:16	going 9:13 12:8,15	82:7 88:25	42:15 62:23
formed 65:20,21	28:10 29:1,25	husband 85:12	63:12 79:23
77:22	43:18 47:7 57:12	86:10	83:22 84:2,6,10
former 65:17	61:23 81:16		84:13 85:13 86:7
forth 97:17	102:13,20 104:8	I	86:22 88:14 89:6
forwarded 52:24	good 10:1 30:20	Iantoni 4:22 38:2	90:10 91:8,12,19
found 51:6 102:7	59:11 73:3 78:24	58:7	93:1,5,8 95:23
foundation 6:20	Gortz 86:17	idea 60:12 70:5	96:7,14 97:21
8:16 77:10,19,24	governor's 51:11	83:16	100:16 101:10
four 10:2,23	grandchildren	identified 12:20	102:11 104:1,2
four-page 6:8 7:10	26:19	53:7 72:20 74:9	104:13
8:5 9:6	grantor 36:20 37:1	74:23 76:12	intended 38:20
frame 59:20	37:2,3,5,7 39:4	identify 94:25	intent 40:13,15
frankly 26:7 82:24	gross 86:8	Ijb@ijblegal.com	58:10,11 68:22
Friday 9:13,19,21	guess 43:4 59:2	3:9	90:10
9:22,24,25 47:2	77:1,3 80:16	Illinois 94:7,8	interest 26:12
59:7 90:25	82:1	96:25 97:15 99:9	67:7 69:17,21
Friedstein 4:25	guilty 45:12	99:19 103:9,21	73:25 74:3,20
38:3 58:6	Gutter 43:15 81:22	104:3	77:23 80:5,9
friendly 65:18,19		immaterial 69:17	interested 94:14
front 14:1 15:8	H	91:23	101:12
31:20,21 32:24	H 6:1	immediate 81:18	interesting 62:24
33:25 36:18,22	Hampton 1:23	impairments 20:23	interests 90:23
54:10 56:22,25	hand 57:23 91:4	impartial 20:24	interfering 27:25
74:17 78:9	handle 20:25	impediments 20:23	interim 25:3,9,18
full 13:1	handled 21:1 27:24	improper 25:8,10	26:1,20
fully 30:15	happened 21:23	47:15 91:24	International
funds 25:16	56:4	100:25 101:3	79:19,21 80:6
furniture 28:1,9	Happens 49:1	inactive 77:20	81:12 83:10
further 29:16 30:6	hate 90:16	78:13	interrogatories
80:16	head 70:9	inception 43:7,18	12:24
future 9:18 10:19	hear 104:20	incident 52:17	interrupt 47:21
11:22 12:1,5	hearing 11:11,13	includable 86:7	inventory 80:10,13
27:23,25	40:19	include 36:25	Investments 6:17
G	hearings 9:13 31:2	38:18 42:7	8:14 76:3
G-o-r-t-z 86:18	held 15:17 17:16	included 28:18	involve 11:17
Galvani 42:23	74:21	33:3 46:23 55:6	involved 11:23
53:16 56:16	helping 21:13	90:4	22:19 23:13 28:4
Geeze 78:18	hereunder 38:1,9	including 19:23	39:20 62:22
general 56:14 74:4	Heritage 88:14,23	42:8 46:12 99:23	90:20 94:11
76:10	hesitancy 29:5	Incorporation 6:18	involvement 65:3,5
generally 18:10	high-net-worth	8:15 72:10 77:9	71:2,4,6,7,14
24:11 36:17	42:9	indirectly 18:23	73:9
83:23 84:1	Highway 3:5 4:9	individual 23:6	involves 11:17
give 15:1 19:8	41:18 64:12	individually 76:19	involving 45:13
20:9 24:7 28:16	hired 58:14,16,17	80:15	irrelevant 47:18
30:2,8 50:15	58:17	individuals 42:9	69:16,23 91:23
given 24:8 28:25	Hold 53:23 54:1	information 14:25	99:22
94:18	63:19	41:15 85:11	irrevocable 68:11
glad 34:9	Holdings 6:14 8:11	91:23 94:18	86:21 96:7
go 11:3 28:14	72:10,14 73:22	Inn 1:23	Irwin 3:4 70:9
29:19 30:17	74:4,13,16 76:11	inquiry 51:14	92:9,10 105:1
34:23 35:22	home 79:4	inserted 16:13	issue 26:16,17,25
	honest 41:12 55:22	54:16	36:20 37:7 47:2

47:6,9 70:9,14 104:6 issues 9:18 10:19 10:24 11:4,21 71:24 90:24 item 57:15 Iviewit@iviewi... 4:20	54:13,19,22 56:11,13 60:13 61:11,15,25 62:8 62:12,13 65:17 67:25 68:1,3,8 68:17 69:11,14 71:23 72:23 73:9 75:18,22 77:21 78:25 80:9 81:16 82:9,22 83:12,13 84:21 85:2,11 87:3,4,9 88:1 89:2,21 91:10 94:1 95:9 97:8 99:11,12 103:17 104:7 knowledge 19:25 20:4 22:9 27:2 40:10,14,19 59:14,15 71:1 75:17 80:20,21 80:23 81:18 87:5 87:7 89:3,11 91:6,22 93:16 knowledgeable 66:17 99:13 known 49:16 78:6 KONOPKA 2:15	89:15,23 94:25 95:2 letterhead 88:9 letting 101:19 liabilities 29:2 liability 22:24 23:1 LIC 66:6 67:2,2 LIC's 66:5 license 12:21 licensed 13:4 life 22:6 42:15 62:23 63:12 83:22 84:2,5,10 84:13 86:7,21,22 88:14 89:5 91:8 91:12 97:21 102:11 lifetime 38:5 light 50:2 51:4,25 52:20 53:4 100:23 limitation 12:7,17 limited 6:15 8:12 10:23 22:24 23:1 28:21 74:5 76:2 limiting 38:13,15 line 47:18,24 69:15,23 lineal 37:14 lineals 57:8 lines 35:9 lips 40:19 Lisa 4:25 38:2 58:6 listed 18:15 65:2 67:6 80:12 81:2 litem 60:6 90:22 litigated 97:23 litigation 20:4 22:4 25:14 44:23 45:2 58:18,24 71:17,22 84:9,12 90:23 99:19 104:3 little 34:1 43:8 57:12,17 65:22 90:25 living 69:20 LLC 6:12,14,23 7:14 8:9,11,19 9:10 63:25 64:22 65:8 67:1,11,13 68:2 70:2,24 71:3,5 72:10,14 73:22 74:4,13,16 76:11 78:10,17	79:19,21 80:6 LLLP 76:3 LLP 6:17 8:14 located 13:8 41:22 69:10 72:23 76:23 86:1 94:20 location 13:17,23 logical 19:22 long 25:15 41:13 41:21 43:5,17 49:16 longer 94:10 100:19 look 16:3 41:4 57:20 66:9 75:23 77:5 79:17 87:23 98:1 looked 41:12 looking 16:12 62:13 78:25 79:14 86:14 88:5 looks 64:23 72:19 82:23 83:3 95:10 95:13 96:8 loss 34:1 lost 7:6 9:2 84:13 91:17 92:24 93:24 95:22 97:3 98:12 ludicrous 26:7
J			
J 3:4 jail 45:25 January 43:11,11 52:16 53:18 54:24 55:11,16 56:1 58:5,22 59:7 60:3 66:15 73:1 83:8 JCK 96:4 Jill 4:22 38:2 58:6 job 29:7 Jodi 1:20 John 3:13 10:5 11:7 12:12 30:21 105:22 John@jmorrisse... 3:18 joinder 50:24 joinders 46:10 Josepher 43:15 judge 9:14,23 29:4 29:7 46:15 99:17 100:24 judgment 20:24 105:12 JUDICIAL 1:6 July 1:25 13:15,15 17:13,25 21:19 21:24 44:1,2,8 74:25	knowledge 19:25 20:4 22:9 27:2 40:10,14,19 59:14,15 71:1 75:17 80:20,21 80:23 81:18 87:5 87:7 89:3,11 91:6,22 93:16 known 49:16 78:6 KONOPKA 2:15	lineal 37:14 lineals 57:8 lines 35:9 lips 40:19 Lisa 4:25 38:2 58:6 listed 18:15 65:2 67:6 80:12 81:2 litem 60:6 90:22 litigated 97:23 litigation 20:4 22:4 25:14 44:23 45:2 58:18,24 71:17,22 84:9,12 90:23 99:19 104:3 little 34:1 43:8 57:12,17 65:22 90:25 living 69:20 LLC 6:12,14,23 7:14 8:9,11,19 9:10 63:25 64:22 65:8 67:1,11,13 68:2 70:2,24 71:3,5 72:10,14 73:22 74:4,13,16 76:11 78:10,17	
K	L		M
keep 26:8 60:15 61:18 87:1 101:1 104:2,13 Kimberly 45:4 kind 11:12 49:7 62:24 78:22 knew 74:11 104:18 know 16:16 17:3,20 18:3 20:3 21:23 26:24 32:21 33:4 33:7 36:24 43:3 44:17,25 45:20 45:23,24 46:1 51:2,10,10,15,17	L 1:12 6:4,9 8:1,6 17:21,24 19:5 Lane 79:3 language 35:13 large 24:22 Lauren 53:16 law 10:5,6 13:5,6 15:25 24:2 64:16 64:18 73:18,19 73:20 87:11 lawsuit 26:3 44:17 72:7,7 105:12 lawyer 100:17,18 100:19 105:4 lay 58:13 laying 100:8 left 25:16 legal 45:8 48:21 49:10 86:18 91:21 93:15 let's 41:14 75:23 77:5 79:17 94:22 96:3 letter 6:7 8:4 32:16 33:19 51:14 55:6,9,10 56:1 58:5 88:8	lineal 37:14 lineals 57:8 lines 35:9 lips 40:19 Lisa 4:25 38:2 58:6 listed 18:15 65:2 67:6 80:12 81:2 litem 60:6 90:22 litigated 97:23 litigation 20:4 22:4 25:14 44:23 45:2 58:18,24 71:17,22 84:9,12 90:23 99:19 104:3 little 34:1 43:8 57:12,17 65:22 90:25 living 69:20 LLC 6:12,14,23 7:14 8:9,11,19 9:10 63:25 64:22 65:8 67:1,11,13 68:2 70:2,24 71:3,5 72:10,14 73:22 74:4,13,16 76:11 78:10,17	M 2:4,5 MA-CSR 1:21 Madam 57:22 78:7 mailing 64:21 66:2 66:25 maintained 68:2,4 majority 66:7 74:2 80:2 making 25:11 35:12 47:22 92:12,14 management 68:23 79:19,21 80:6 81:12 83:10 manager 56:14 67:14,18,22,23 67:24 72:16 73:4 73:17,21,23 74:6 74:7,10,11,12 79:8,9 manages 49:5 managing 43:2,6 56:14,17 66:12 66:21,23 67:22 67:23 75:8,11 76:14

Manceri 58:14,16 58:22 59:8 105:14	53:25 71:16 91:16 102:8	needs 63:12	100:15
March 14:16,22 15:1 41:23 64:15	misused 45:17	never 25:10 26:10 26:11 84:23	obvious 10:22
mark 14:5	mixing 86:2,2	85:10 87:7,9	obviously 16:15 42:2 62:5 68:19
marked 15:5 72:9 82:16 89:16	modest 91:15	100:18 102:17	79:15 82:8 83:2
marshall 94:15	Molly 3:19	new 44:24 46:20,22 65:24 86:21	104:17 105:9
Massachusetts 1:23 1:24 13:10,12	moment 53:23 54:1 63:19	NH-LCR 1:21	occur 90:7
material 35:14,15	momentum 57:10 90:17	noninvolvement 103:9	occurred 25:7 27:19 51:16 87:16
Materiality 99:16	money 28:10,16	normally 67:9	October 81:13
matter 22:19 94:7	monies 22:25	notarize 46:19	office 34:3 46:14 49:8,9,11 51:12
matters 10:20 12:1 20:1 28:22 91:4	month 65:22,22	notarized 46:16,17 46:21 48:4 50:3 50:19	53:6,12 56:6 61:25 62:3 65:16 65:18 66:5 68:4 73:2 76:25 77:1 79:1 90:9 97:12 98:6 103:19
McAndrews 4:23	months 41:25 87:16	notarizing 45:17 46:5	offices 67:1
mean 38:18,24 39:7 51:1 63:9 71:1 75:10 82:24 85:24 87:13 100:8 104:17 105:3	Moran 44:11 45:4 48:2,3,4 50:2 51:14	notary 1:21 12:22 45:17 46:2 51:12	oh 50:1 61:8 78:8 97:1
means 86:5 101:16 101:17,18	Morin 48:2	note 67:8	Ohnemus 1:20
meant 67:17	Morrissey 3:13 11:7,7 12:12 30:21,21 31:6 105:22,22	notes 90:14,14	okay 10:1 14:1 22:12 29:19 30:20 31:21 32:5 32:25 34:5,11,22 35:23 36:23 37:17 38:10 39:12 42:3,20 43:5,13,25 44:3 44:8 45:3,6,11 46:18 47:14 48:9 48:15 49:15 51:21 52:5 53:7 53:12,19 54:4 55:12,25 56:20 57:24 59:11,17 59:22 60:2,18 61:16,22 62:4,16 63:5,14,19,21 64:11,21 65:7 66:24 67:9,25 68:14 69:9 70:10 70:22 71:8,18,21 73:3,20,24 75:2 75:7,18,20,25 76:10,17,22 77:4 77:14 78:13 79:10,17 80:5,16 80:24 81:10 83:5 84:3,8,16 85:6 85:20 86:9 88:4 88:5,23 91:11 92:12,17 93:7 94:24,24 95:15 96:18 97:2,8
measure 30:19	mortgage 67:8,8 69:18,21	noticed 55:5	
meet 62:18	mother 19:25	Notwithstanding 37:23,24 38:10 38:15	
meetings 39:21 40:8	motion 10:4	November 16:19 81:14 82:5	
member 66:12,21,23 67:10,18,22,23 73:7,11,12 75:8 75:11 98:23,25	motions 10:10	number 74:23 82:20 83:1 90:18	
members 20:21 21:7 22:23,23 49:24 62:17 68:6,6 74:15,21 75:7,11	motions/petitions 10:7	numbered 54:12,14	
mentioned 69:2 96:21 97:14 99:4	move 28:9 61:23		
merits 26:3	moved 50:11	O	
messed 54:13	moving 31:5 57:14	O-a-k-s 78:7	
met 62:16,19	Mrachek 2:14 10:5	Oaks 6:23 8:18 78:6,8,17 79:3 79:10,16 81:6,11 81:13 82:20	
Michael 3:21	mulling 70:8	oath 14:16	
middle 47:15	mutual 62:20,25 63:10	object 29:11 30:1 47:13 69:15 73:13 75:14 96:19 97:24 103:15	
miles 13:18,22,23	N	objecting 100:6	
million 87:22 89:4 89:8	N 5:1	objection 10:21 17:1 20:18 22:2 23:19,20 24:25 25:20 26:6 27:1 28:3 29:10 30:24 67:16 91:21 92:6 93:14 99:15 100:23 104:20	
Mimi 4:23	N.W 4:17	objections 92:13 92:14	
mine 29:15 49:2	name 6:11,22 7:13 8:8,18 9:9 13:1 23:6 43:19 96:6 96:9	obligation 101:12	
minor 74:20	named 19:12 21:15 21:20 25:13 65:13 71:16	obligations 94:14	
minute 47:8,12,13 47:13	naming 26:8	obtain 50:14	
minutes 57:17	narrow 10:24		
minutia 87:15	nature 41:2 71:10		
misdemeanor 45:22	necessarily 71:24 103:22		
mistaken 50:24	necessary 10:18 11:15 20:25 101:10		
	need 31:4 57:10		
	needed 27:24		

98:8,19 99:3,7
 99:25 102:6
 103:7 104:9
 105:17
old 61:20
once 30:12 66:20
ones 46:20,22
 72:20
ongoing 20:4
operating 67:12
operations 67:13
operative 16:22
opinion 38:7 99:1
Oppenheimer 64:24
 65:2 67:2 68:7
 69:3,5
opportunity 30:2,8
orally 104:12
order 9:23
ordered 29:15
organization 6:13
 8:10 65:12
organize 65:7
original 15:17
 17:12,17 61:2,3
 61:5,6,13 69:12
originally 54:14
 65:13
originals 60:18,20
ought 102:1
overall 79:23 90:6
Overly 23:21
oversees 49:12
owned 23:1,2 26:11
 27:8,14 66:6
 69:2 73:25 74:2
 79:11 80:1,13,14
 85:16 103:1,5
owner 85:21,23
 86:5 93:11
 102:13
owners 63:15
ownership 80:5,9
 86:3,25 102:18

P

P 1:20 3:13
P.A. 2:4,15
p.m. 1:25 90:17
PA 41:11 43:16
page 5:3 6:2 16:13
 16:15 32:3,6,6
 34:14,17 35:20
 36:4 37:18 42:21
 42:22 45:3 66:10
 67:21 72:17
 73:15 80:24 81:1

82:12 83:5 95:5
 96:3
pages 1:2 41:10
 60:11,12
paid 82:8 89:4,7
 89:18 91:13
 102:21 103:3
Palm 1:7 2:19 3:16
 13:14,24 92:11
 93:23 97:14,23
 99:10
Pam 58:7 85:12
 86:9
Pam's 86:10
Pamela 38:1
Pankauski 10:6,6
paper 71:1
papers 59:8
paperwork 87:16
paragraph 32:3,6
 34:13,14,16,18
 35:1,2,3,20 36:2
 36:3 37:17,22
 39:15,19 54:15
 54:15,16 56:21
 99:4
Pardon 95:12
part 11:17 23:7
 47:14 51:9 79:23
 83:24 86:7
participants 91:1
particular 46:16
particularly 21:2
parties 9:16 11:25
 30:14
partner 13:6 43:2
 43:6 56:15,17
 73:18,19,20 74:4
 76:10,15 87:11
partners 65:17
partnership 6:16
 8:13 74:5 76:2
party 34:19,25
 35:14 36:6,10,10
 36:12,14,20,25
 94:10
passed 27:11 48:6
passes 66:20 67:11
passing 67:14 70:3
payable 81:6 82:20
 83:9 91:20 93:2
 93:21 103:6
 104:18
paying 69:20
payment 81:12 82:4
 82:9
payments 21:12

79:15
pays 49:6
pending 84:9
Peninsula 66:3
 76:22
people 28:11 90:18
 99:23
percent 22:4 55:23
 79:22 82:7 87:3
 88:25 102:9
Perfectly 91:2
performed 45:13
 81:10
period 6:25 7:2,4
 8:21,23,25
person 20:8 35:16
 50:3 67:10,11
personal 10:8 20:2
 20:7 21:15 22:9
 27:11,16 28:18
 29:8 40:10,14
 48:11 51:2,2
 55:18 58:8 59:24
 61:1 75:17 95:16
 96:1 100:10,13
 101:9,22 104:12
 105:1,5
personally 49:18
 68:3 103:2,5
persons 94:15
 101:13
Peter 2:4,5 12:11
 29:21 31:10 34:8
 55:23 57:6,9
 59:5 65:16 72:7
 74:18 75:9 90:15
 101:1 102:10
 104:5 105:7,19
petition 46:10
petitioned 50:13
petitions 10:10
Pfeaman@feaman...
 2:9
phone 59:19
physically 13:8
picks 35:16
picture 42:21
place 9:13 53:17
 54:18,20 62:2
placed 103:4
plan 13:11 90:6
planning 22:14
 39:20,25 40:2,3
 40:9 42:8,12,15
 66:18 83:20 84:4
plans 13:14 23:4
playing 23:10

Plaza 1:24 4:8
pleading 94:2
pleadings 26:10
please 27:4 35:22
 41:4 92:18
pled 45:12
Plymouth 1:24 13:9
point 9:18 10:18
 11:21 19:4 28:13
 31:7 33:6 58:12
 58:24 84:24
 86:15 87:13
 88:18 105:18
policies 91:12,15
 102:21
policy 85:16,23,24
 86:25 87:22
 88:18,24 89:6,12
 90:5 91:8,19
 93:1,5,8,12,20
 100:16 102:14,20
portion 28:15
position 19:16
 45:6,7 56:13
 101:17,18
possession 60:19
 69:12
potential 85:25
potentially 71:6
pour-over 11:13
power 31:23 32:10
 35:8
powers 19:9
PR 23:24 94:13
 101:6,6,12
practical 28:25
practice 13:5
precautions 22:14
precisely 45:23
 86:20
predeceased 38:3
 39:5,6
predicate 23:21
 58:13 100:8
prejudice 25:23
premarked 41:5
 57:21 72:1
prepared 14:13
 46:20,22 54:14
 55:17 86:19,21
 86:24 98:6,8,11
 98:15
present 4:3 44:13
 44:15 62:5,8,9
 62:11
presently 84:9
president 56:19

presume 76:24 84:7 89:3	38:4 90:12	reach 26:13	59:21 63:24
pretty 78:24	provides 19:12	reaction 22:10	84:13
previous 66:2 101:6	provision 19:11 32:1 36:1,22 38:6 53:2 93:8	read 36:7 37:21 39:1,23,24 89:20 92:21,23	references 11:10
price 28:15	provisions 1:19	really 38:24 44:25 87:20 89:20 104:8	referred 36:16 37:9 44:18 63:13 82:2 98:24
principally 78:19	Public 1:22 12:23	Realty 6:12 8:9 63:25 64:22 65:8 67:1,5 68:2,24 70:2,18,24 71:3 71:5,13,15,21 74:9	referring 40:5 61:9 74:22
Printed 96:8	publics 51:12	reason 26:13 29:4 86:11 102:16,17 102:19	refused 24:14
printout 6:6 8:3 63:22 78:4	purchase 28:15	reasons 19:23 94:4 94:5	regard 19:9 40:7 47:3 58:18 68:23 71:19 74:8 101:23
prior 14:21 18:5,8 23:9,16 65:15 68:19 100:24	purpose 9:12 77:18 77:20	recall 16:14 18:15 18:18 21:14,17 27:5 28:4 32:20 33:12 51:18 52:15 58:21,25 59:25 65:12 74:14 79:14 80:8 80:12 82:6 91:11 91:14 97:25 103:11,12,14 104:17 105:15	regarding 10:14 19:2 21:10 45:18 70:17 90:5 103:8
privilege 10:14 70:5,9,13 104:21	purposes 12:16 35:1,2,3 37:25 38:11,13,17,21 38:23,24 39:3,5 78:20 86:6 87:2 91:24	receive 87:21	regardless 30:15
privileged 10:25	pursuant 1:18 35:8	received 59:9 60:10,12	registered 7:14 9:9 64:3,4,9,11 65:13,25 67:25 72:13 76:6,18 77:15
privy 71:24	pursue 99:18	Recess 57:19	registry 89:5
Pro 4:16	put 14:25 100:1 102:17	recollection 18:17 21:8 49:19 50:22 51:5 57:5 86:13	related 34:18,25 35:13,16 36:6,9 36:10,12,13,19 36:25 37:2 44:7 50:25 58:19 85:11
probably 19:24 35:10 55:21,22 59:7 65:24 96:17	putting 47:17 92:5	recommend 101:8	relates 24:19
probate 1:9 42:18 46:7		recommended 59:23 59:25	relating 90:4
probation 46:1	Q	recommending 29:12 100:9,12 101:5,7	relationship 21:4 63:1,6
problem 25:17 29:12 57:18	qualifications 91:4,5 100:2	reconciliation 6:24 7:1,3 8:20 8:22,24 79:18 82:14 83:3	relative 48:25 49:1
procedure 1:19 12:17 67:12	quarter 82:15	record 12:14 14:7 30:11,22 31:7 36:8 47:1,17 50:12 90:15 100:1	relatively 91:15
proceeding 94:1,11	question 17:2 26:21 30:16 38:14 39:13 40:14 43:20 47:14,17 48:1 56:10 59:10 61:22 67:4,19 69:25 70:4,11 90:16 91:24 92:18,23,23 100:9 101:1 103:16,18 105:1	recovered 13:2	released 88:19
proceedings 50:9	questioning 30:17 47:18,24 69:16 69:23	reestablished 94:20 102:2	Relevance 99:15
proceeds 86:7 87:21 88:18 89:18 90:11 91:19 93:1,20 97:21 100:15 101:11 104:1,2 104:13,18 105:10	questions 10:16 12:8 14:24 29:16 30:3,6,18,23 90:19 99:24 104:10 105:21,23	refer 39:25 59:2	relevant 24:19 91:3 100:2
process 39:20 40:1 40:2,3,6,7	quiet 104:7	reference 33:14	remaining 19:5 35:6,11
produced 34:7 56:2 60:16	quite 94:12		remember 68:5 75:16 78:18 86:20
production 12:21	quote 39:19 88:19 98:20,21		removal 10:11
professional 63:1			remove 18:21 21:25 94:6
professionally 49:17	R		removed 28:2 94:8
program 62:24	R1 :16 5:5 7:15 12:19 13:3 14:8		rent 69:20
proper 29:5	rationale 23:8		reopen 50:13
properly 47:10,11	Raton 3:7 4:11,18		reopened 50:12
property 20:7 27:7 27:11,21 28:18			rep 95:16
prosecution 105:11			repeat 92:18
Proskauer 86:16			repetitive 57:2
protect 100:14,22			report 79:18
protective 30:19			reporter 40:22
provide 41:3 78:25 78:25			
provided 22:16,24			

57:22,24 78:8 92:21 represent 42:5 58:15 87:12 96:13 representation 59:13 representative 10:9 20:2 21:16 27:17,17,21 29:8 48:12 50:5 51:3 52:7 55:4,18 58:8 59:24 60:25 61:1 68:20 73:12 93:19 96:1 100:10,14 101:9 101:23 104:12 105:2,6 representatives 52:12,19 represented 24:6 86:16 87:19 92:7 97:9,20 representing 24:2 90:22 92:1,3 95:22,25 represents 97:4 request 47:23 89:10,25 91:7 requested 29:13 requires 46:15 requiring 28:1 resided 99:10 residence 23:1 69:20 residences 25:1 resign 32:13 34:3 50:5 52:7,11,18 55:3 58:10,11 resignation 19:3 23:17 32:19 33:1 33:10,13,15,21 58:7 60:5 resigned 23:9 resources 28:21 respect 25:15 respectfully 47:23 respond 103:17 responsibility 68:22 responsible 15:25 66:25 restate 67:19 Restated 6:5 8:2 17:24 19:6 31:17 43:21 75:1 reviewed 14:18,20	36:15 51:8 reviews 14:3 54:2 63:19 65:1 revocable 10:12 52:23 53:11 96:15 right 9:17 10:17 11:25 13:9,19 29:23 31:10 32:21 33:16 34:12 35:7 36:2 37:21 38:6 39:12 41:14,24 42:5 43:4 47:20 48:19 49:3,15 50:1 53:3 54:4 56:12 57:17 58:21 60:4 60:15 61:13 62:12 63:17 64:16 66:1,6,9 67:5 68:18 70:15 71:25 72:16 73:14 74:6 75:13 77:2,4 78:1 79:3 79:6 81:19 82:11 83:19 84:21 85:2 86:4 88:7 92:16 93:18 94:22 98:1 105:17 RMR 1:20 Robert 4:7 18:11 65:23 73:8,17 74:7 90:3 96:9 role 14:21 20:10 20:13 22:1 23:10 Rose 2:14,16 5:7 10:5,21 12:2,3 12:14,25 14:5 23:20 29:14,25 30:10 31:3,3,16 34:7,11 47:1,2,6 47:9,16 57:9,16 59:5,15,18 67:16 69:15 70:11 72:6 73:13 75:14 90:15 91:21 92:3 92:14 93:14 96:19 97:24 99:15 100:23 105:20,24 roughly 65:22 RPR 1:20 Rspallina@tesc... 4:13 Rubin 43:15 Ruffin 43:16 ruin 57:9	Rules 1:19 12:17 ruling 100:24 <hr/> S <hr/> S 1:18 2:22 6:1 38:1,2 64:4,11 safe 15:18 17:17 61:18 sale 24:22 27:19 28:1,18,23 sandbagging 30:4 satisfactorily 12:20 saw 33:8 87:14 saying 38:25 says 34:16 36:6 37:14 38:10,11 96:6 scope 91:22 93:15 score 57:3 Se 4:16 seal 45:17 second 12:2 27:4 39:18 42:21 43:23 secretary 45:8 73:16 section 35:19,24 36:14,15,25 37:9 37:13 see 17:10 26:12 34:20 37:14 41:14 44:2 54:11 64:1,25 65:1 72:11 76:4 77:12 78:11 81:4,8 83:14 88:11,21 94:19 95:8 96:5 96:6,10,11 seeing 89:23 96:16 seen 34:5 61:3 84:16,23 85:10 88:2,23 select 19:18 selected 19:19,21 selecting 20:10 sense 28:6,20 63:7 63:8 87:6 102:12 sent 10:14 40:22 46:8 51:14 sentence 35:9 37:22 39:18 seriously 99:2 serve 24:20 29:12 35:17 64:9 served 45:24 services 79:1,2	serving 20:1 23:22 52:25 set 22:16 29:24 65:23,25 78:19 setting 77:24 seven-and-a-half 81:15 shared 65:16 shell 64:8 76:17 Shirley 6:19 8:16 15:11,13,21 16:1 16:4,9,18,24 17:5 20:3 23:24 23:25 24:3,16,23 25:12,22,22 26:4 26:5,11,17 27:5 28:7,16 45:18 46:6 48:7,12,16 49:22 52:23 53:8 53:10,21 54:9 55:19 58:2 61:1 61:2 74:1,19 75:5 77:9,19,23 84:4,21 86:15 Shirley's 27:10,12 75:5 shortly 59:18 show 45:3 shown 66:19 72:13 72:16 76:6,10 77:14 79:7 80:10 shows 41:17 42:20 64:3,21 66:2,12 72:21 73:4,16 78:13 Si 21:9 51:1 62:18 102:17 siblings 21:3 side 24:3,17,21,23 26:17 49:7,9,10 sign 73:11 signature 48:5 50:3 67:20 73:7 95:11,14,14 signed 14:16,22 16:18,24 18:5 21:19 44:3,5,7 44:13,15 46:12 46:16,21,23 62:10 67:21 73:11 87:17 silent 101:19 Simon 1:12 3:19 6:4,9 7:8 8:1,6 9:5 10:9,12 17:8 17:21,23 18:5,13 18:20,24 19:2,5
--	---	--	--

20:3,12 21:24	43:8 87:16	105:11	4:10 41:18 64:12
22:6,14,21 23:10	sold 25:1 27:6,13	start 35:5	64:19 66:3 72:22
23:11,15,16	27:22	Starting 73:1	76:23
24:21 27:8,11	sole 19:4 22:23	state 6:10,21 7:12	Suites 1:23
28:8,17 31:16	solely 38:20	8:7,17 9:8 13:1	summer 13:11 51:21
37:4 38:2 40:4	somebody 28:14	13:5 39:18 51:13	51:22,23
40:15 46:9,23,25	34:3 54:13 67:2	63:23 73:16 78:5	superseded 61:21
48:4 49:21 50:4	89:4	89:11 99:9	supplied 56:7
50:6 52:8,12,19	son 98:17	statement 47:14,22	support 21:13 45:4
55:13 58:7,8,15	sorry 23:12 34:23	95:5	supposed 99:19
58:19 60:23	61:8,10 75:10	states 88:17	supposedly 87:17
61:14 62:3 63:3	92:19 97:1	statute 45:20	supposition 51:9
66:7,13 67:6,21	South 2:17 3:5 4:9	steps 101:10	sure 21:5 31:6
68:12,21,23 70:3	41:18 64:12	stipulate 9:14	34:10 41:13,16
72:17 73:4 74:2	space 65:16	stipulation 10:22	44:20 55:22
74:9,19,25 75:4	Spallina 4:6,7	11:5,9,14,16	57:14 60:20 85:1
76:24 80:2,18	13:6 18:12 26:8	12:11	88:3 92:20,22
84:4 85:12,16,21	32:7,13 41:11,17	Street 3:14 4:17	95:11,14
86:15,25 90:5,6	41:21 42:22 43:6	structuring 22:20	surviving 19:13
90:9 91:13,20	43:9 44:10 52:1	subject 11:4 12:7	99:5
93:2 96:7 97:22	52:11 56:16	29:2 30:13 36:11	swear 12:18
98:17 99:5	65:23,24 73:8,17	58:1 104:3,15	sworn 11:6 12:22
100:11 101:11	73:21 74:7,12	subordinate 34:18	
103:9,25 104:14	75:10,19 76:14	34:25 35:13,16	T
Simon's 18:9 21:16	81:24 87:11 88:9	36:6,9,10,12,13	T 6:1 64:3,11
22:9 27:14,18	89:14,17,24 90:4	36:20	T-w-o 78:8
80:5 95:25 96:1	91:6 95:1,3,18	subparagraph 32:3	T&S 7:13 9:9
sir 13:25 14:12	96:9,13 97:20	32:4	tainted 50:9,16
15:7,24 16:7	Spallina's 19:3	subsequent 40:7	take 9:13,17 10:17
17:11,19,22 18:7	33:15 95:10,13	49:24 60:5	11:19,25 12:2
19:7 20:19 24:1	special 22:15	subsequently 46:18	22:14 24:18
31:12,18 33:25	specific 87:5	46:20 55:3	33:18 41:4 53:17
35:21 36:9 37:16	specifically 18:18	successful 105:11	54:18,20,23
37:20 38:9 39:14	21:17 24:13	succession 42:12	57:11,11,13,20
40:24 41:6,8	58:25	66:18	62:2 75:23 77:5
42:4,19 43:24	spend 13:11	successor 7:7 9:3	79:17 87:23
45:5 58:10 59:4	spoken 59:20	10:8 18:12,16,21	93:19 98:1
60:9,17 62:1	spontaneity 47:21	19:10,14,16 20:1	100:21 101:9,9
64:2,17 67:24	staff 45:4	20:2 21:15 23:23	taken 10:3 11:21
68:6 72:2,4,12	stamped 96:4	23:24 29:8 31:24	24:8 57:19
75:25 76:5,13,16	standard 34:2	32:7,14 33:17,22	takes 100:12
76:21,21 77:7,13	67:12	33:22 34:4 38:8	talk 105:13
77:17 78:3,12	standing 30:24	38:19 39:9 48:11	talking 40:1 58:2
79:5 81:4,5,9,21	31:1 101:16,19	48:15 55:18,18	70:6 105:15
81:25 82:13,18	standpoint 28:25	59:24 61:1 75:12	tangentially 70:16
83:7,13,19 84:2	Stanford 69:6,7	86:12 87:13	tangible 20:7
84:11,15,18,20	Stansbury 2:10	93:25 97:4,9	27:11
85:23 88:22 95:7	18:19,21 20:5	98:12 100:10,13	tax 29:2 86:6 87:2
95:20 96:16 97:7	21:14,20,25 22:5	101:8	Technology 64:18
98:3,7,14 101:5	22:10 25:13 26:4	suddenly 54:24	Ted 1:18 2:22
102:23,25 104:22	26:13 31:11	sue 21:6 48:23	10:11,15 19:21
sister's 62:22	44:19 58:19	79:6	23:9,13,14,22
sit 29:3 36:23	60:25 71:17,22	sued 21:6 22:10	24:5,11,13 25:8
83:16	90:21 99:18	suffers 20:22	26:24 29:5,7,12
sitting 13:9 61:6	104:1,15 105:13	sufficient 25:16	31:25 34:24 37:6
situations 24:7	105:16	suggesting 29:5	38:1 39:7 48:13
six 26:19,22,25	Stansbury's 25:21	Suite 2:18 3:6,15	48:16 49:21

55:17 58:5,17 59:20,23 62:18 62:19,21 63:2,6 63:11,13,15 66:7 70:1,19,23 71:2 71:12 75:12 77:1 80:2,18 85:4,9 85:12 86:11 91:4 92:3,6,15 97:3 98:15,17 100:7,9 100:12,19 101:5 101:8,14 104:11	44:6 46:9 47:18 49:19,23 50:23 50:25 51:1 52:6 55:11,11 62:19 62:21 63:4 65:12 66:5 68:5 69:22 70:16 86:22,23 87:19 90:24,25 93:4 94:13 100:25 101:2,14 102:8 104:7 105:17	traffic 70:22 97:12 transfer 42:8 86:25 true 16:8 28:19,21 41:9 44:25 48:1 58:3,4 trust 6:5 7:6 8:2 9:2 10:12 15:21 16:1,5,9 17:4,6 17:24 18:4,9,22 19:6,8,11 20:14 23:11,16,24 25:13,23 26:5,9 26:11,14 27:6 28:7 31:17 32:1 34:19,25 35:16 35:25 36:7,10,11 36:13 37:4,25 38:12,14,18,22 38:24,25 39:3,5 40:16 43:21 48:16 52:23 53:9 53:11,22 54:9 55:19 58:3 61:14 62:10 64:24 66:17 74:1,2,19 74:20 75:1,3,5 80:14 84:10,13 85:3,9,18,22 86:20,22 87:1,13 87:20 91:18 92:24 93:25 94:20 95:23 96:1 96:7,8,15 97:3 98:12 101:25 102:1,4,6,6,11 103:1,4	74:22,23 truth 59:6 try 101:10 trying 59:5 78:18 78:20 81:17 83:13 99:16 100:14 104:7 TS 7:8 9:4 turn 29:16 37:19 40:21 turned 60:5,22 two 6:22 8:18 35:9 57:17 69:21 74:3 78:6,16 79:10,16 81:6,10,13 82:20 91:11 102:21 104:10 two-page 6:7 8:4 two-thirds 80:25 types 78:23 typically 64:8
Ted's 24:20 telephone 2:3,13 3:3,12 4:5 97:17 TELEPHONIC 1:16 tell 19:20 20:16 32:24 35:7 63:9 84:25 102:16 tendered 30:12 term 33:17 terms 36:13 50:9 93:4 Tescher 1:17 4:6 5:5 6:4,6,7,8,9 6:10,13,15,18,21 6:24 7:1,3,5,8 7:10,12,15,16 8:1,3,4,5,6,7,10 8:12,15,17,20,22 8:24 9:1,4,6,8 9:17 10:16,25 11:22 12:4,19 13:3,6 14:2,8,9 14:11 31:10 41:10,17,21 43:6 43:9,15 48:23 49:16 57:20 59:19 65:23 81:22,23 88:9 91:5 92:2,7,13 100:2 105:21	third 42:22 66:9 THOMAS 2:15 thought 26:7 27:12 51:7 61:8 82:25 thoughts 26:3 thousands 60:11 threatened 21:5,6 three 16:21 22:22 23:2 41:10 68:7 68:10,13 69:1 three-page 6:6 8:3 throw 70:6 tie 47:7 time 14:14,21 19:4 22:8 23:9,22 24:5,6,7,21 25:4 25:12 26:1,20,23 27:3,12,16,19,23 28:13,23 44:23 45:25 46:7,9 47:19,22 48:5,11 48:15 50:4,7 52:6,10,17 56:1 56:5,17 65:14 69:24 72:24 77:22 79:15 80:7 86:15 89:15,23 94:12 95:19 96:17 99:22 105:13	trustee 7:7 9:3 10:12 18:22 19:4 19:5,13,14 20:2 23:23 25:9 31:24 33:17,22 34:17 35:11,17 38:8,19 39:9 48:16 55:19 68:9 75:13 84:22 85:3,9 86:12 87:13,18,20 93:25 95:17,22 95:25 96:9,14 97:3,5,9 98:13 trustees 26:9 35:6 69:1,4 trusts 22:21,23 23:3 60:21 68:7 68:10,11,11,14 69:2,9,10 74:3	<hr/> U <hr/> ultimately 15:18 102:20 unaltered 54:6,7 uncommon 94:1 undergo 28:9 understand 10:3 80:1,4 85:15,15 100:25 understanding 11:12 21:4 37:6 40:12 78:16 79:20 84:24 86:23 95:21,24 understandings 87:4 undertake 28:9,22 unfair 91:1 Unfortunately 22:11 Union 88:14 unpaid 69:19 unquote 88:20 unrelated 90:23 untainted 50:14 unusual 16:11 upcoming 31:2 updated 41:25 42:4 use 11:10,17 34:3 64:9 78:20 99:20
Tescher's 10:17 11:20 testament 60:24 testified 12:23 44:22 testimony 5:3 94:21 98:20 Thank 57:25 59:11 105:19 Theodore 19:19 thing 16:11 62:7 things 10:2 83:4 think 10:22 11:6 20:12 21:17 27:2 31:4 34:7 39:1	times 21:5 24:13 timing 55:24 today 9:15 10:16 12:9 13:8 15:1 29:3 30:23 36:23 74:24 77:20 83:16 85:3 today's 11:24 told 56:22,25 62:4 74:8 86:10 top 16:13 37:18 tortured 39:10 totaled 82:4 totally 103:22 town 51:23	<hr/> V <hr/> valuable 69:24 value 28:17 variety 19:23	

various 10:7,10
 vault 61:19
 verify 41:15
 version 18:4,4,16
 versions 18:8
 versus 26:22,25
 view 90:19
 violating 45:21
 vis-a-vis 71:6
 VOLUME 1:1

W

Wait 47:12,12,13
 waive 10:17 30:24
 waiver 11:17,25
 50:23,23
 waivers 46:10
 50:15
 waiving 9:15,16
 want 20:13 21:25
 30:2,8 31:6 34:8
 36:21 37:12
 39:15 40:21 57:9
 67:19 70:6 89:21
 104:23
 wanted 39:12 94:6
 102:17,19 103:23
 104:2
 wants 88:17
 wasn't 23:12 41:3
 44:20 47:10 67:2
 88:3 105:3
 wasting 47:19
 69:24 99:22
 way 1:24 30:5
 36:24 43:20
 64:18 80:25
 82:15,17 89:22
 105:8
 we'll 94:23
 we're 12:8 59:5
 we've 57:11 62:20
 74:23
 Wealth 42:8
 web 6:6 8:3 45:3
 website 41:10 42:6
 66:19
 Wednesday 1:24
 WEISS 2:15
 well-respected
 92:11
 Wells 4:8
 weren't 52:3 62:5
 West 2:6,19 3:16
 whatsoever 83:17
 Whispering 79:3
 wholeheartedly

11:1
 wholly 69:23
 wife 21:10 49:2
 78:20 79:6
 wife's 83:9
 William 2:10 20:5
 21:25 22:10
 31:11
 wills 60:21
 wish 30:18 105:20
 wished 90:6
 wishes 29:17
 withdrawing 59:9
 withdrawn 58:23
 withdrew 59:1
 65:15
 witness 1:17 11:6
 11:23 12:18 14:3
 29:21,23 30:8,12
 47:16 54:2 57:23
 63:19 65:1 70:8
 92:9,22 100:4
 104:22 105:19
 witness's 91:22
 93:16
 witnessed 44:10
 wonderful 21:3
 work 45:9,12 81:10
 86:18
 works 45:10
 wouldn't 39:6 93:9
 write 33:19
 written 33:21
 89:16 94:25 95:3
 wrong 86:23 99:16
 wrote 15:2 39:4
 58:5 95:16

X

X 5:1 6:1

Y

 Yates 52:25 55:6,9
 yeah 22:18 29:22
 34:21 38:17 42:2
 47:4,4 54:2 57:4
 57:6 61:11 65:2
 70:15,16 80:22
 80:23,23 82:25
 83:2,5 87:25
 88:6 96:5 104:25
 year 13:15 51:19
 51:20 55:25
 65:16 72:25
 years 20:20 43:8
 62:20 69:21
 81:15

Z

0

001273 96:4
 001359-367 7:8 9:4
 08 65:14,21 73:1
 75:6

1

1 6:4 8:1 10:4
 14:6 32:6 37:13
 37:22 41:23
 43:11,11 54:12
 54:15,16 73:1
 80:25
 1-15 1:3
 1-165 1:2
 1,500 13:22
 1.6 89:4
 1/14/2014 6:7 8:4
 1/30/13 6:8 8:5
 1/31/2007 7:4 8:25
 10 1:23 6:21 8:17
 26:18,22,25 78:2
 78:4
 100 13:18,23 79:22
 87:3 102:9
 106 5:9
 107 72:22
 11 55:16
 11-A 6:24 8:20
 79:14,17 80:25
 82:24
 11-B 7:1 8:22
 82:17
 11-C 7:3 8:24 83:6
 11/1/2006 81:3,20
 82:16
 11/30/2006 7:2
 8:23
 11th 9:25 11:11
 13:15 56:1 59:7
 12 7:5 9:1 94:3,23
 98:2
 12-month 56:5
 12/6/2012 7:11 9:7
 123193 1:21
 12th 73:16
 13 5:7 7:8 9:4
 13192 1:21
 14 7:10,15 9:6
 87:23 88:5 89:16
 94:23,24 95:6
 14th 58:5,22 60:3
 15 7:12 9:8 32:6,6
 16 32:3 34:14,17
 16th 11:13,15

12:12 13:15
 18 16:19
 1990 43:18
 1995 96:15
 1st 82:5

2

2 6:6 8:3 10:6
 16:15 32:3 41:5
 54:16 56:21
 72:17 95:5
 2.6 89:7
 2:38 1:25
 20 15:16,22
 200 3:6
 2000 86:19 102:4
 2006 68:12 78:14
 81:14 82:5
 2007 49:19 62:17
 62:19 83:8,9
 2008 15:16,22
 16:19 18:9,16
 21:16 40:1,6
 43:9,11,12 61:7
 61:14 76:8 77:22
 84:5
 2011 78:15
 2012 17:13,25
 18:11,22 21:24
 40:3,9,16 44:1,2
 44:8 54:21 61:24
 66:2,15 74:25,25
 80:7 88:10 89:16
 2013 51:19,20,21
 52:6 53:18 55:11
 55:16 56:1 64:23
 73:16
 2014 1:25 14:16,22
 41:23 52:16
 54:25 58:5,22
 59:7
 2045 82:20
 2046 81:22
 2047 81:3
 2101 72:22
 213 3:15
 2247 83:11
 22nd 83:9
 245-8588 4:19
 25 17:13,25 44:2
 74:25
 25th 21:20 44:1,8
 2600 79:3
 2753 4:17

3

3 6:7 8:4 10:10

32:3 34:14 54:12
 54:15,17 57:21
 58:3 67:21 73:15
3(a) 32:4 35:2,5
3(b) 35:1,3
3010 66:3 76:23
31 5:8
330 3:14
33401 2:19 3:16
33432 3:7 4:11
33434 4:18
33436 2:7
34th 4:17
3695 2:6

4

4 6:8 8:5 72:21
4:30 90:17
4:42 99:16
4855 64:18
4th 14:16

5

5 6:9 8:6 35:20
 39:16,19 72:17
 99:4
500 4:10 41:18
 64:13
502012CP004391 . . .
 1:8
505 2:17
561 2:8,20 3:8,17
 4:12,19

6

6 6:10 8:7 37:18
 63:18,22 64:15
 64:25 66:1 67:21
 74:9 88:9 89:16
6/1/95 96:8
600 2:18
655-2250 2:20
672 37:10
672(c) 36:14,17

7

7 6:13 8:10 36:3,4
 36:9 64:20 72:1
 72:9 73:15
700 3:5 60:11
720 64:19
734-5552 2:8

8

8 6:4,6,7,8,9,10
 6:13,15,15,18,21
 6:24 7:1,3 8:12

75:23 76:1
833-0766 3:17

9

9 1:24 6:18 7:5,8
 7:10,12 8:15
 77:5
9/29/2006 6:25
 8:21
91 1:21
910-3071 3:8
925 4:9 41:18
 64:12
95 94:19 101:24
950 66:3 76:22
997-7008 4:12

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.

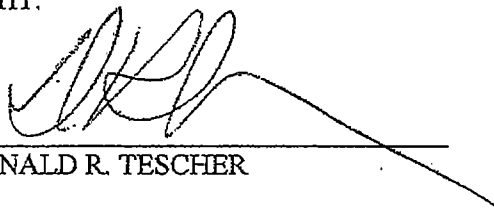
14. In my view, during the time I was counsel for Ted as fiduciary, it is my opinion that he fulfilled his fiduciary duties and acted in a reasonable and appropriate manner. I am aware of

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.

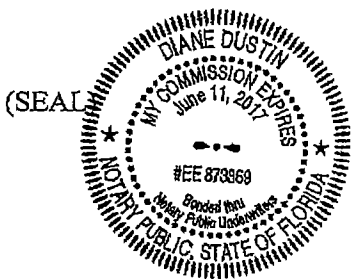
16. The last person Simon would want to serve in any fiduciary capacity is Eliot. Simon did not want Eliot to have any role in any of these matters.

FURTHER AFFIANT 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.



Diane Dustin

Notary Public
My commission expires:

EXHIBIT

"A"

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

FAWPDATAdrlBernstein, Shirley & Simon(2008 Estate Planning/Will of Shirley Bernstein.wpd [08 15:36:41 5 19]

LAST WILL
OF SHIRLEY BERNSTEIN

EXHIBIT

"B"

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

(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.

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

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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

SP

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 IANTONI 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.

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.

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

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;

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 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. 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

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.

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,

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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.I., 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.

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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.

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.

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

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

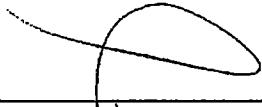
manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

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.

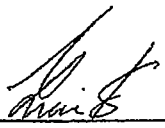
SETTLOR and TRUSTEE:



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 KRATISH
Address: 16068 GLENCREST AVENUE
DEERBURY BEACH, FL 33416

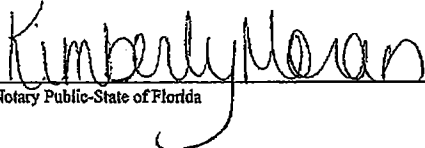
STATE OF FLORIDA

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 THRU 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 _____

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

EXHIBIT

"C"

F

**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]

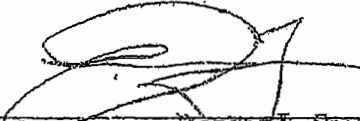
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

SETTLOR and TRUSTEE:

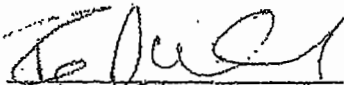


SHIRLEY BERNSTEIN

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 18 day of Nov, 2008:



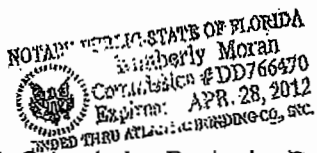
Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076



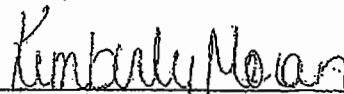
Print Name: Rachel Walker
Address: 100 Plaza Real South
apt 308
Boca Raton, FL 33432

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 _____

NEWPDATA\Adv\Bernstein, Shirley & Simon\2008 Estate Planning\First Amendment to Shirley Bernstein Trust Agreement wpd (11 09:26 18 08)

EXHIBIT

"D"

WILL OF
SIMON L. BERNSTEIN

Prepared by:

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

CONFORMED COPY

WILL OF

SIMON L. BERNSTEIN

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

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.

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 1 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 25 day of July, 2012.

/s/ Simon L. Bernstein
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 25 day of July, 2012.

/s/ Robert L. Spallina residing at Robert L. Spallina
[Witness Signature] [Witness Address]
7387 Wisteria Avenue
Parkland, FL 33076
[Witness Address]

/s/ Kimberly Moran residing at Kimberly Moran
[Witness Signature] [Witness Address]
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.

/s/ Simon L. Bernstein
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.

/s/ Robert L. Spallina
Witness

/s/ 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.

Commission No. EE092282
Expires May 10, 2015
[Seal with Commission Expiration Date]

/s/ Lindsay Baxley
Signature - Notary Public-State of Florida

Lindsay Baxley
Print, type or stamp name of Notary Public

EXHIBIT

"E"

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 10 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



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.

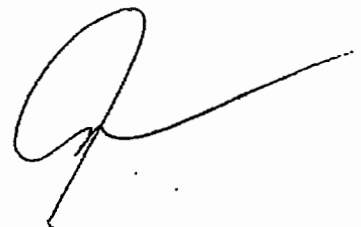
6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor 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 LANTONI 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.

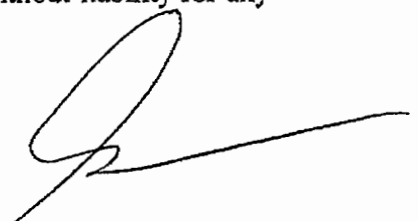
3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph IA hereof, provided I otherwise have legal capacity to do so.

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.

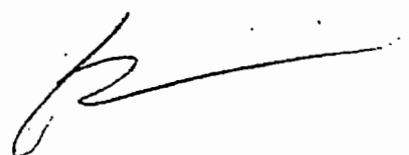
6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property; and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy 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.

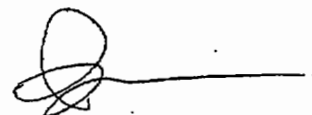
E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative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



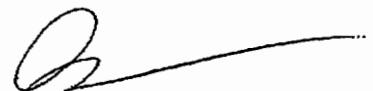
and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

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.

L. 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 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.

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 instalments, (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.

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

SETTLOR and TRUSTEE:

[Handwritten signature of Simon L. Bernstein]

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

[Handwritten signature of Kimberly Moran]
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.

[Handwritten signature of Lindsay Baxley]
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 _____

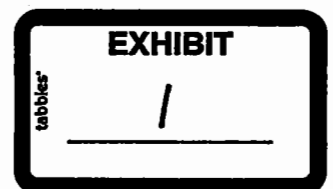
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SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

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



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:

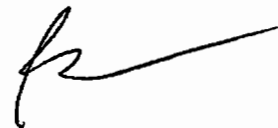
a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

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.

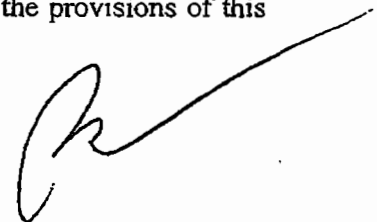
20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action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

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.

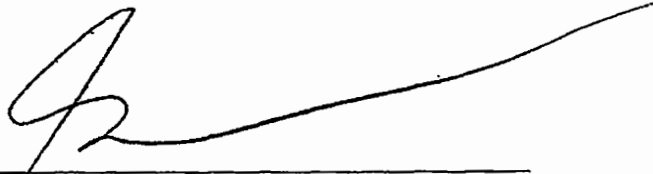
G. **Residence as Homestead.** I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with 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.

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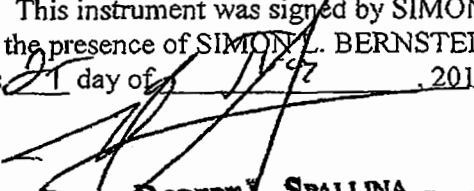
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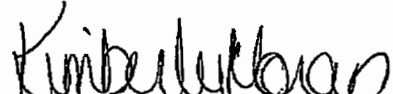
IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

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 21 day of July, 2012:


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

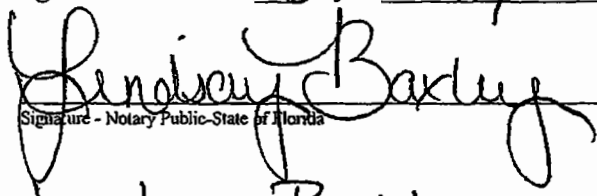

Print Name: Kimberly Moran
Address: 6362 Las Flores Drive
Boca Raton, FL 33433

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
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 _____ or Produced Identification _____
Type of Identification Produced _____

Stansbury's
Exh. 2
to Tescher Depo

TESCHER & SPALLINA, P.A.

ATTORNEYS-AT-LAW



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www.tescherspallina.com

Welcome to **TESCHER & SPALLINA, P.A.**

The law office of **TESCHER & SPALLINA, P.A.** in Boca Raton, Florida is a boutique tax practice focused on wealth transfer planning for high net-worth individuals and families, including gift and estate tax planning, business succession planning, charitable planning, corporate, limited partnership and asset protection planning, life insurance planning, post-mortem planning, probate administration and other tax related matters.

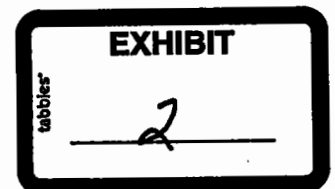
Our practice approach is team based, allowing us to provide the highest quality, cost efficient legal service for our clients. The selection of an attorney to plan your estate is a decision that can last for generations. An effective, tax efficient estate plan coordinates what will happen with the various aspects of your financial and personal life - home, investments, business, life insurance, retirement assets, and other issues in the event you become disabled or if you die. Most importantly, an overall estate plan protects the members of your family long after you are not able to care for them. Whenever possible, we like to work with families on multi-generational planning matters.

Our attorneys have extensive expertise in these areas, take pride in their practice and reputation, and have been recognized in national publications and through membership in prestigious peer organizations. The firm's managing partner has been prominently featured in numerous ranking guides including The Best Layers in America, Robb Report and Worth Magazine's Top 100 Attorneys, Florida Legal Elites, Florida Super Lawyers and Chambers USA. All of our attorneys hold graduate law degrees in tax or estate planning and are admitted to practice before the Florida Bar.

Members of our firm believe in giving back to their local community and their profession. Our attorneys participate in numerous bar activities and community organizations in Palm Beach, Broward and Miami-Dade counties. We welcome you to contact us to learn more about our firm.

DISCLAIMER

The hiring of a lawyer or law firm is an important decision and should not be based solely upon advertisements, this communication or the information provided herein. Before you decide whether to retain a lawyer or law firm, and before you decide which lawyer or law firm to retain, please call us and ask us to send you free written information about our qualifications and experience.



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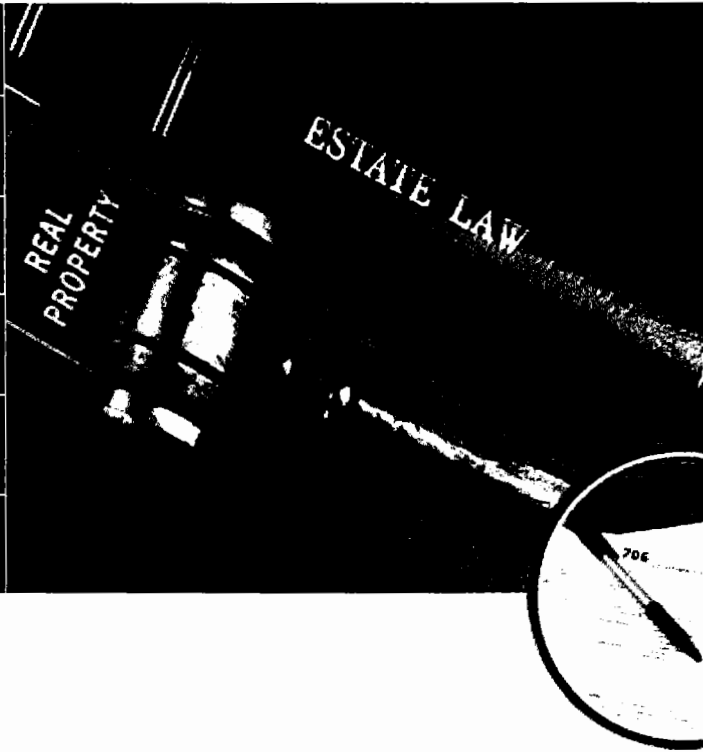
Practice Areas

Our People

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Directions

Disclaimer



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Websites:

www.tescherspallina.com

Our People

Our Attorneys



DONALD R. TESCHER holds two degrees from the University of Florida, with a bachelor of science in business administration (accounting) from the University of Florida School of Business and a juris doctor from the University of Florida College of Law. Mr. Tescher also holds a master of laws degree in taxation from New York University. Mr. Tescher is a past Chairman of the Tax Section of The Florida Bar and recipient of the Gerald T. Hart Outstanding Florida Tax Lawyer Award. Mr. Tescher has been recognized by The Best Lawyers in America, the Robb Report Worth Magazine, Chambers and Partners USA, Florida Trend Magazine - South Florida Legal Guide, and Florida Super Lawyers. Mr. Tescher is a Fellow of the American College of Trust and Estate Counsel

(ACTEC) and a member of its Business Planning and Estate and Gift Tax committees. He has served as adjunct professor at the University of Miami School of Law Graduate Tax and Estate Planning programs. He is a member of the Directors' Committee of The Florida Bar Tax Section, the Executive Council and Trust Law Committee of The Florida Bar Real Property, Probate and Trust Law Section, and member of various Committees of the Tax and Real Property Sections of the American Bar Association. [Click here](#) for a complete list of Mr. Tescher's articles, publications, recognitions and extra-curricular activities. You can contact Mr. Tescher by email at dtescher@tescherspallina.com

[More»](#)

ROBERT L. SPALLINA holds a bachelor of science degree in accounting with honors from the University of Florida Fisher School of Accounting, a juris doctor from Loyola Law School in Los Angeles, and a master of laws degree in estate planning from the University of Miami School of Law. Mr. Spallina is a former Certified Public Accountant (CPA) and Certified Financial Planner (CFP), and began his professional career with KPMG Peat Marwick in Los Angeles. After working as a CPA with KPMG, Mr. Spallina worked for several years as a controller





Spallina worked for several years as a controller and Vice President of Finance for Sony Pictures Entertainment and Mandalay Pictures prior to pursuing his law degrees. Mr. Spallina began his legal career as a Trusts and Estates attorney with Tescher Gutter

Chaves Josepher Rubin Ruffin & Forman, P.A. in 2002, and focuses his practice on wealth transfer planning, post-mortem planning, probate and related matters for high net worth individuals and families. Mr. Spallina is an active member of the Tax and Real Property, Probate and Trust Law sections of the Florida Bar, and co-authored an article for the June 2010 Florida Bar Journal titled Section 2053 Regulations: Continued Uncertainty. Mr. Spallina has been a guest lecturer for the Tax Practitioners Annual Update Course for the Tax Law Section of the Florida Bar and is the current President of the Boca Raton Tax Institute. Mr. Spallina is also a member of the Greater Boca Raton Estate Planning Council and South Palm Beach County Bar Association. You can contact Mr. Spallina by email at rspallina@tescherspallina.com



LAUREN A. GALVANI graduated from Boston College in 2006 with a triple major, receiving her bachelor of arts degree in English, History, and Political Science. Ms. Galvani was also a dual degree candidate at the University of Miami School of Law, and simultaneously received her juris doctor and master of laws in taxation in 2009. While at the University of Miami, Ms. Galvani practiced international estate planning as a summer associate at Aballi Milne Kalil, P.A. in Miami, Florida. Ms. Galvani joined Tescher & Spallina, P.A. in October of 2009 and focuses her practice on wills, trusts and estates for high net worth individuals. Ms. Galvani is licensed to practice in Florida and Massachusetts, and is actively involved in the Tax and Real Property,

Probate and Trust Law sections of the Florida Bar and the American Bar Association. Ms. Galvani co-authored an article that appeared in the June 2010 Florida Bar Journal Section 2053 Final Regulations: Continued Uncertainty? and is co-authoring another article that will appear in the June 2011 Florida Bar Journal. Ms. Galvani is also a member of the Boca Raton Tax Institute and South Palm Beach County Bar Association. You can contact Ms. Galvani by email at lgalvani@tescherspallina.com

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Diane Dustin - ddustin@tescherspallina.com

SuAnn Tescher - stescher@tescherspallina.com

Stansbury's

Exh. 3

to Fischer's depo

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TESCHER & SPALLINA, P.A.

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DIANE DUSTIN
KIMBERLY MORAN
SUANN TESCHER

January 14, 2014

VIA U.S. MAIL AND EMAIL

Ted S. Bernstein
880 Berkeley Street
Boca Raton, FL 33487

Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Lisa S. Friedstein
2142 Churchill Lane
Highland Park, IL 60035

Pamela B. Simon
950 North Michigan Ave.
Suite 2603
Chicago, IL 60606

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035

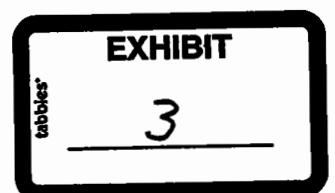
Re: Estates and Trusts of Shirley Bernstein and Simon Bernstein

Dear Ladies and Gentlemen:

It has been brought to my attention that a document was prepared in our office that altered the disposition of the Shirley Bernstein Trust subsequent to Simon Bernstein's death. Information provided to me appears to indicate that there were two versions of the First Amendment to the Shirley Bernstein Trust Agreement, both executed on November 18, 2008. Under one version the children of Pam Simon and Ted Bernstein would not be permissible appointees of Simon Bernstein's exercise of the power of appointment while under the second version that restriction was removed. As you all know, Simon Bernstein's dispositive plan, expressed to all of you during his lifetime on a conference call, was to distribute the Estate to all ten of his grandchildren. That was the basis upon which the administration was moving forward.

Under the Shirley Bernstein Trust, there is a definition of children and lineal descendants. That definition excluded Pam Simon, Ted Bernstein and their respective children from inheriting. The document also contained a special Power of Appointment for Simon wherein he could appoint the assets of the Trust for Shirley's lineal descendants. Based upon the definition of children and lineal descendants, the Power of Appointment could not be exercised in favor of Pam Simon, Ted Bernstein or their respective children, although we believe it was Simon Bernstein's wish to provide equally for all of his grandchildren.

On November 18, 2008, it does appear from the information that I have reviewed that Shirley Bernstein executed a First Amendment to her trust agreement. The document as executed appears to make only one relatively minor modification to her trust disposition by eliminating a specific gift to Ted



Bernstein Family
January 14, 2014
Page 2

Bernstein's stepson. In January of 2013 a First Amendment to the Shirley Bernstein Trust Agreement was provided to Christine Yates, Esq. who, at that time, was representing Eliot Bernstein. The document provided contained a paragraph number 2 which modified the definitional language in Shirley's document so as to permit, by deleting the words "and their respective lineal descendants" from the definition, an exercise of the power of appointment by Simon Bernstein over the Shirley Bernstein Trust to pass equally to all ten grandchildren rather than only six of the grandchildren.

By virtue of The Florida Bar Rules of Professional Conduct, I am duty bound to provide this information to you. Obviously, as a result of the issues and ramifications raised by the allegations, my firm must resign from further representation in all matters relating to the Estates and Trusts of Simon Bernstein and Shirley Bernstein. Furthermore, it is my intent, and I assume also the intent of Robert Spallina, to tender our resignations as personal representatives of the Simon Bernstein Estate and as trustees of the Simon Bernstein Trust. If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity. With regard to the Simon Bernstein Estate, the appointment of the successor would require a court proceeding.

I am obviously upset and distraught over this chain of events and will do all that I reasonably can to correct and minimize any damages to the Bernstein family. As I believe you know, to date there has only been a modest funding of some, but not all, of the continuing trusts for the grandchildren emanating from Shirley's Trust assets.

Very truly yours,



DONALD R. TESCHER

DRT/km

cc: Alan Rose, Esq.

Stansbury's
Exh. 4 (Composite emails)
to Tescher depo

Robert Spallina

From: Christine Yates [cty@TrippScott.com]
Sent: Wednesday, January 30, 2013 6:17 AM
To: Robert Spallina
Cc: 'Eliot Ivan Bernstein'
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

Robert, after discussions with my client, he is not in agreement with the plan proposed below. A more formal letter will follow.

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, January 29, 2013 11:43 AM
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Heritage Policy

I am following up on our telephone conference from last week. Ted has contacted me about circulating a draft of the settlement agreement that would be presented to the court. Again, prior to preparing an agreement, I want to make sure that you are ALL in agreement that the proceeds do not come to the estate. I can tell you that your father planned his estate intending and believing that the five children would split the proceeds equally. We would like to see his wishes carried out and not have the proceeds paid to the estate where they could be subject to creditor claims prior to being split in equal shares among the grandchildren. Please advise if you are in agreement to move forward to petition the court for an order that would split the proceeds equally among the five of you.

Robert L. Spallina, Esq.
TESCHER & SPALLINA, P.A.
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
Telephone: 561-997-7008
Facsimile: 561-997-7308
E-mail: rspallina@tescherspallina.com

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at www.tescherspallina.com

The information contained in this message is legally privileged and confidential information intended only for the use of the individual or entity named above. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. If you have received this communication in error, please immediately notify us by e-mail or telephone. Thank you.

From: Robert Spallina
Sent: Wednesday, January 23, 2013 1:14 PM
To: Ted Bernstein
Cc: Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates; Kimberly Moran
Subject: Re: Heritage Policy

Kim will send.

Sent from my iPhone

On Jan 23, 2013, at 1:11 PM, "Ted Bernstein" <tbernstein@lifeinsuranceconcepts.com> wrote:



Robert Spallina

From: Jill Iantoni [jilliantoni@gmail.com]
Sent: Tuesday, January 29, 2013 3:39 PM
To: Robert Spallina
Subject: Re: Heritage Policy

Thanks

Jill Iantoni
iantoni_jill@ne.bah.com
Recruiting Services
Booz | Allen | Hamilton

On Jan 29, 2013, at 2:03 PM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

The claim could be open for a long time but if it is cleared up then the money would be free from creditor claims. I do not know if there is a time frame for a pay out but if the proceeds are paid to the estate then your father's intent is not carried out.

From: Jill Iantoni [mailto:jilliantoni@gmail.com]
Sent: Tuesday, January 29, 2013 12:45 PM
To: Robert Spallina
Cc: Jill Iantoni
Subject: Re: Heritage Policy

Hi Robert,

If the money stays at the insurance company until the Bill S. claim is cleared up, can we then decide if ALL five are in agreement and if not, wouldn't that money be free from creditors at that point? Is there a time fram that the money has to leave the insurance company and be paid out?

Thanks.
Jill

On Tue, Jan 29, 2013 at 10:42 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

I am following up on our telephone conference from last week. Ted has contacted me about circulating a draft of the settlement agreement that would be presented to the court. Again, prior to preparing an agreement, I want to make sure that you are ALL in agreement that the proceeds do not come to the estate. I can tell you that your father planned his estate intending and believing that the five children would split the proceeds equally. We would like to see his wishes carried out and not have the proceeds paid to the estate where they could be subject to creditor claims prior to being split in equal shares among the grandchildren. Please advise if you are in-agreement to move forward to petition the court for an order that would split the proceeds equally among the five of you.

From: Jill Iantoni [mailto:jill_iantoni@gmail.com]
Sent: Thursday, January 24, 2013 3:12 PM
To: Robert Spallina
Cc: Jill Iantoni
Subject: Bernstein Estate 1/24/2013

Hi Robert,

thanks for today's call. Three questions.

One, if the 5 kids do NOT all agree that we should split the insurance proceeds amongst the 5 of us, what happens to the insurance proceeds? Can 4 out of 5 (or whatever the number is) over rule and move forward with the court hearing requesting that the insurance proceeds get paid out to the 5 children? If that is a NO, do the proceeds go directly to the estate? If the answer is the 10 grandchildren, will that be subject to creditors or would that money get paid out quickly (just as it would to the 5 of us) and avoid any potential law suit/creditors?

Two, if any of the 5 children have personal counsel representing them, are they allowed to have their bills sent to you/Estate for payment? If yes, is there a provision that the others can put in place that regulates the amount/or a provision that states it come out of their child(ren) portion of the estate?

Can you also clarify, that based on the conversation today, there is a chance that Bill S. case will be null and void and even if it is not, it is not towards Si Bernstein or his estate? Did I understand that correctly?

Thanks so much,

Jill

Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Tuesday, January 22, 2013 1:34 PM
To: Robert Spallina; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: RE: Heritage Policy

Robert,

We are in the midst of arranging a phone call between myself, Pam, Eliot, Christine Yates, Jill and Lisa. We were hoping to have that call today but Christine cannot make it until Thursday. I think it is imperative for this call to occur prior to anything else being done, including your call with their legal department. This way, we can establish whether there is going to be an agreement among the 5 of us, or not.

I completely agree with your assessment below of the options available here.

Please feel free to call me to discuss.

Ted

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, January 22, 2013 12:16 PM
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: Heritage Policy

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Stansbury's

Exh. 5

to Tescher Sepa

502012CP004391XXXXSB

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WILL OF

SIMON L. BERNSTEIN

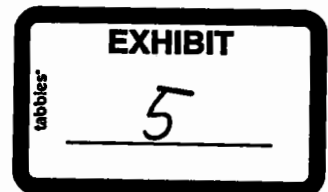
2012 OCT -2 AM 9:32
SHARON R. ARBEY, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH-FILED

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.



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.



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**"). Invest 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;

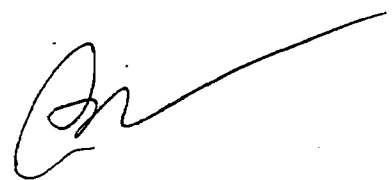
vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

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.

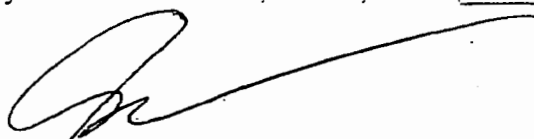
8. **Spouse.** The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

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.

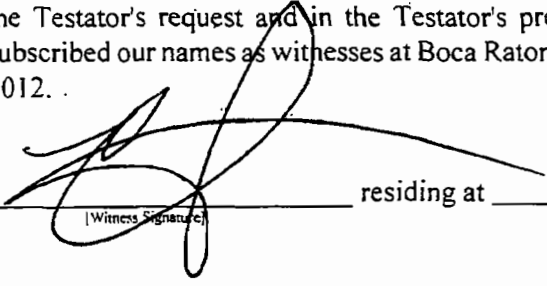
[remainder of page intentionally left blank]

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a long, sweeping horizontal line that extends to the right and then curves slightly downwards.

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 27 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.

[Signature]
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.

[Signature]
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.

[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.

LAST WILL
OF SIMON L. BERNSTEIN

Stansbury's

Exh 6

to Tescher depo



Detail by Entity Name

Florida Limited Liability Company

BERNSTEIN FAMILY REALTY LLC

Filing Information

Document Number	L08000054043
FEI/EIN Number	26-2735064
Date Filed	06/02/2008
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	09/29/2010
Event Effective Date	NONE

Principal Address

2753 NW 34th Street
BOCA RATON, FL 33434

Changed: 04/12/2013

Mailing Address

Oppenheimer Trust Company of DE
405 Silverside Road
Suite 250
Wilmington, DE 19809

Changed: 03/19/2014

Registered Agent Name & Address

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431

Name Changed: 04/20/2009

Address Changed: 04/20/2009

Authorized Person(s) Detail

Name & Address

Title MGR



Oppenheimer Trust Company
Oppenheimer Trust Company of DE
405 Silverside Road
Suite 250
Wilmington, DE 19809

Annual Reports

Report Year	Filed Date
2012	01/05/2012
2013	04/12/2013
2014	03/19/2014

Document Images

<u>03/19/2014 -- ANNUAL REPORT</u>	View image in PDF format
<u>04/12/2013 -- ANNUAL REPORT</u>	View image in PDF format
<u>01/05/2012 -- ANNUAL REPORT</u>	View image in PDF format
<u>04/14/2011 -- ANNUAL REPORT</u>	View image in PDF format
<u>09/29/2010 -- REINSTATEMENT</u>	View image in PDF format
<u>04/20/2009 -- ANNUAL REPORT</u>	View image in PDF format
<u>06/02/2008 -- Florida Limited Liability</u>	View image in PDF format

2013 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L08000054043

Entity Name: BERNSTEIN FAMILY REALTY LLC

Current Principal Place of Business:

2753 NW 34TH STREET
BOCA RATON, FL 33434

Current Mailing Address:

OPPENHEIMER TRUST COMPANY
18 COLUMBIA TURNPIKE, 3RD FLOOR
FLORHAM PARK, NJ 07932 US

FEI Number: 26-2735064

Certificate of Status Desired: Yes

Name and Address of Current Registered Agent:

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

Authorized Person(s) Detail :

Title MGR
Name OPPENHEIMER TRUST COMPANY
Address OPPENHEIMER TRUST COMPANY
18 COLUMBIA TURNPIKE, 3RD FLOOR
City-State-Zip: FLORHAM PARK NJ 07932

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 006, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: OPPENHEIMER TRUST COMPANY BY: JANET CRAIG SENIOR VICE PRESIDENT 04/12/2013

Electronic Signature of Signing Authorized Person(s) Detail

_____ Date

Stansbury's

Exh. 7

to Tascher depo

**Electronic Articles of Organization
For
Florida Limited Liability Company**

L08000013540
FILED 8:00 AM
February 06, 2008
Sec. Of State
gharvey

Article I

The name of the Limited Liability Company is:
BERNSTEIN HOLDINGS, LLC

Article II

The street address of the principal office of the Limited Liability Company is:
950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL. US 33487

The mailing address of the Limited Liability Company is:
950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL. US 33487

Article III

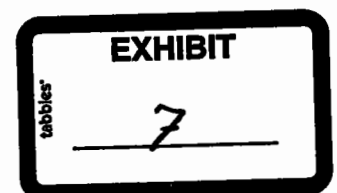
The purpose for which this Limited Liability Company is organized is:
ANY AND ALL LAWFUL BUSINESS.

Article IV

The name and Florida street address of the registered agent is:
DONALD R TESCHER
2101 CORPORATE BOULEVARD
SUITE 107
BOCA RATON, FL. 33431

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: DONALD R. TESCHER



Article V

The name and address of managing members/managers are:

Title: MGR
SIMON BERNSTEIN
950 PENINSULA CORPORATE CIRCLE, SUITE 3010
BOCA RATON, FL. 33487 US

Signature of member or an authorized representative of a member

Signature: ROBERT L. SPALLINA

L08000013540
FILED 8:00 AM
February 06, 2008
Sec. Of State
gharvey

2013 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L08000013540

Entity Name: BERNSTEIN HOLDINGS, LLC

Current Principal Place of Business:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487

Current Mailing Address:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487 US

FEI Number: NOT APPLICABLE

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE720
BOCA RATON
BOCA RATON, FL 33431 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

Authorized Person(s) Detail :

Title MGR
Name SPALLINA, ROBERT L
Address 4855 TECHNOLOGY WAY
SUITE 720
City-State-Zip: BOCA RATON FL 33431

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: ROBERT L. SPALLINA

MGR

04/12/2013

_____ Electronic Signature of Signing Authorized Person(s) Detail

_____ Date

2012 LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L08000013540

FILED
Jan 05, 2012
Secretary of State

Entity Name: BERNSTEIN HOLDINGS, LLC

Current Principal Place of Business:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487 US

New Principal Place of Business:

Current Mailing Address:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487 US

New Mailing Address:

FEI Number: FEI Number Applied For () FEI Number Not Applicable (X) Certificate of Status Desired ()

Name and Address of Current Registered Agent:

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON
BOCA RATON, FL 33431 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

MANAGING MEMBERS/MANAGERS:

Title: MGR
Name: BERNSTEIN, SIMON
Address: 950 PENINSULA CORPORATE CIRCLE, SUITE 3010
City-St-Zip: BOCA RATON, FL 33487 US

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes.

SIGNATURE: SIMON BERNSTEIN MR 01/05/2012

_____ Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

**Electronic Articles of Organization
For
Florida Limited Liability Company**

L08000013540
FILED 8:00 AM
February 06, 2008
Sec. Of State
gharvey

Article I

The name of the Limited Liability Company is:

BERNSTEIN HOLDINGS, LLC

Article II

The street address of the principal office of the Limited Liability Company is:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL. US 33487

The mailing address of the Limited Liability Company is:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL. US 33487

Article III

The purpose for which this Limited Liability Company is organized is:

ANY AND ALL LAWFUL BUSINESS.

Article IV

The name and Florida street address of the registered agent is:

DONALD R TESCHER
2101 CORPORATE BOULEVARD
SUITE 107
BOCA RATON, FL. 33431

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: DONALD R. TESCHER

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

October 11, 2012

VIA EMAIL

Gavin McNally, Associate Banker
J.P. Morgan Private Bank
205 Royal Palm Way
Palm Beach, FL 33480

Re: Bernstein Holdings, LLC

Dear Gavin:

This letter serves to state that due to the passing of Simon L. Bernstein, there is a change in management and signers of Bernstein Holdings, LLC. The members of the LLC have designated me as manager of the partnership until such time as there is a distribution of the Bernstein Estate.

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

Sincerely,



ROBERT L. SPALLINA

RLS/km

TS004866

Stansbury's
Exh. 8
to Fischer depo

Certificate of Limited Partnership

A0800000154
FILED
February 15, 2008
Sec. Of State
gharvey

Name of Limited Partnership:

BERNSTEIN FAMILY INVESTMENTS, LLLP

Street Address of Limited Partnership:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL. US 33487

Mailing Address of Limited Partnership:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL. US 33487

The name and Florida street address of the registered agent is:

DONALD R TESCHER
2101 CORPORATE BLVD.
SUITE 107
BOCA RATON, FL. 33431

I certify that I am familiar with and accept the responsibilities of registered agent.

Registered Agent Signature: DONALD R. TESCHER

The name and address of all general partners are:

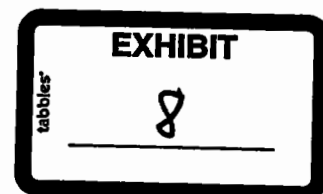
Title: G
BERNSTEIN HOLDINGS, LLC
950 PENINSULA CORPORATE CIRCLE SUITE 3010
BOCA RATON, FL. 33487 US

This Limited Partnership is a Limited Liability Limited Partnership.

Signed this Fifteenth day of February, 2008

I (we) declare the I (we) have read the foregoing and know the contents thereof and that the facts stated herein are true and correct.

General Partner Signature: ROBERT L. SPALLINA



FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS[Home](#)[Contact Us](#)[E-Filing Services](#)[Document Searches](#)[Forms](#)[Help](#)

Detail by Entity Name

Florida Limited Partnership

BERNSTEIN FAMILY INVESTMENTS, LLLP

Filing Information

Document Number	A08000000154
FEI/EIN Number	262124343
Date Filed	02/15/2008
State	FL
Status	INACTIVE
Last Event	REVOKED FOR ANNUAL REPORT
Event Date Filed	09/27/2013
Event Effective Date	NONE

Principal Address

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487

Mailing Address

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487

Registered Agent Name & Address

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431

Name Changed: 04/17/2009

Address Changed: 04/17/2009

General Partner Detail

Name & Address

Document Number L08000013540

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State of Florida, Department of State

BERNSTEIN HOLDINGS, LLC
950 PENINSULA CORPORATE CIRCLE SUITE 3010
BOCA RATON, FL 33487

Annual Reports

Report Year	Filed Date
2010	09/30/2010
2011	04/18/2011
2012	01/03/2012

Document Images

<u>01/03/2012 -- ANNUAL REPORT</u>	View image in PDF format
<u>04/18/2011 -- ANNUAL REPORT</u>	View image in PDF format
<u>09/30/2010 -- REINSTATEMENT</u>	View image in PDF format
<u>04/17/2009 -- ANNUAL REPORT</u>	View image in PDF format
<u>02/15/2008 -- Domestic LP</u>	View image in PDF format

2012 LIMITED PARTNERSHIP ANNUAL REPORT

DOCUMENT# A08000000154

FILED
Jan 03, 2012
Secretary of State

Entity Name: BERNSTEIN FAMILY INVESTMENTS, LLLP

Current Principal Place of Business:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487 US

New Principal Place of Business:

Current Mailing Address:

950 PENINSULA CORPORATE CIRCLE
SUITE 3010
BOCA RATON, FL 33487 US

New Mailing Address:

FEI Number: 26-2124343 FEI Number Applied For () FEI Number Not Applicable () Certificate of Status Desired ()

Name and Address of Current Registered Agent:

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

GENERAL PARTNER INFORMATION:

Document #: L08000013540
Name: BERNSTEIN HOLDINGS, LLC
Address: 950 PENINSULA CORPORATE CIRCLE SUITE 3010
City-St-Zip: BOCA RATON, FL 33487 US

ADDRESS CHANGES ONLY:

Address:
City-St-Zip:

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a General Partner of the limited partnership or the receiver or trustee empowered to execute this report as required by Chapter 620, Florida Statutes.

SIGNATURE: SIMON BERNSTEIN

MR

01/03/2012

_____ Electronic Signature of Signing General Partner

_____ Date

J.P. Morgan Account Suitability Supplement

J.P.Morgan

A. Account Information (required for JPMS Brokerage and Investment Management accounts)

Title of Account: BERNSTEIN FAMILY INVESTMENT LLLP

Personal Accounts

- Individual Joint (JTWROS/JAWROS for TX residents) Tenants in Common Tenants by the Entirety
 Community Property Transfer on Death (TOD) UTMA/UGMA IRA

Primary Account Owner: _____ Occupation/Position _____
 Number of Dependents _____ Name of Employer _____
 Owner Annual Income (\$) _____ Liquid Net Worth (\$) _____ Total Net Worth excl. primary residence (\$) _____

Joint Account Owner:

Annual Income (\$) _____

Entity Accounts

- Corporation Partnership PIC/PHC (applicable to international entities only) Sole Proprietorship
 Foundation Endowment Limited Liability Company Limited Liability Partnership Other Non Profit

Annual Income (\$) 500K Liquid Net Worth (\$) 5.0MM Total Net Worth (\$) 12.0MM

Trust/Estate Accounts

- Trust Estate Endowment Foundation ERISA Plan Other Charitable Trust Other _____

Trust/Estate Liquid Net Worth (\$) _____ Trust/Estate Total Net Worth (\$) _____

B. Affiliations (required for JPMS Brokerage and Investment Management accounts)

Applicable to account owners or authorized signers or trustees and executors.

I, my spouse, or immediate family member who receives material support from me or gives material support to me is, or has been, a director, corporate officer, control person, affiliate or an owner of 10% of a public corporation's stock: Yes No

If yes, name of person _____ Name of corporation _____

If yes, is the corporation traded publicly on a U.S. Stock exchange? Yes No

I, my spouse, immediate family member who receives material support from me or gives material support to me, or an individual controlling the account is employed by or associated with a Broker-Dealer: Yes No

If yes*, name of Broker-Dealer _____ Name of employee/assoc. _____

Accountholder or immediate family member or another household member is an employee of a financial institution or insurance company: Yes No

If yes*, name of institution _____ Name of employee/assoc. _____

*If Yes, Broker-Dealer and FINRA member financial institutions must provide written permission on corporate letterhead to open a Brokerage, Margin, or Investment Management account.

C. Brokerage Account Information (required for JPMS Brokerage accounts only)

Investment Profile

My objective for this account (check one): Capital Preservation Income Generation Capital Appreciation

Speculative or aggressive investments that may generate higher returns but may be riskier than other investments because I may lose all or part of my investment (check one): Are permitted in this account Are not permitted in this account

Primary source of income: Investments Compensation Pension Other _____

Please indicate the number of years of personal trading experience for the authorized party(s) on this account:

Stocks 30 Bonds 30 FX 10 Structured Products 0 Options 20 Emerging Markets 10 Hedge Funds / Private Placements 10 Futures/Commodities 10 Mutual Funds 0

I currently have brokerage accounts with the following firms: _____

Approximate value of investable assets held away from the firm? \$ _____

Those assets are invested in the following Asset Classes: Equities Fixed Income & Cash Alternative Investments Other

Most of those assets are invested in: Equities Fixed Income & Cash Alternative Investments Other

Check only one selection for Investment Time Horizon, Primary Liquidity Needs, and Secondary Liquidity Needs

Investment Time Horizon: Less than 1 year 1-5 years 6-10 years Greater than 10 years

Primary Liquidity Needs: Short Term Medium Term Long Term None

Secondary Liquidity Needs: Short Term Medium Term Long Term None

J.P. Morgan Use Only

Title

SPN

CAS

Page 1 of 2

Banker/Investor

7/12 1522

Stansbury's

Exh. 9

to Tescher depo

**Electronic Articles of Incorporation
For**

N08000000944
FILED
January 30, 2008
Sec. Of State
epeterson

SHIRLEY BERNSTEIN FAMILY FOUNDATION, INC.

The undersigned incorporator, for the purpose of forming a Florida not-for-profit corporation, hereby adopts the following Articles of Incorporation:

Article I

The name of the corporation is:

SHIRLEY BERNSTEIN FAMILY FOUNDATION, INC.

Article II

The principal place of business address:

7020 LIONS HEAD LANE
BOCA RATON, FL. US 33496

The mailing address of the corporation is:

7020 LIONS HEAD LANE
BOCA RATON, FL. US 33496

Article III

The specific purpose for which this corporation is organized is:

IT IS A CHARITABLE PRIVATE FOUNDATION TO SUPPORT PUBLIC CHARITIES.

Article IV

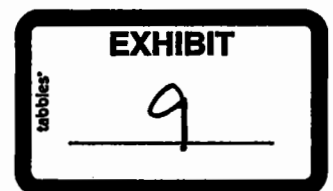
The manner in which directors are elected or appointed is:

AS PROVIDED FOR IN THE BYLAWS.

Article V

The name and Florida street address of the registered agent is:

DONALD R TESCHER
2101 CORPORATE BOULEVARD
SUITE 107
BOCA RATON, FL. 33431



I certify that I am familiar with and accept the responsibilities of registered agent.

N0800000944
FILED
January 30, 2008
Sec. Of State
epeterson

Registered Agent Signature: DONALD R. TESCHER

Article VI

The name and address of the incorporator is:

DONALD R. TESCHER
2101 CORPORATE BOULEVARD
SUITE 107
BOCA RATON, FL 33431

Incorporator Signature: DONALD R. TESCHER

Article VII

The initial officer(s) and/or director(s) of the corporation is/are:

Title: P
SIMON BERNSTEIN
7020 LIONS HEAD LANE
BOCA RATON, FL. 33496 US

Title: T
SHIRLEY BERNSTEIN
7020 LIONS HEAD LANE
BOCA RATON, FL. 33496 US

Title: S
TRACI KRATISH
950 PENINSULA CORPORATE CIRCLE, SUITE 3010
BOCA RATON, FL. 33487 US

Stansbury's
Eth. 10
to Teacher's depo



Detail by Entity Name

Florida Limited Liability Company

TWO OAKS CONSULTING, LLC

Filing Information

Document Number	L06000106492
FEI/EIN Number	205792177
Date Filed	11/01/2006
State	FL
Status	INACTIVE
Effective Date	10/30/2006
Last Event	ADMIN DISSOLUTION FOR ANNUAL REPORT
Event Date Filed	09/28/2012
Event Effective Date	NONE

Principal Address

2600 WHISPERING OAKS LANE
DELRAY BEACH, FL 33445

Mailing Address

2600 WHISPERING OAKS LANE
DELRAY BEACH, FL 33445

Registered Agent Name & Address

TESCHER, SUANN L
2600 WHISPERING OAKS LANE
DELRAY BEACH, FL 33445

Authorized Person(s) Detail

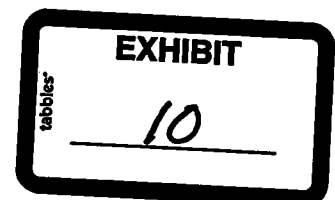
Name & Address

Title MGR

TESCHER, SUANN L
2600 WHISPERING OAKS LANE
DELRAY BEACH, FL 33445

Annual Reports

Report Year	Filed Date
-------------	------------



2009	02/11/2009
2010	04/05/2010
2011	03/04/2011

Document Images

<u>03/04/2011 -- ANNUAL REPORT</u>	View image in PDF format
<u>04/05/2010 -- ANNUAL REPORT</u>	View image in PDF format
<u>02/11/2009 -- ANNUAL REPORT</u>	View image in PDF format
<u>02/29/2008 -- ANNUAL REPORT</u>	View image in PDF format
<u>02/23/2007 -- ANNUAL REPORT</u>	View image in PDF format
<u>11/01/2006 -- Florida Limited Liability</u>	View image in PDF format

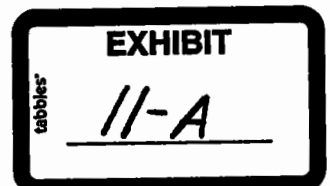
Stansbury's

Exh. 11-A, 11-B, 11-C
to Tescher's depo

5:06 PM
11/06/06

**Arbitrage International Management LLC
Reconciliation Detail
Cash - Wachovia, Period Ending 09/29/2006**

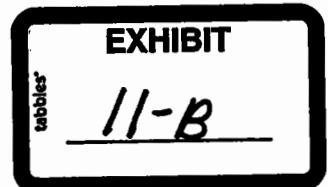
Type	Date	Num	Name	Cir	Amount	Balance
Check	10/17/2006		Larry Bishins		-25,000.00	-473,970.06
Check	10/17/2006	2010	Sarita Roche		-2,000.00	-475,970.06
Check	10/17/2006	2009	ADT		-1,150.00	-477,120.06
Check	10/17/2006	2011	Ideal Tile		-500.64	-477,620.70
Check	10/17/2006	2007	Traci Kratish		-371.25	-477,991.95
Check	10/17/2006	2012	Sai Gorge		-365.75	-478,357.70
Check	10/18/2006	2013	Ransom Jones		-9,841.87	-488,199.57
Check	10/18/2006	2014	HPA Solida Floorin...		-525.00	-488,824.57
Check	10/19/2006	2017	Today's Business In...		-2,907.50	-491,732.07
Check	10/19/2006	2015	P&M Treasure Coa...		-1,700.00	-493,432.07
Check	10/19/2006	2016	Kinkos		-63.77	-493,495.84
Check	10/23/2006	EFT	Ted Bernstein		-17,000.00	-510,495.84
Check	10/23/2006	2023	21st Holdings, LLC		-1,820.00	-512,315.84
Check	10/23/2006	2020	William Alvarez		-1,000.00	-513,315.84
Check	10/23/2006	2022	Bill Stansbury		-741.42	-514,057.26
Check	10/23/2006	2018	Ron Galli		-425.47	-514,482.73
Check	10/23/2006	2019	Lisa Bruder		-356.50	-514,839.23
Check	10/23/2006	2021	Bill Stansbury		-100.00	-514,939.23
Check	10/24/2006	2024	Al Prince		-120,249.00	-635,188.23
Check	10/24/2006	2025	Telenet Systems, Inc		-9,825.00	-645,013.23
Check	10/24/2006		National Service As...		-8,800.00	-653,813.23
Check	10/24/2006	EFT	George J Karr DDS,...		-1,150.00	-654,963.23
Check	10/25/2006	2026	American Express		-4,559.60	-659,522.83
Check	10/25/2006	2028	Blue Box Design		-260.00	-659,782.83
Check	10/26/2006	2029	Glenn Dattile		-525.00	-660,307.83
Check	10/26/2006	ATM	Cash		-202.00	-660,509.83
Check	10/26/2006	2030	Juliana Goldman		-27.67	-660,537.50
Check	10/26/2006	ATM	Cash		-9.02	-660,546.52
Check	10/27/2006	VISA	Summit Van Lines, ...		-1,724.00	-662,270.52
Check	10/27/2006	2073	Ted Bernstein		-194.63	-662,465.15
Check	10/27/2006	VISA	Target		-129.75	-662,594.90
Check	10/27/2006	VISA	Dunkin Donuts		-14.18	-662,609.08
Check	10/28/2006	ATM	Cash		-500.00	-663,109.08
Check	10/28/2006	VISA	Dunkin Donuts		-13.75	-663,122.83
Check	10/29/2006	ATM	Cash		-202.00	-663,324.83
Check	10/30/2006	2035	Caris Furniture		-4,289.59	-667,614.42
Check	10/30/2006	2032	Petty Cash		-1,200.00	-668,814.42
Check	10/30/2006	2074	Ted Bernstein		-399.37	-669,213.79
Check	10/30/2006	2033	Juliana Goldman		-88.56	-669,302.35
Check	10/30/2006	2034	Diana Banks		-86.49	-669,388.84
Check	10/31/2006	2036	Signal US Commun...		-2,955.00	-672,343.84
Check	10/31/2006	2037	Signal US Commun...		-1,240.00	-673,583.84
Check	11/1/2006	2047	Two Oaks Consultin...		-55,000.00	-728,583.84
Check	11/1/2006	2046	Teschler Gutter Cha...		-45,000.00	-773,583.84
Check	11/1/2006	2075	Ransom Jones		-10,272.97	-783,856.81
Check	11/1/2006	2045	Banner Technolog...		-8,136.60	-791,993.41
Check	11/1/2006	2076	Ransom Jones		-333.67	-792,327.08
Check	11/1/2006	2048	Fred Braun		-150.00	-792,477.08
Check	11/1/2006	2038	Woodbridge Florist		-53.25	-792,530.33
Check	11/2/2006	2077	Cash		-35,000.00	-827,530.33
Bill Pmt - Check	11/2/2006	2078	Boz Admin Group		-2,125.00	-829,655.33
Bill Pmt - Check	11/3/2006	2088	Greenberg Traurig		-25,000.00	-854,655.33
Bill Pmt - Check	11/3/2006	2098	FedEx		-1,042.12	-855,697.45
Bill Pmt - Check	11/3/2006	2091	BellSouth		-524.35	-856,221.80
Bill Pmt - Check	11/3/2006	2095	Cingular Wireless		-483.14	-856,704.94
Bill Pmt - Check	11/3/2006	2097	Cingular Wireless		-377.74	-857,082.68
Bill Pmt - Check	11/3/2006	2089	UPS		-326.61	-857,409.29
Bill Pmt - Check	11/3/2006	2094	BellSouth		-99.12	-857,508.41
Bill Pmt - Check	11/3/2006	2093	FPL		-90.00	-857,598.41
Bill Pmt - Check	11/3/2006	2092	Cingular Wireless		-71.44	-857,669.85
Bill Pmt - Check	11/3/2006	2090	FPL		-70.00	-857,739.85
Check	11/3/2006	2100	Maroone Volvo		-42.46	-857,782.31
Check	11/3/2006	ATM	Cingular Wireless		-31.94	-857,814.25
Bill Pmt - Check	11/3/2006	2096	BellSouth		-31.76	-857,846.01
Check	11/3/2006	ATM	Starbucks		-9.53	-857,855.54



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12/07/06

**Arbitrage International Management LLC
Reconciliation Detail
Cash - Wachovia, Period Ending 11/30/2006**

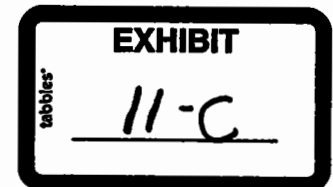
Type	Date	Num	Name	Clr	Amount	Balance
Beginning Balance						1,960,376.72
Cleared Transactions						
Checks and Payments - 127 Items						
Bill Pmt -Check	10/7/2006	2079	Aetna	X	-2,688.00	-2,688.00
Bill Pmt -Check	10/7/2006	2085	Office Depot	X	-1,435.74	-4,123.74
Bill Pmt -Check	10/7/2006	2087	Tax Collector, Palm...	X	-857.90	-4,981.64
Bill Pmt -Check	10/7/2006	2083	FPL	X	-220.33	-5,201.97
Bill Pmt -Check	10/7/2006	2086	PitneyBowes	X	-206.99	-5,408.96
Bill Pmt -Check	10/7/2006	2080	Avaya, Inc.	X	-95.10	-5,504.06
Bill Pmt -Check	10/7/2006	2084	InterCall	X	-40.08	-5,544.14
Bill Pmt -Check	10/7/2006	2081	Dell	X	-16.03	-5,560.17
Check	10/17/2006	2007	ADT	X	-1,150.00	-6,710.17
Check	10/17/2006	2012	Sal Gorge	X	-365.75	-7,075.92
Check	10/23/2006	2023	21st Holdings, LLC	X	-1,820.00	-8,895.92
Check	10/23/2006	2020	Bill Stansbury	X	-100.00	-8,995.92
Check	10/25/2006	2028	Blue Box Design	X	-260.00	-9,255.92
Check	10/30/2006	2034	Juliana Goldman	X	-88.56	-9,344.48
Check	10/31/2006	2036	Signal US Commun...	X	-2,955.00	-12,299.48
Check	10/31/2006	2037	Signal US Commun...	X	-1,240.00	-13,539.48
Check	10/31/2006	VISA	Uncle Tals	X	-167.62	-13,707.10
Check	11/1/2006	2045	Two Oaks Consultin...	X	-55,000.00	-68,707.10
Check	11/1/2006	2046	Teschler Gutter Cha...	X	-45,000.00	-113,707.10
Check	11/1/2006	2075	Ransom Jones	X	-10,272.97	-123,980.07
Check	11/1/2006	2047	Banner Technologie...	X	-8,136.60	-132,116.67
Check	11/1/2006	2076	Ransom Jones	X	-333.67	-132,450.34
Check	11/1/2006	2048	Fred Braun	X	-150.00	-132,600.34
Check	11/1/2006	2038	Woodbridge Florist	X	-53.25	-132,653.59
Check	11/2/2006	2077	Cash	X	-35,000.00	-167,653.59
Bill Pmt -Check	11/2/2006	2078	Boz Admin Group	X	-2,125.00	-169,778.59
Check	11/2/2006	VISA	Home Decorators Co	X	-711.71	-170,490.30
Check	11/2/2006	VISA	NextStore	X	-57.63	-170,547.93
Bill Pmt -Check	11/3/2006	2088	Greenberg Traurig	X	-25,000.00	-195,547.93
Bill Pmt -Check	11/3/2006	2098	FedEx	X	-1,042.12	-196,590.05
Bill Pmt -Check	11/3/2006	2091	BellSouth	X	-524.35	-197,114.40
Bill Pmt -Check	11/3/2006	2095	Cingular Wireless	X	-483.14	-197,597.54
Bill Pmt -Check	11/3/2006	2097	Cingular Wireless	X	-377.74	-197,975.28
Bill Pmt -Check	11/3/2006	2089	UPS	X	-326.61	-198,301.89
Check	11/3/2006	ATM	Cash	X	-302.00	-198,603.89
Check	11/3/2006	VISA	Abe & Louie's	X	-99.60	-198,703.49
Bill Pmt -Check	11/3/2006	2094	BellSouth	X	-99.12	-198,802.61
Bill Pmt -Check	11/3/2006	2093	FPL	X	-90.00	-198,892.61
Bill Pmt -Check	11/3/2006	2082	DIRECTV	X	-83.33	-198,975.94
Bill Pmt -Check	11/3/2006	2092	Cingular Wireless	X	-71.44	-199,047.38
Bill Pmt -Check	11/3/2006	2090	FPL	X	-70.00	-199,117.38
Check	11/3/2006	2100	Maroone Volvo	X	-42.46	-199,159.84
Check	11/3/2006	ATM	Cingular Wireless	X	-31.94	-199,191.78
Bill Pmt -Check	11/3/2006	2096	BellSouth	X	-31.76	-199,223.54
Check	11/3/2006	ATM	Starbucks	X	-9.53	-199,233.07
Check	11/7/2006	2052	Simon Bernstein	X	-100,000.00	-299,233.07
Check	11/7/2006	VISA	Mike's Cigars Distri...	X	-295.40	-299,528.47
Check	11/8/2006	2051	Donald C. Sider & ...	X	-50,000.00	-349,528.47
Check	11/8/2006	EFT	Transfer	X	-35,000.00	-384,528.47
Check	11/8/2006	EFT	CFC of Delaware LLC	X	-25,000.00	-409,528.47
Check	11/8/2006	2102	Traci Kratish	X	-294.00	-409,822.47
Check	11/8/2006	VISA	Delta Airlines	X	-159.30	-409,981.77
Check	11/8/2006	VISA	Southwest Airlines	X	-137.10	-410,118.87
Check	11/8/2006	VISA	NextStore	X	-41.23	-410,160.10
Check	11/8/2006	VISA	Agent Fee	X	-30.00	-410,190.10
Check	11/9/2006	2053	Simon Bernstein	X	-100,000.00	-510,190.10
Check	11/9/2006	EFT	Paychex	X	-70,000.00	-580,190.10
Check	11/9/2006	EFT	Paychex	X	-39,917.94	-620,108.04
Check	11/9/2006	EFT	CFC of Delaware LLC	X	-28,330.06	-648,438.10
Bill Pmt -Check	11/9/2006	2054	Telenet Systems, Inc	X	-780.00	-649,218.10
Check	11/9/2006	VISA	Henry's	X	-152.49	-649,370.59
Check	11/9/2006	FEE	Wachovia Bank	X	-60.50	-649,431.09
Check	11/9/2006	VISA	NextStore	X	-26.29	-649,457.38
Check	11/10/2006	EFT	CFC of Delaware LLC	X	-50,565.00	-700,022.38
Check	11/10/2006	EFT	Paychex	X	-41,886.52	-741,908.90



6:37 PM
02/07/07

**Arbitrage International Management LLC
Reconciliation Detail
Cash - Wachovia, Period Ending 01/31/2007**

Type	Date	Num	Name	Cir	Amount	Balance
Check	1/16/2007	VISA	Credit One Bank	X	-666.77	-280,443.94
Check	1/16/2007	2249	Traci Kratish	X	-650.11	-281,094.05
Check	1/17/2007	EFT	CFC of Delaware LLC	X	-55,114.00	-336,208.05
Check	1/17/2007	VISA	Wynn Hotel	X	-3,119.84	-339,327.89
Check	1/17/2007	VISA	Hudson News	X	-17.75	-339,345.64
Check	1/18/2007	VISA	NextStore	X	-35.50	-339,381.14
General Journal	1/19/2007	EFT	Paychex Taxpay	X	-8,290.31	-347,671.45
General Journal	1/19/2007	EFT	Paychex DirDep/RCX	X	-5,914.21	-353,585.66
Check	1/19/2007	2245	Case Professional ...	X	-2,000.00	-355,585.66
Check	1/19/2007	2244	Petty Cash	X	-1,000.00	-356,585.66
General Journal	1/19/2007	EFT	Paychex DirDep/RCX	X	-475.90	-357,061.56
General Journal	1/19/2007	EFT	Paychex Taxpay	X	-165.37	-357,226.93
Check	1/19/2007	2242	Petty Cash	X	-125.00	-357,351.93
Check	1/19/2007	VISA	NextStore	X	-6.04	-357,357.97
Check	1/22/2007	2247	Two Oaks Consultin...	X	-30,000.00	-387,357.97
Check	1/22/2007	VISA	Kee Grill	X	-186.02	-387,543.99
Check	1/22/2007	2246	T-Mobile	X	-107.10	-387,651.09
Check	1/22/2007	VISA	Brio	X	-73.13	-387,724.22
General Journal	1/23/2007	EFT	Paychex DirDep/RCX	X	-25,000.00	-412,724.22
General Journal	1/23/2007	EFT	Paychex Taxpay	X	-19,489.07	-432,213.29
Check	1/23/2007	EFT	Cingular Wireless	X	-1,674.58	-433,887.87
Bill Pmt -Check	1/23/2007	2252	William Alvarez	X	-1,330.00	-435,217.87
Check	1/23/2007	EFT	Cingular Wireless	X	-286.64	-435,504.51
Bill Pmt -Check	1/23/2007	2254	AVS Underwriting, ...	X	-225.00	-435,729.51
Bill Pmt -Check	1/23/2007	2257	FedEx	X	-202.75	-435,932.26
Bill Pmt -Check	1/23/2007	2251	Totally Chocolate	X	-20.00	-435,952.26
Check	1/24/2007	EFT	Larry Bishins	X	-20,000.00	-455,952.26
Bill Pmt -Check	1/24/2007	2261	Goldstein Lewin & ...	X	-4,891.70	-460,843.96
Bill Pmt -Check	1/24/2007	2260	FedEx	X	-374.72	-461,218.68
Check	1/24/2007	2265	TeleOptions	X	-326.82	-461,545.50
Check	1/25/2007	EFT	CFC of Delaware LLC	X	-40,418.00	-501,963.50
Check	1/25/2007	VISA	BellSouth	X	-460.83	-502,424.33
Check	1/26/2007	2266	American Express	X	-14,284.85	-516,709.18
Check	1/29/2007	VISA	NextStore	X	-43.50	-516,752.68
Check	1/30/2007	EFT	APS	X	-1,000.00	-517,752.68
Check	1/31/2007	SWE...	Wachovia Bank	X	-1,078,000.00	-1,595,752.68
Check	1/31/2007	VISA	Wine Course	X	-117.00	-1,595,869.68
Check	1/31/2007	EFT	Paychex Taxpay	X	-48.31	-1,595,917.99
Check	1/31/2007	EFT	Paychex Taxpay	X	-42.86	-1,595,960.85
Total Checks and Payments					-1,595,960.85	-1,595,960.85
Deposits and Credits - 9 items						
Deposit	1/2/2007	SWE...	Arbitrage Internatio...	X	1,591,742.47	1,591,742.47
Deposit	1/5/2007	DEP	Coffee Whiz.com	X	23.96	1,591,766.43
Bill Pmt -Check	1/14/2007		David Stern Designl...	X	0.00	1,591,766.43
Check	1/19/2007	2243	Simon Bernstein	X	0.00	1,591,766.43
Deposit	1/29/2007			X	4,587.18	1,596,353.61
Check	1/30/2007	EFT	APS	X	0.00	1,596,353.61
Bill Pmt -Check	1/31/2007	2276	Peninsula Corp., Ltd.	X	0.00	1,596,353.61
Check	2/1/2007	SWE...	Wachovia Bank	X	0.00	1,596,353.61
Bill Pmt -Check	2/6/2007	2295	Blue Box Design	X	0.00	1,596,353.61
Total Deposits and Credits					1,596,353.61	1,596,353.61
Total Cleared Transactions					392.76	392.76
Cleared Balance					392.76	1,129.00



Stansbury's

Exh. 12

to Tescher skpo

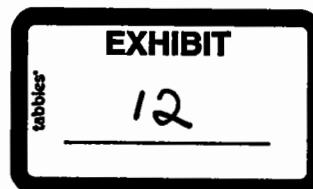
IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: SIMON BERNSTEIN PROBATE DIVISION
IRREVOCABLE INSURANCE
TRUST dated JUNE 21, 1995 FILE NO.:

**DECLARATORY ACTION TO ESTABLISH A LOST
TRUST
AND APPOINT A SUCCESSOR TRUSTEE**

COMES NOW TED BERNSTEIN, son of SIMON BERNSTEIN ("SIMON"), deceased, and alleges the following:

Parties, Jurisdiction and Venue

1. This is an action to establish the terms of a lost trust, including the determination of a successor trustee, pursuant to Florida Statutes 86.011, 86.041 and 736.0201(2) and (4).
2. Florida Statutes 86.736.0201 provides, in part, for the Court to intervene in the administration of a trust when invoked by an interested person relating to the validity, administration or distribution of a trust, appoint or remove a trustee and ascertain beneficiaries.
3. Petitioner, TED S. BERNSTEIN ("TED"), is of legal age and a resident of Palm Beach County, Florida, and the former Personal Representative and current trustee of the FAMILY TRUST F/B/O SIMON BERNSTEIN under the SHIRLEY BERNSTEIN REVOCABLE TRUST.
4. SHIRLEY BERNSTEIN is the predeceased spouse of SIMON, who upon information and belief was the Trustee of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST (the "ILIT") , an irrevocable trust established by SIMON on June 21, 1995 .
5. SIMON died on September 13, 2012 and his estate is now being probated in the Circuit Court for Palm Beach County, Florida. SIMON is survived by the following adult children:



TED S. BERNSTEIN, resident of Palm Beach County, Florida ;
PAMELA BERNSTEIN, resident of Chicago, Illinois;
ELIOT BERNSTEIN, resident of Palm Beach County, Florida;
JILL IANTONI, resident of Highland Park, Illinois; and
LISA S. FRIEDSTEIN, resident of Highland Park, Illinois (hereinafter sometimes referred to as the "Children").

All of the Children are sui juris and have either executed and filed Consents to the relief sought or have been served with this Petition.

6. Venue of this proceeding is proper in this Court pursuant to Florida Statutes 737.0204 and Chapter 47 because the ILIT's principal place of administration and Trust situs was and remained in Palm Beach County, Florida.

General Allegations

7. Attached as Exhibit "A" is a copy of the Form SS-4, Application for Employer Identification Number, reflecting the name of the ILIT and signed by SHIRLEY as the Trustee and dated June 21, 1995.
8. Diligent search for the ILIT or a copy of it has been made, including inquiry with the insurance carrier, HERITAGE UNION LIFE INSURANCE COMPANY ("HERITAGE"), search of SIMON'S and SHIRLEY'S papers and documents, lawyer files and accountant files, and no original or copy has been located.
9. Upon information and belief, the Petitioner, TED, was named as the successor Trustee to SHIRLEY of the ILIT. (See Affidavit of David Simon, Esq., son-in-law of SIMON and SHIRLEY, attached hereto as Exhibit "B").
10. Upon information and belief, the beneficiaries of the ILIT were the children of SIMON and SHIRLEY, in equal shares and per stirpes. (See Affidavit of Robert L. Spallina, Esq., personal attorney to SIMON and SHIRLEY during their lifetimes, attached hereto as Exhibit "C").
11. HERITAGE has advised counsel for the Petitioner that their records reflect the owner of the life insurance policy to be SIMON and the beneficiary to be the ILIT. (See copy of communication from carrier dated _____ attached hereto as Exhibit

"D").

12. HERITAGE will not settle and pay the death benefit under policy #1009208 until receipt of a court order identifying the successor trustee of the ILIT.
13. In order to avoid delays occasioned by the need to open new banking arrangements for the ILIT to process and distribute the insurance proceeds, TED wishes to authorize HERITAGE to disburse the death benefit proceeds to Tescher & Spallina, P.A. Trust Account at Sabadell Bank.

WHEREFORE, Petitioner respectfully requests this Court to determine that

A. TED S. BERNSTEIN is the successor trustee to SHIRLEY BERNSTEIN of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dated June 21, 1995;

B. The remainder beneficiaries of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dated June 21, 1995 are the five (5) children of SIMON and SHIRLEY, in equal shares, per stirpes;

C. HERITAGE UNION LIFE INSURANCE COMPANY be directed to distribute the death benefit proceeds to the Tescher & Spallina, P.A. Trust Account at Sabadell Bank.

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 _____, 2013

TED S. BERNSTEIN

Donald R. Tescher, Esq.
Attorney for Petitioner
Florida Bar No. 121086
Tescher & Spallina, P.A.
4855 Technology Way, Suite 720
Boca Raton, FL 33431
Telephone: (561) 997-7008
Fax: (561) 997-7308

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Stansbury's

Exh. 13

to Tescher ~~Depo~~

WILL OF
SIMON L. 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

SIMON L. BERNSTEIN

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

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. My spouse is SHIRLEY BERNSTEIN ("**SHIRLEY**"). My children are TED S. BERNSTEIN ("**TED**"), PAMELA B. SIMON, ELIOT BERNSTEIN, JILL LANTONI 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 SHIRLEY, if SHIRLEY 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 SHIRLEY 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 SHIRLEY nor any child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. RESIDENCES

I give to SHIRLEY, if SHIRLEY 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 SHIRLEY 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 SIMON L. BERNSTEIN

TESCHER & SPALLINA, P.A.

TS001360

ARTICLE IV. PERSONAL REPRESENTATIVES

1. **Appointment and Bond.** I appoint SHIRLEY and WILLIAM E. STANSBURY, or either of them alone if the other is unable to serve, 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/ Simon L. Bernstein
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 20 day of May, 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, 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.

/s/ Simon L. Bernstein
SIMON L. BERNSTEIN, Testator

We, Robert Spallina and Diana Banks, 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.

/s/ Robert L. Spallina
Witness

/s/ Diana Banks
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 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 SIMON L. 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:\WPDATA\rl\Bernstein, Shirley & Simon\2008 Estate Planning\Will of Simon L. Bernstein.wpd [04/15/41:29 3 19]

LAST WILL
OF SIMON L. BERNSTEIN

-8-

TESCHER & SPALLINA, P.A.

TS001367

LAW OFFICES
TESCHER & SPALLINA, P.A.

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

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

STANSBURY
EXHIBIT
502012CP004391SB
F

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

SUPPORT STAFF
DIANE DUSTIN
KIMBERLY MORAN
SUANN TESCHER

December 6, 2012

VIA FACSIMILE: 803-333-4936

Attn: Bree
Claims Department
Heritage Union Life Insurance Company
1275 Sandusky Road
Jacksonville, IL 62651

Re: **Insured: Simon L. Bernstein**
Contract No.: 1009208

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate.
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children.
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the EIN number for the 1995 trust.

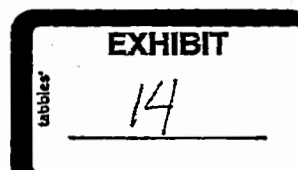
If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

Robert L. Spallina
ROBERT L. SPALLINA

RLS/km

Enclosures



BT000083

CLAIMANT STATEMENT

0008600.0002710

DECEDENT INFORMATION	
1. Name of Deceased (Last, First Middle) Bernstein, Simon Leon	2. Last 4 digits of Deceased's Social Security No: 5211
3. If the Deceased was known by any other names, such as maiden name, hyphenated name, nickname, derivative form of first and/or middle name or an alias, please provide them below.	
4. Policy Number(s) 1009208	5. If policy is lost or not available, please explain: unable to locate, policy is 30 years old
6. Deceased's Date of Death 09/13/12	7. Cause of Death natural causes
8. <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending	

CLAIMANT INFORMATION			
9. Claimant Name (Last, First, Middle). If trust, please list trust name and complete Trustee Certification section. Simon Bernstein Irrevocable Insurance Trust			
10. Street Address	11. City	12. State and Zip	13. Daytime Phone Number
14. Date of Birth	15. Social Security or Tax ID Number	16. Relationship to Deceased	
17. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
18. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
19. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement?			<input type="checkbox"/> Yes <input type="checkbox"/> No

CLAIMANT INFORMATION (to be completed by 2nd claimant, if any)			
20. Claimant Name (Last, First, Middle). If trust, please list trust name and complete Trustee Certification section.			
21. Street Address	22. City	23. State and Zip	24. Daytime Phone Number
25. Date of Birth	26. Social Security or Tax ID Number	27. Relationship to Deceased	
28. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
29. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
30. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement?			<input type="checkbox"/> Yes <input type="checkbox"/> No

YOUR SIGNATURE IS REQUIRED ON THE NEXT PAGE.
 CL G012F Life Claimant Statement No RAA 12/23/2011 Page 3

CLAIMANT STATEMENT

0000000.0002711

SETTLEMENT OPTIONS

The policy may contain one or more settlement options, such as Interest Payments, Installments for a Specified Amount, Life Annuity, Life Annuity with Period Certain, and/or Joint Life and Survivorship Annuity. You may choose to receive a lump sum payment or another settlement option available in the policy under which a claim is made. For more information, refer to the optional methods of policy settlement provision in the policy or contact us at the mailing address noted on the front of the claim form.

If you wish to select a settlement option, please indicate your settlement selection by name (not by number) on the line below after you have carefully reviewed the options available in the policy. Availability of settlement options are subject to the terms of the policy. If you do not choose a settlement option, we will send a lump sum settlement to you.

Name of Settlement Option from Policy

Important Information About the USA PATRIOT Act

To help fight the funding of terrorism and money-laundering activities, the U.S. government has passed the USA PATRIOT Act, which requires banks, including our processing agent bank, to obtain, verify and record information that identifies persons who engage in certain transactions with or through a bank. This means that we will need to verify the name, residential or street address (no P.O. Boxes), date of birth and social security number or other tax identification number of all account owners.

SUBSTITUTE FOR IRS FORM W-9

This information is being collected on this form versus IRS form W-9 and will be used for supplying information to the Internal Revenue Service (IRS). Under penalty of perjury, I certify that 1) the tax ID number above is correct (or I am waiting for a number to be issued to me), 2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3) I am a U.S. person (including a U.S. resident alien). Please cross through item 2 if you have been notified by the IRS that you are subject to backup withholding because you have failed to report all interest and dividends on your tax return.

SIGNATURES

I/We do hereby make claim to said insurance, declare that the answers recorded above are complete and true, and agree that the furnishing of this and any supplemental forms do not constitute an admission by the Company that there was any insurance in force on the life in question, nor a waiver of its rights or defenses.

For Residents of New York: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

For Residents of All Other States: See the Fraud Information section of this claim form.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature of Claimant and Title

Date

Signature of Second Claimant, if any, and Title

Date

CLAIMANT STATEMENT

TRUSTEE CERTIFICATION

00006680.0002712

TRUSTEE CERTIFICATION (to be completed only if trust is claiming proceeds)

COMPLETE THIS SECTION ONLY IF A TRUST IS CLAIMING BENEFITS.
Please include a copy of the trust agreement, including the signature page(s) and any amendments.

I/We, the undersigned trustee(s), represent and warrant that the copy of the trust agreement, which we will provide you pursuant to this certification, is a true and exact copy of said agreement, that said agreement is in full force and effect, and that we have the authority to make this certification.

Generation Skipping Transfer Tax Information - THIS MUST BE COMPLETED FOR PAYMENT

I/We the undersigned, on oath, deposes and states as follows with respect to the possible application of the Generation Skipping Transfer (GST) tax to the death benefit payment (Mark the appropriate item):

- 1. The GST tax does not apply because the death benefit is not included in the decedent's estate for federal estate tax purposes.
- 2. The GST tax does not apply because the GST tax exemption will offset the GST tax.
- 3. The GST tax does not apply because at least one of the trust beneficiaries is not a "skipped" person.
- 4. The GST tax does not apply because of the reasons set forth in the attached document (Please attach document setting forth the reasons why you believe the GST tax does not apply.)
- 5. The GST tax may apply. As a result, the death benefit payment IS subject to withholding of the applicable GST tax. Enclosed is the completed Schedule R-1 (Form 706) for submission to the Internal Revenue Service.

Name of Trust <i>Simon Bernstein Irrevocable Insurance Trust</i>		Date of Trust Agreement <i>06/01/1995</i>
Date of all Amendments		Trust Tax ID Number <i>65-6178916</i>
Printed Name of Trustee(s)	Signature(s)	
a. _____	<i>Robert L. Spallina</i>	
b. _____	_____	
c. _____	_____	
d. _____	_____	

Stansbury's
Exh. 15
to Tescher's depo

FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS



Detail by Entity Name

Florida Limited Liability Company

T & S REGISTERED AGENTS, LLC

Filing Information

Document Number	L08000110070
FE/EIN Number	N/A
Date Filed	11/25/2008
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	10/11/2012
Event Effective Date	NONE

Principal Address

925 S. FEDERAL HIGHWAY,
SUITE 500
BOCA RATON, FL 33432

Changed: 03/06/2014

Mailing Address

925 S. FEDERAL HIGHWAY,
SUITE 500
BOCA RATON, FL 33432

Changed: 03/06/2014

Registered Agent Name & Address

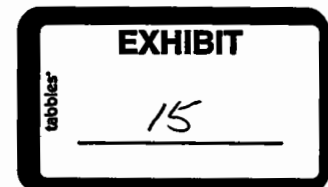
TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

Authorized Person(s) Detail

Name & Address

Title MGRM

TESCHER, DONALD R



4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431

Title MGRM

SPALLINA, ROBERT L
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431

Annual Reports

Report Year	Filed Date
2012	10/11/2012
2013	03/21/2013
2014	01/08/2014

Document Images

<u>01/08/2014 -- ANNUAL REPORT</u>	View image in PDF format
<u>03/21/2013 -- ANNUAL REPORT</u>	View image in PDF format
<u>10/11/2012 -- REINSTATEMENT</u>	View image in PDF format
<u>03/04/2011 -- ANNUAL REPORT</u>	View image in PDF format
<u>04/05/2010 -- ANNUAL REPORT</u>	View image in PDF format
<u>04/01/2009 -- ANNUAL REPORT</u>	View image in PDF format
<u>11/25/2008 -- Florida Limited Liability</u>	View image in PDF format

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State of Florida, Department of State

2014 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L08000110070

Entity Name: T & S REGISTERED AGENTS, LLC

Current Principal Place of Business:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

Current Mailing Address:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

FEI Number: NOT APPLICABLE

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent

Date

Authorized Person(s) Detail :

Title MGRM
Name TESCHER, DONALD R
Address 4855 TECHNOLOGY WAY, SUITE 720
City-State-Zip: BOCA RATON FL 33431

Title MGRM
Name SPALLINA, ROBERT L
Address 4855 TECHNOLOGY WAY, SUITE 720
City-State-Zip: BOCA RATON FL 33431

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: ROBERT L. SPALLINA

VP

01/08/2014

Electronic Signature of Signing Authorized Person(s) Detail

Date

2013 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L08000110070

Entity Name: T & S REGISTERED AGENTS, LLC

Current Principal Place of Business:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

Current Mailing Address:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

FEI Number: NOT APPLICABLE

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent Date

Authorized Person(s) Detail :

Title	MGRM	Title	MGRM
Name	TESCHER, DONALD R	Name	SPALLINA, ROBERT L
Address	4855 TECHNOLOGY WAY, SUITE 720	Address	4855 TECHNOLOGY WAY, SUITE 720
City-State-Zip:	BOCA RATON FL 33431	City-State-Zip:	BOCA RATON FL 33431

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: DONALD R. TESCHER **MGRM** **03/21/2013**

Electronic Signature of Signing Authorized Person(s) Detail Date

2012 LIMITED LIABILITY COMPANY REINSTATEMENT

DOCUMENT# L08000110070

FILED
Oct 11, 2012
Secretary of State

Entity Name: T & S REGISTERED AGENTS, LLC

Current Principal Place of Business:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Principal Place of Business:

Current Mailing Address:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Mailing Address:

FEI Number: **FEI Number Applied For ()** **FEI Number Not Applicable (X)** **Certificate of Status Desired ()**

Name and Address of Current Registered Agent:

TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: DONALD R. TESCHER

Electronic Signature of Registered Agent

Date

MANAGING MEMBERS/MANAGERS:

Title: MGRM
Name: TESCHER, DONALD R
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

Title: MGRM
Name: SPALLINA, ROBERT L
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes.

SIGNATURE: DONALD R. TESCHER

MGR

10/11/2012

Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

2011 LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L08000110070

FILED
Mar 04, 2011
Secretary of State

Entity Name: T & S REGISTERED AGENTS, LLC

Current Principal Place of Business:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Principal Place of Business:

Current Mailing Address:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Mailing Address:

FEI Number: FEI Number Applied For () FEI Number Not Applicable (X) Certificate of Status Desired ()

Name and Address of Current Registered Agent:

TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

MANAGING MEMBERS/MANAGERS:

Title: MGRM
Name: TESCHER, DONALD R
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

Title: MGRM
Name: SPALLINA, ROBERT L
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes.

SIGNATURE: DONALD R. TESCHER MGR 03/04/2011

Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

2010 LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L08000110070

FILED
Apr 05, 2010
Secretary of State

Entity Name: T & S REGISTERED AGENTS, LLC

Current Principal Place of Business:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Principal Place of Business:

Current Mailing Address:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Mailing Address:

FEI Number: FEI Number Applied For () FEI Number Not Applicable (X) Certificate of Status Desired ()

Name and Address of Current Registered Agent:

TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

MANAGING MEMBERS/MANAGERS:

Title: MGRM
Name: TESCHER, DONALD R
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

Title: MGRM
Name: SPALLINA, ROBERT L
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

I hereby certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes.

SIGNATURE: DONALD R. TESCHER MGRM 04/05/2010

_____ Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

2009 LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L08000110070

FILED
Apr 01, 2009
Secretary of State

Entity Name: T & S REGISTERED AGENTS, LLC

Current Principal Place of Business:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Principal Place of Business:

Current Mailing Address:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431

New Mailing Address:

FEI Number: FEI Number Applied For (X) FEI Number Not Applicable () Certificate of Status Desired ()

Name and Address of Current Registered Agent:

TESCHER, DONALD R
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL 33431 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

MANAGING MEMBERS/MANAGERS:

Title: MGRM () Delete
Name: TESCHER, DONALD R
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

Title: MGRM () Delete
Name: SPALLINA, ROBERT L
Address: 4855 TECHNOLOGY WAY, SUITE 720
City-St-Zip: BOCA RATON, FL 33431

ADDITIONS/CHANGES:

Title: () Change () Addition
Name:
Address:
City-St-Zip:

Title: () Change () Addition
Name:
Address:
City-St-Zip:

I hereby certify that the information supplied with this filing does not qualify for the exemption stated in Chapter 119, Florida Statutes. I further certify that the information indicated on this report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 608, Florida Statutes.

SIGNATURE: DONALD R. TESCHER MGRM 04/01/2009

Electronic Signature of Signing Managing Member, Manager, or Authorized Representative / Date

**Electronic Articles of Organization
For
Florida Limited Liability Company**

L08000110070
FILED 8:00 AM
November 25, 2008
Sec. Of State
nculligan

Article I

The name of the Limited Liability Company is:

T & S REGISTERED AGENTS, LLC

Article II

The street address of the principal office of the Limited Liability Company is:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL. 33431

The mailing address of the Limited Liability Company is:

4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL. 33431

Article III

The purpose for which this Limited Liability Company is organized is:

ANY AND ALL LAWFUL BUSINESS.

Article IV

The name and Florida street address of the registered agent is:

DONALD R TESCHER
4855 TECHNOLOGY WAY
SUITE 720
BOCA RATON, FL. 33431

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: DONALD R. TESCHER

Article V

The name and address of managing members/managers are:

Title: MGRM
DONALD R TESCHER
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL. 33431

Title: MGRM
ROBERT L SPALLINA
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL. 33431

Signature of member or an authorized representative of a member

Signature: DONALD R. TESCHER

L08000110070
FILED 8:00 AM
November 25, 2008
Sec. Of State
nculligan

APPENDIX 14

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

IN RE: ESTATE OF SIMON L. BERNSTEIN

Deceased.

-----/

PROCEEDINGS BEFORE
HONORABLE JOHN PHILLIPS

DATE: September 15, 2015

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

1 APPEARANCES:

2

3 APPEARING ON BEHALF OF THE PERSONAL REPRESENTATIVE:

4 BRIAN O'CONNELL, ESQ.
5 JOIELLE A. FOGLIETTA, ESQ.
6 CIKLIN, LUBITZ & O'CONNELL
7 West Palm Beach, FL 333401

8 APPEARING OF BEHALF OF WILLIAM STANSBURY:

9 PETER FEAMAN, ESQ.
10 PETER M. FEAMAN, P.A.
11 3695 Boynton Beach Blvd., Suite 9
12 Boynton Beach, FL 33436

13 APPEARING ON BEHALF OF MOLLY SIMON, et al:

14 JOHN MORRISSEY, ESQ.
15 MORRISSEY LAW
16 330 Clematis Street, 213
17 West Palm Beach, FL 33401

18 APPEARING ON BEHALF OF TED S. BERNSTEIN:

19 ALAN B. ROSE, ESQ.
20 PAGE, MRACHEK, FITZGERALD & ROSE, P.A.
21 505 S. Flagler Drive, Suite 600
22 West Palm Beach, FL 33401

23 APPEARING ON BEHALF OF TESCHER & SPALLINA:

24 KENNETH S. POLLOCK, ESQ.
25 SHENDELL & POLLOCK, P.L.
2700 N. Military Trail, Suite 150
Boca Raton, FL 33431

ALSO PRESENT: Eliot Bernstein

25

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

7

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

10 MS. FOGLIETTA: Yes, Judge.

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

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

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

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

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

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

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

17 MR. FEAMAN: Right.

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

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

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

3 THE COURT: You can.

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

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

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

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

1 of order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: What is the name or where is

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

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

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

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

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

12 MS. FOGLIETTA: The filing number?

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

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

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

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

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

24 MS. FOGLIETTA: I have a copy.

25 MR. ELIOT BERNSTEIN: Can I make an

1 objection?

2 THE COURT: Who are you?

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

4 THE COURT: You can't object yet.

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

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

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

15 MR. ROSE: An amended complaint.

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

18 MR. ROSE: Yes.

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

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

23 THE COURT: All right.

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

1 the documents.

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

4 MR. ROSE: Yes, sir.

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

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

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

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

14 THE COURT: 10-6-14?

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

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

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

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

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

1 those things that happened?

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

4 THE COURT: Case Number 14CP3698.

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

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

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

14 MR. ELIOT BERNSTEIN: What?

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

17 MR. ELIOT BERNSTEIN: Okay.

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

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

14 MR. ELIOT BERNSTEIN: Yes, sir.

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

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

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

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

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

11 Okay, so --

12 MR. ROSE: May I approach --

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

19 MR. ROSE: Yes, sir.

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

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

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

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

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

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

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

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

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

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

22 THE COURT: Okay. Why?

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

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

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

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

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

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

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

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

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

16 MR. ROSE: Sure.

17 THE COURT: What's up with that?

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

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

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

1 get confused and disaster happens.

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

6 MR. ELIOT BERNSTEIN: Yes, sir.

7 THE COURT: What's your objection?

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

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

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

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

1 I might make a mistake if I get confused.

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

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

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

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

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

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

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

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

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

14 THE COURT: I got that.

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

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

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

1 THE COURT: Okay.

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

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

5 MR. ROSE: Yes.

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

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

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

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

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

25 THE COURT: Why?

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

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

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

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

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

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

15 MR. ELIOT BERNSTEIN: Okay.

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

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

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

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

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

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

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

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

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

1 THE COURT: Okay.

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

9 THE COURT: William Stansbury.

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

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

1 trial.

2 MR. MORRISSEY: I'm sorry.

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

13 MR. MORRISSEY: No.

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

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

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

14 MR. O'CONNELL: Correct.

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

17 THE COURT: Okay. Am I going to?

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

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

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

1 --

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

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

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

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

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

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

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

1 I'm crossing that off my list.

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

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

7 THE COURT: Who filed that motion?

8 MR. ELIOT BERNSTEIN: Me.

9 THE COURT: When did you file?

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

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

14 MR. ELIOT BERNSTEIN: A while ago.

15 THE COURT: Any closer estimate than that?

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

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

21 MR. ELIOT BERNSTEIN: Yeah.

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

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

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

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

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

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

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

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

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

20 MS. FOGLIETTA: I do.

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

23 MR. O'CONNELL: Sure.

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

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

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

5 THE COURT: Was there ever a hearing?

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

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

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

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

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

10 (Handing)

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

13 MS. FOGLIETTA: You can keep them.

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

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

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

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

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

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

6 MR. ELIOT BERNSTEIN: He directed that.

7 THE COURT: Say that again?

8 MR. ELIOT BERNSTEIN: He directed that.

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

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

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

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

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

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

23 MR. ELIOT BERNSTEIN: Welcome to mine.

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

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

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

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

9 MR. ELIOT BERNSTEIN: Okay.

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

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

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

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

25 Now back to the William Stansbury claim

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

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

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

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

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

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

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

25 THE COURT: When was that set? When did

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

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

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

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

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

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

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

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

25 THE COURT: Did you ever see Colin use a

1 computer in court?

2 MR. O'CONNELL: Not really.

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

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

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

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

19 MR. FEAMAN: Yes, Your Honor.

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

24 MR. FEAMAN: Correct.

25 THE COURT: All right.

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

24 THE COURT: Is that petition at issue?

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

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

4 THE COURT: Okay.

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

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

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

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

21 MR. O'CONNELL: Thank you.

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

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

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CERTIFICATE OF COURT REPORTER

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

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

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

Dated this 12th day of October, 2015.

Julie Andolpho, FPR

<u> </u> <u> </u>	<u> </u> <u> </u>	<u> </u> <u> </u>	<u> </u> <u> </u>
\$	28th 31:3,10	above-styled 3:2	allowed 34:20
\$100 9:14		accomplish 32:15	alluded 32:7
\$2.5 16:16	<u> </u> <u> </u>	according 12:12	alludes 32:24
	3	account 40:10,13	already 19:1
<u> </u> <u> </u>	3 10:23 12:22	accounting 39:12	37:4,23
0	30 23:7 26:16	acting 21:10	am 4:16 27:20,25
0 31:7	3188 3:4	action 8:3	28:17 34:7 42:9
<u> </u> <u> </u>	330 2:13	29:21,25 37:7	amended 10:17
1	333401 2:5	42:13	11:15,16,19
1 42:5	33401 2:13,17	actual 11:24	12:20 15:17
10:30 41:18	33431 2:21	actually 4:4 8:2	21:6 23:12 36:2
10:32 1:19 41:24	33436 2:9	28:19 38:17	amendments 12:16
10-6 12:12	36 10:7	40:14,15	among 8:14
10-6-14 12:14	3695 2:9	ad 6:5,23	amount 23:22
12 38:12	386 39:9	8:22,24 9:2	and/or 42:16
124391CP 38:12	3rd 11:14	28:9,12 30:4	Andolpho 42:3,19
12th 42:17		32:13,14	answer 20:24
13 11:24	<u> </u> <u> </u>	add 8:4	21:18 22:2 29:4
14 10:7 31:10	4	added 8:4	answered 8:6
14CP3698 13:4	41 35:1	additional 18:24	13:5 19:2
38:22	42 42:5	address 18:15	anybody 15:20
15 1:18 42:8	4th 4:7,13	22:4	16:12 23:21
150 2:21		addressed 6:4	25:18 31:18
15-minute 39:20	<u> </u> <u> </u>	9:21	41:9
15th 3:6	5	addressing 21:16	anymore 4:16
	502012CP4391XXXX	adjudicated 37:3	anyone 32:11
<u> </u> <u> </u>	NB 1:2	administrative	34:13
2	5020143698 10:5	34:17,19	anything 13:19
2 12:23	505 2:17	adult 25:23	25:1,21
20 33:6 38:6	<u> </u> <u> </u>	29:17	26:17,22 31:9
39:18	6	advance 36:18,20	anywhere 31:9
2010 5:16	600 2:17	adversary 34:14	apologize 23:10
2012 5:11	6th 22:22	41:2	apparently 38:21
2012CP4391 38:12		advised 8:3	APPEARANCES 2:1
2013 10:23	<u> </u> <u> </u>	against 40:21	appeared
30:18,19	7	ago 22:18 28:23	27:21,22,23
2014 30:23 33:23	7-20-2015 40:8	30:14 38:3,8	APPEARING
2015 1:18 3:6	79 12:3	39:9	2:3,7,11,15,19
38:6 42:8,17		agreement 40:5	appellate 4:10
20th 31:1 37:23	<u> </u> <u> </u>	al 2:11	apply 42:14
213 2:13	8	Alan 2:16 5:1	appoint 6:16
24 33:3,20,23	8 31:6	alike 31:7	7:25 30:2
26 12:21 21:6	82 33:24	allegation 19:17	32:11,12
36:3		allegations	appointed 7:25
27 12:21	<u> </u> <u> </u>	11:25	33:1
2700 2:21	9	allege 19:13	appointment 6:11
28 30:23	9 2:9	alleged 35:3	7:24 19:9,18,19
2-8 31:4	9:27 1:19		25:14 28:12
			32:22 36:22
	<u> </u> <u> </u>		
	A		
	a.m 1:19 41:24		
	able 14:6 16:4		

<p>approach 15:12</p> <p>appropriate 32:11,17 40:19</p> <p>approve 36:19 40:4</p> <p>approved 35:5</p> <p>approximately 38:8</p> <p>argue 21:12 24:3,7</p> <p>argued 7:16</p> <p>arguing 21:11,15</p> <p>aside 26:25 28:3 39:20 41:14</p> <p>assets 17:22,24</p> <p>assigned 5:7</p> <p>assistant 27:8</p> <p>attack 13:24 16:7</p> <p>attention 36:12</p> <p>attorney 6:16 30:3,4,5 32:8,12,25 42:10,11</p> <p>attorneys 3:18 9:18 11:11 14:16 30:3 31:25 36:23 39:8</p> <p>August 30:23 31:1,10</p> <p>authorized 35:10</p> <p>aware 32:3</p> <p>away 8:12 10:21</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>bad 25:16</p> <p>baggage 29:3</p> <p>Bang 27:10</p> <p>Beach 1:1 2:5,9,13,17 3:3,4,5</p> <p>Bear 31:8</p> <p>become 9:10</p> <p>beginning 29:6,7</p> <p>behalf 2:3,7,11,15,19 3:15 16:15 25:8 29:16 34:24</p>	<p>behind 9:14,15</p> <p>belief 9:13</p> <p>believe 6:2 7:7 8:10 9:1,2 11:22 15:13 16:25 28:18 32:6,16 37:18 38:7,8</p> <p>believes 17:3</p> <p>beneficiaries 6:14 7:21 19:2 25:24 32:19</p> <p>beneficiary 7:2,5,14,19,22 40:9</p> <p>Bernstein 1:5 2:15,24 3:9 5:10 6:7 7:1,24 9:3 10:25 11:3,5,17 12:25 13:2,3,8,9,14,1 7 14:14 15:5 16:17,19,20 17:6,7,18,20,22 ,23,25 18:4,5,6,7,12,2 0 19:16,20 20:2,6,8,11,12, 16,20 21:7,18,24 22:23,25 23:23 24:1,2,6,11,15, 19 25:7,9 28:18,22 29:5,12 30:5,8,10,14,16 ,21,23,24 32:8,17 34:8 35:3,4,6,8,11,1 9,23 36:5,9 37:1 39:11 40:8 41:15</p> <p>Bernstein's 7:19,20,22,23 13:10</p> <p>best 5:25</p> <p>bigger 14:3</p> <p>bit 6:8</p> <p>Blanc 37:8,10,15 39:21</p> <p>blurting 13:22</p> <p>Blvd 2:9 3:4</p> <p>Boca 2:21</p> <p>bogged 19:23</p>	<p>borne 37:22</p> <p>bottom 29:8</p> <p>Boynton 2:9</p> <p>branch 3:21,22 4:6</p> <p>BRIAN 2:4</p> <p>briefly 5:5 36:10</p> <p>bring 6:7 36:12</p> <p>brings 38:17</p> <p>brought 4:23</p> <p>builds 5:17</p> <p>business 16:8</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>capacity 34:11</p> <p>care 25:11</p> <p>career 41:16</p> <p>case 1:2 3:9 4:1,2,16,19,20, 25 5:13 6:8 8:23 9:9 10:5 13:2,4,6,10,18 14:2,3,5 15:4 17:2 18:12 19:4 22:24 23:20 24:3 29:9 30:17 31:14 33:15,18 35:12,20 36:1 37:3 38:9,11,14,16,2 1 41:15</p> <p>cases 5:6,8 14:17 15:22 23:4 28:15 35:14</p> <p>cause 3:2</p> <p>certainly 26:2 32:18 34:16,24 41:10</p> <p>CERTIFICATE 42:1</p> <p>certification 42:14</p> <p>certify 42:3,9</p> <p>changed 34:3</p> <p>chart 12:12</p> <p>chew 20:24</p> <p>chewing 16:2</p> <p>Chicago 37:21</p> <p>children 6:6,16</p>	<p>9:4 21:13 30:3,6,11 31:13 32:1,9,12,13,18 ,24 36:23</p> <p>CIKLIN 2:5</p> <p>CIRCUIT 1:1</p> <p>civil 26:18</p> <p>claim 5:21 18:21 26:12 36:25 37:2,5 40:3</p> <p>claimed 20:14</p> <p>claiming 21:9</p> <p>claims 24:17 40:20</p> <p>clarify 35:15 36:7</p> <p>clarifying 23:2</p> <p>clawback 40:20</p> <p>Clematis 2:13</p> <p>client 5:22</p> <p>clients 9:1 26:2</p> <p>closer 30:15</p> <p>closing 5:15</p> <p>Colin 4:4 5:23 8:3,7,25 10:4 12:6 15:16 18:10,23 19:11,20 22:5 27:15,19 28:3 31:2 33:4,14,22 34:16 35:5 36:3,11 38:25</p> <p>Colin's 6:9</p> <p>coming 3:17</p> <p>compel 31:12</p> <p>complaint 7:2 8:1 10:17 11:15,16,19 15:17 18:25 19:12 23:13</p> <p>complex 15:2</p> <p>complicated 24:12,14</p> <p>comprehensive 4:22</p> <p>computer 10:20 11:8 30:25 33:7 38:14 39:1</p> <p>concluded 41:24</p> <p>conference 4:19</p>
---	--	---	--

5:8 8:13 13:19 29:9 33:15 conflict 9:4 21:15 38:5 conflicted 21:12 confused 13:9 20:1,25 21:1 35:16,20,21 confusion 35:25 consider 5:14 consisting 42:5 constantly 19:24 construction 5:20 8:3 18:18,20 21:15 22:24 consummation 40:22 contemplated 40:12 contempt 24:23 context 19:15 control 6:9 42:16 conversation 24:25 copies 33:11 copy 10:17,24 12:18 31:18,22 correct 4:13 5:16 15:18 26:10 28:13,14 39:24 42:6 counsel 5:25 26:14 30:11 31:13 32:15,22 42:10,12 count 8:4,5,8,10 10:2 11:20,25 12:2,7 15:16 18:11,19,24 19:21 21:5 22:13 23:12 36:2 County 1:1 3:4,5 couple 8:21 court 1:1 3:8,11,12,13,23 4:7,18 5:3,12 6:10 7:11 9:19,25 10:6,10,13,20	11:2,4,7,16,19, 23 12:2,5,10,14,19 ,24 13:4,12,15,18 14:15,17 15:6,13,20,24 16:6,12,14,22 17:3,9 18:9,17 19:25 20:7,10,18,22 21:16,21 22:1,14,17 23:1,3,6,16,21, 25 24:4,8,13,16,21 25:11,17 26:1,6,9,24 27:3,14 28:17,20,25 29:2,7,20 30:7,9,12,15,19 ,24 31:5,15,16,21,2 4 32:5,20 33:11,14 34:19 35:1,7,9,18,21, 24 36:6,13,21 37:10,14,25 38:1,9,13,20,25 39:1,3,13,20,23 ,25 40:24 41:4,12,22 42:1 courteous 14:21,23 Courthouse 3:4 courtroom 6:9 13:21 24:24 25:18 Court's 7:9 CP003698XXX 10:8 crap 14:24 creditor 3:16 16:16 26:7,11,19 39:17 crossing 30:1 curator 9:18 cut 21:14 <hr/> D <hr/> date 1:18 27:9 Dated 42:17 day 3:6 23:20 24:10 25:3,6,15	27:9 38:4 42:17 days 23:24 26:16 38:3,8 39:9 DCA 4:7 deals 15:17 Deceased 1:6 decide 6:24 13:20 19:15 24:4 decided 22:16 deciding 13:19 declared 40:9 defaulted 13:6 defendant 37:13 defendants 12:25 deferred 8:25 definitely 34:25 demand 14:23 denied 28:23 deprives 19:19 description 31:16 determination 10:2 determine 7:3 8:2,5 17:4 18:19 determined 16:24 died 5:10,16 difference 24:24 different 17:21 18:14 23:22 27:17,19 28:1,2 38:13 differently 25:19 difficult 29:25 dinosaur 36:14 39:4 direct 19:5 42:16 directed 35:6,8 direction 42:16 directly 19:8 42:12 disaster 20:1 discharge 37:19	discuss 6:21 discussed 20:5 disinherited 7:5 dismiss 19:3 disregard 34:1 disrespectful 17:10 division 3:11,13 37:9 docket 10:11,18 11:8 12:20,21 21:6 28:21 33:3,6,19,23,24 35:1 36:3 document 7:18 10:1 12:3 20:14 24:20 25:25 38:1 documents 7:3,4,17 8:2,6 10:3 12:1 15:18 18:12,13 19:6,7,13 20:4 21:5 22:9 24:16 25:4 26:22 dollars 8:18 done 4:25 5:15 14:18 15:14 20:11 23:15,16 26:17 27:10 28:16 drafted 7:4 Drive 2:17 driving 9:13 due 38:5 <hr/> E <hr/> early 6:4 41:11 either 3:18 8:16 13:5 40:21 eliminate 35:24 Eliot 2:24 6:6 7:1 9:3 10:25 11:3,5 13:2,8,14,17 14:14 15:5 17:5,6,7,8,12 19:19 20:2,6,8,20 21:7,18,24 23:23 24:1,6,11,15,19 25:7 28:18,22
--	--	--	--

29:5,12 30:5,8,10,14,16 ,21 31:13 32:1,22 35:4,6,8,11,19, 23 36:5,9 39:11 else 3:13 4:3,15,24 8:8,9 9:24 16:12 17:14,15 19:22 22:3 24:8 26:22 28:5 34:2 employee 42:10,11 enforceable 19:14 enter 40:4 entered 11:13 12:11 15:15 33:22 entire 21:13 25:18 entirely 27:17 entries 33:24 entry 10:11,18 12:20,21 21:6 28:21 33:3,6,19,23 35:1 36:3 ESQ 2:4,8,12,16,20 establish 21:2 establishes 7:15 estate 1:5 3:16 5:15,19,20 10:2 16:16,18 17:19,25 18:4,12,14 20:4,11 21:5 22:8 25:4,10 26:8,11,12 30:23,24 31:25 32:24 34:8 37:1,12,22 38:19 40:5,15,21 estates 5:9,17 9:12,15 31:12 estate's 37:20 estimate 30:15 estimators 25:16 et 2:11 events 15:22	everybody 8:6 11:9 14:22 23:14 41:5 everybody's 23:9 everyone 13:5 18:25 34:12 everything 8:8,9 9:23 19:22 21:14 22:24 example 7:18 19:16 execute 19:18 executed 19:6 24:18 exercise 19:9 exercised 19:10 expect 27:18 experience 27:18 28:4 experiences 28:3 explain 16:5 25:1 34:7 explaining 24:21 extra 36:17 eye 14:11 <hr/> F <hr/> face 39:4 failed 22:2 fairly 6:4 fall 9:24 familiar 23:7,9 family 21:13 fax 36:11,13 Feaman 2:8 3:14,15 4:4,17 16:14,15,23 17:17 20:13 25:8 26:5 37:7,12,16 38:3,11,16 39:14,19,24 40:1,25 fees 8:18 9:18 30:10 FIFTEENTH 1:1 fifth 8:23 39:15 figure 9:19 14:6,8 22:4	26:24 30:13 37:10,14 39:23 figuring 13:23 file 6:14 8:4 18:24 19:11 26:16 29:17,18 30:9,12 36:19 filed 6:11,15 7:1 8:1,2,19 10:23 12:24 18:13 20:10 26:12,13 28:11,20 29:4,21,22,24 30:7,19 33:25 34:16,23,25 35:3,4,10 36:16 37:8,19 38:18 39:12 40:4,8 41:1 filing 10:12 30:16 filings 33:4 financially 42:12 finger 39:7 first 6:23 8:11,15 9:9,23 10:14 15:14,21 16:1,6,8,21 17:5 18:8 20:9 24:2 30:17 35:16 FITZGERALD 2:16 FL 2:5,9,13,17,21 Flagler 2:17 Florida 1:1 3:5 focus 31:8 FOGLIETTA 2:4 3:10 10:12,16,24 12:18 29:14 31:14,20 33:13 38:23 foolishly 33:21 foregoing 42:4 formal 28:11 forward 41:22 FPR 42:19 fraud 24:19 28:24	fraudulent 21:9 free-standing 41:2 front 14:17 27:21,22,23 fun 41:22 fund 40:16,19 funding 37:20 funds 40:19 <hr/> G <hr/> GAL 6:11 Gardens 3:5 general 37:9 getting 25:19 29:23 given 33:1 gotten 11:12 grandchildren 7:21,25 25:23 29:17 granted 4:12 41:8 great 27:14 33:17 34:2 ground 14:1,4 19:4 guardian 6:5,23 8:22,24 9:2,5 28:9,12 32:13,14 guardians 28:25 guy 14:9 27:4,16,18 28:1 guys 14:10 28:24 <hr/> H <hr/> Handing 33:10 handy 31:22 happen 9:23 15:4 34:3,18,20 happened 13:1 31:1 happens 9:9 20:1 41:20 haven't 11:12 14:6,11,12 having 4:24 15:25 28:4
---	---	---	---

31:25 33:17 head 31:7 hear 6:25 21:20,25 heard 8:15 12:7 14:23 16:1,21 18:8 30:18 41:10 hearing 5:5 16:9 21:10 29:19 32:5,7 35:9,16 37:24 38:2,7,18 39:10,13,16,18 41:13,24 hearings 6:22 41:23 held 24:22 he'll 39:23 help 13:22 34:5 helping 26:24 hereby 42:3 Here's 20:20 he's 7:1,4,5,13 16:16 21:10,11,14 25:12 26:12,17 27:17,22 28:1 hit 38:1 Honor 5:10 13:11 17:19 18:3 26:4 31:3 32:4 33:9 37:16,23 39:19 40:2 Honorable 1:10 3:3 42:7 hope 26:5 33:7 hoping 29:18 humble 18:3 hundreds 8:18	13:9,19,20 14:1,9,10,18,19 ,20 15:6,8,10 16:2 17:5 20:22 21:2,24 22:4 23:7,9 24:23 25:19 27:2,3,4,5 29:21 30:1,13 31:7 32:3 35:15,20,21 36:6,7,8,23 37:14 39:6,15 improperly 21:10 inclusive 42:6 incorporates 11:25 incorrect 26:8 indicated 9:3,11 indirectly 42:13 influenced 19:17 ins 23:8 inside 22:23 institute 34:14 intend 25:2,3 27:15 intended 22:7 intention 22:8 29:17 interest 26:3 interested 42:12 interesting 3:14 interpreted 34:13 interrupt 24:22,23 intervening 25:13 intimately 23:7 involved 17:12 34:11 37:5 involvement 25:9 IRA 40:9 isn't 4:1 24:13 30:18 issuance 32:23 issue 6:17 8:10,11,15 15:21,25 16:1,24 17:3,16	18:22 19:15 20:3 21:4 24:8,9 25:3 33:18 40:24 issued 22:5 issues 8:14 9:8,23 17:1,4 18:22 items 34:22 it's 3:25 4:2 6:17,18,23 8:6 10:5 11:20 15:9 16:19 17:14 18:5 19:4 22:15,21 24:11,16 26:18 29:17,23,24,25 32:11,16,21 33:15,16 34:2 37:4 41:2,11 I've 4:22 5:13 14:5,17 23:6 28:8 30:16 33:5 34:10 38:20 39:7	jumping 13:21 jurisdiction 19:1 37:9 <hr/> K <hr/> KENNETH 2:20 key 17:13,14,15 <hr/> L <hr/> lacked 8:19 language 20:16 late 3:17 later 14:7 LAW 2:12 lawsuit 26:16 lawyer 9:5 27:23,24 lawyers 20:13 leads 33:20 least 6:2 leave 27:6,7 legal 8:18 lengthy 4:22 letters 10:6 level 34:17 linchpin 16:25 lines 33:6 list 7:1 19:13 28:7 30:1 36:24 41:23 lists 6:18 litem 6:5,23 8:22,25 9:2 28:10,12 30:4 32:13,14 litigants 3:18 litigation 5:19 17:13 22:6 26:18 34:14 37:21 39:22 litigations 26:23 little 6:8 living 23:3,6 long 27:16 28:23 41:23 lot 8:11 41:18
<hr/> I <hr/> I'd 16:4 20:23 38:3 39:4 II 11:21 12:2 21:5 23:12 36:2 I'll 19:25 23:13,14 28:5 29:22 41:19 I'm 4:8,10 5:1,4 10:8,21 11:3,7,11,13	<hr/> J <hr/> John 1:10 2:12 3:3 25:22 42:7 JOIELLE 2:4 jotting 28:8 Joy's 29:13 JP 40:9 judge 3:10,23 4:4,10,16 5:23 6:9 8:3,7,25 10:4 12:6 15:16 18:10,23 19:11,20 22:5 25:22 26:20 27:16,19,21,22, 24,25 28:3 29:15 31:2 33:4,14,22 34:15 35:5 36:3,11 37:8 38:23 39:21 judges 28:2 judge's 4:9 judgment 26:19 judicial 1:1 9:20 27:8 Julie 42:3,19		

love 27:15	MOLLY 2:11	15:25	34:1,2,4,12
LUBITZ 2:5	money 32:21,23 33:2 40:11,14	16:4,10,13	ordered 18:23 19:11,20 35:12
<hr/> M <hr/>	Morgan 40:9	20:3,7 21:3	ordering 35:17
main 3:21 6:20	morning 5:1	26:13 27:12	orderly 13:23
manage 4:20	Morrissey 2:12 25:22 26:2,10	32:10 39:12	outs 23:8
manageable 9:10	27:2,13 29:16	41:8	overlap 18:22 19:5 25:13
management 4:19 13:18 29:9	Morrissey's 9:1	objects 41:9	<hr/> P <hr/>
33:15,16	motion	occasions 26:6	P.A 2:8,16
manifested 22:7	6:10,11,16,25	O'Connell 2:4,5	P.L 2:20
Marty 27:15	8:21,22 30:2,7	3:17 6:18 15:23	Page 2:16 11:24 12:23
matter 17:18	31:11,15,25	16:3,11	pages 42:5
18:2 34:9,15	32:21	20:10,12 25:12	paid 40:12
41:2	36:12,19,22	28:14 30:22	Palm 1:1 2:5,13,17
matters 5:22	37:19 39:17	31:3,11,23 32:3	3:3,4,5,19
may 15:12 16:14	40:4,7 41:8,9	33:9 34:5,21	paper 24:17 31:18,22
30:18,19 40:2	motions 5:24	38:18 39:2	papers 9:3
maybe 6:17 18:14	6:19 7:8 8:19	40:3,7,17,25	Paragraph 12:3,22
31:2	16:5 34:17,23	41:1,5,21	participation 37:21
mean 17:9 21:12	move 9:2 23:15 29:23	O'Connell's 6:25	particular 34:12
40:17	moved 19:3	October 10:23	parties 8:13 42:11
means 26:15	moving 31:7	11:14 22:22	party 20:17 25:12
42:15	MRACHEK 2:16	37:23 38:6	pay 30:10 31:12,25
mediation 7:7	multiple 22:12	39:18 42:17	pending 5:18,24 6:15 8:22 29:15
mentioned 5:10	mystified 15:8	octopus 14:5	30:2 36:22 37:8
7:13 25:7	<hr/> N <hr/>	office 38:7	people 13:21 14:23 15:10
mess 28:5	narrow 9:17	okay 13:17 14:15	41:17
messed 15:1	nervous 11:10	15:11 16:3,22	perhaps 31:16 33:21
met 14:5,11,12	nice 28:1 41:15	17:9 23:1,3,21	period 39:21
method 14:25	Nobody 19:3	24:15,25 26:1	permission 36:15,18,20
middle 35:13	nor 42:11	27:14 28:17	persistent 14:10
Military 2:21	Normally 23:19	29:20 31:5	person 14:8
million 9:14	north 3:20 4:5	36:9,13,21	personal 2:3 26:13,14 34:7
16:16	nothing 20:11	37:10 38:13	38:19
mind 10:19 21:3	notice 38:7,18 39:13	39:6 41:4	
22:3 29:24	noticed 5:7 7:11 13:6 18:25	old 31:6	
31:21	notices 27:9 41:12	one-count 7:2 8:1 19:12	
mine 35:23	<hr/> O <hr/>	ones 14:4 31:6 33:11	
minor 6:6 31:13	object 11:4	operating 20:15	
32:1	15:21 16:11	operative 7:18	
minute 22:17	objected 41:11	opinion 18:3,5	
minutes 23:7	objection 11:1	Oppenheimer 8:23	
misleading 26:6		order 4:5,9	
mistake 4:11,13		6:1,7,21 7:14	
21:1		11:13	
modest 9:15 27:4		12:10,15,17,21	
		15:15,22 16:8	
		18:10	
		22:6,9,19,20	
		23:16 24:24	
		31:2 32:2	
		33:3,5,6,7,16,1	
		7,19,22	

Peter 2:8 3:15 16:15	proceedings 1:10 3:2 22:12,18,23 42:4,7	regard 34:11 37:17 40:2	14:1 17:1,4,11
petition 12:20 21:6 30:17 35:2,10 36:2 40:24 41:3	program 33:7	regarding 37:1	respect 26:21,22
petitions 33:25 34:24	progress 29:8 33:18	reissued 31:6	respectfully 3:19
PGA 3:4	prohibits 33:4	related 20:17 40:7	response 12:24
PHILLIPS 1:10 3:3 42:8	prominent 20:13	relates 19:8 40:10	responsibility 37:20
pieces 5:18 24:17	properly 18:25 19:4 21:8	relative 42:9,11	rest 22:22 41:16
planning 5:4	property 9:16	relatively 9:12	retain 32:15
plate 9:20	pulled 29:14	relief 4:12 32:16	retract 34:4
pleading 11:13 29:11 37:2	purpose 8:13	remember 20:24 28:10	return 14:24 33:12
pleadings 11:12 12:16	pursuant 38:6,17	REMEMBERED 3:1	road 23:16
please 4:14 11:9 16:14 21:17 22:1	<hr/> Q <hr/>	removal 5:21 16:20	role 16:5
pled 36:1,2	question 4:8 15:5 18:13 20:19,23 21:17,19,21,22 22:2 25:17 29:4 33:20,21 34:22 40:13	remove 7:6 35:2,13	room 27:7,8
point 3:15 9:7 12:6 13:11 34:10	<hr/> R <hr/>	removed 28:24	Rose 2:16 5:1,4,16 6:13 7:17 9:22 10:5,8,18,23 11:15,18,22,24 12:4,9,12,15,22 13:5 15:12,19 18:16,18 22:11,15,21 23:2,5,19 25:12 28:15 32:6 36:10,15 41:7
POLLOCK 2:20	raise 13:11	re-notice 39:10,16	roughly 39:9
position 6:23 7:15 16:19 34:6	raises 3:14	report 4:21,24 6:3 7:12 9:12	rude 10:21
pour-over 17:24 18:1	randomly 3:25	reporter 42:1,16	ruling 31:24
power 7:24 19:9,10,18 25:13 32:14	Raton 2:21	represent 25:23 32:13	run 26:16
practice 29:22	RE 1:5	representative 2:3 26:14,15 34:8 38:19	runs 13:20
precludes 20:15	ready 15:23 25:19 41:13	represented 6:6	<hr/> S <hr/>
predates 12:17	really 39:2	representing 9:6	sale 36:19
pre-deceased 5:13	reason 16:7,23 23:11 25:5 40:10	represents 26:7	savvy 39:5
prepared 13:10	reassigned 3:25	reproduction 42:15	scanned 31:17
PRESENT 2:24	received 4:21	request 28:9,11 38:5	scheduled 39:14 41:17
pretty 27:25	record 41:7	requested 32:8	screen 11:8 38:14
probably 7:9 17:1	records 29:13 38:1	reserve 27:8	scrolled 39:7
problem 13:24,25 20:20 21:7	recusal 3:12 4:5	reset 38:5	scrolling 11:11 39:6
problems 33:17	recused 5:24	resolution 15:15	seat 4:14
proceed 27:15	recuses 3:24	resolve 7:7 8:11 13:24 15:3 22:8	seated 11:9 16:13 21:17 22:1
proceeding 14:25	reduced 26:19	resolved 4:25 8:9 9:11 15:21 16:1,9 17:16 25:5 29:23	second 28:7 31:8
	referred 11:20 39:22	resolving 8:19	
	referring 39:15		

38:20	17:19,20,23,25	spending 9:18	18:16 25:15
seeking 32:23	18:4,7,12	standing 7:6	28:1 31:23
seems 10:14	19:8,16 20:11	8:16,17,20	40:18 41:15
sell 9:16	22:25 30:23,24	17:12 18:22	
send 27:9	31:12 34:8 37:1	19:20 26:20	<hr/> T <hr/>
sending 36:17	40:8	Stansbury 2:7	tables 16:13
sent 38:7 39:14	Simon's 35:19	3:16 16:15,20	taking 7:8 29:21
separate 5:22	simple 19:12	18:6 25:8	talk 14:7 15:9
17:20 26:18	27:4	26:9,11,15	talking 10:16
37:7	simplify 15:2	36:25 37:6,18	15:6,7,10 41:16
separately 12:8	single 10:1	39:17	tech 39:5
36:4	sir 11:22 12:4	40:6,11,12,21	technically
September 1:18	14:12,14 15:19	Stansbury's 40:3	5:6,18
3:6 33:23 42:8	20:6	start 24:2	Ted 2:15 11:17
sequence 15:22	sit 15:9	started 4:1,2	16:20 18:6
served 41:5	sitting 27:20	21:22 35:12	20:12,15 21:8
serving 21:8	slows 29:8	starts 12:2	24:2 35:13
sets 37:2 39:16	small 9:12	State 3:5	Ted's 21:11
setting 16:8	smart 14:9	statement 11:6	ten 7:21 38:3,8
38:2 41:19	sole 7:19,22	status 4:21 5:7	39:9
settlement	somebody 3:12,24	6:3 7:12 8:13	terms 34:9
40:5,11,16,20,2	4:2,11,15	stay 22:5,24	Tescher 2:19
3	24:6,17 41:12	stayed 8:8 12:9	28:23
several 7:13	somebody's 29:24	19:21 22:18	testamentary
20:8 23:4,24	somehow 22:7	stays 22:22	15:18
severed 8:7 10:3	someone 6:12	step 4:18 36:17	Thank 21:17
12:6,9 19:22	26:12	stick 27:11	36:21 41:21
22:12 36:3	somewhere 22:10	stop 13:13,15	Thanks 33:14
severing 15:16	sooner 14:6	22:1	41:18
18:10	sorry 10:8 17:6	Street 2:13	that's 4:7,13
SHENDELL 2:20	27:2 31:3	striking 36:23	7:16 8:10,23
Shirley 5:19	sort 5:25 6:17	Stuart 35:2	9:13,22 14:1,2
7:22,23 13:3,10	39:10	stuff 8:12 10:10	15:4 16:1
17:17,21 18:20	sought 32:16	13:25 33:25	17:13,14,17
22:23 25:9	soul 7:20	34:19	18:1,2 19:17
31:12 36:5	source 40:19	stupid 14:18,19	20:4,22 23:2
38:23	south 3:19	subject 32:9	24:3,9 26:8,24
Shirley's 35:20	Spallina 2:19	35:18	27:5,10,16
shopping 3:24	28:24	subsequent 40:22	29:21 31:14
shorter 33:8	speak 5:2 9:6	successfully	32:16 33:21
sidetracked	25:14 40:17	21:13	34:9 35:14,17
19:25	special 37:24	successor 16:21	36:1,5 37:7,22
significant 18:2	specialty 13:25	18:7 34:7 35:3	38:13,16,23
silently 15:9	specifically 4:5	suggest 32:9	39:3 41:10
similar 6:17	12:22	suggesting 17:15	themselves 3:24
Simon 1:5 2:11	speed 4:23	Suite 2:9,17,21	7:17 8:14
3:8 5:9,20,21	spend 41:16	supposed 19:23	Theodore 35:2
7:18,20,24 13:9		25:20	therefore 26:20
16:17,18		sure 14:20,22	there's 4:12
			5:12,18 6:20
			14:4 15:25 16:7
			18:21 19:5
			23:11 24:16,19

<p>29:22 30:2 33:3 36:22 40:1,13</p> <p>they're 14:16 19:14 20:15 21:9</p> <p>thousands 8:18</p> <p>timely 39:12</p> <p>tiny 20:24</p> <p>title 29:10 33:5,8</p> <p>today 8:24 13:10 17:19 38:17</p> <p>today's 29:18</p> <p>tomorrow 38:4</p> <p>ton 34:23</p> <p>towards 29:23</p> <p>Trail 2:21</p> <p>transcript 42:4,6</p> <p>trial 13:7 16:8 20:3 23:12 25:2,5 27:1,9 41:19</p> <p>tried 28:25 36:4</p> <p>trifocals 31:5</p> <p>true 22:5 42:6</p> <p>trust 5:17,20 7:20,23 8:3 10:3 17:18,21,22,23 18:1,5,7,18,21 22:23 25:25 32:23 38:21,24</p> <p>trustee 16:21 17:3 18:7,14 20:12,16 21:8,9 24:3 35:3</p> <p>trustees 4:21 15:13</p> <p>trustee's 7:12 17:11</p> <p>trusts 5:21</p> <p>truthful 27:5</p> <p>try 6:7 14:21,22 19:23 23:17,20 34:5</p> <p>trying 9:16 11:8 19:15 21:2,4 22:4 30:13 31:7 35:25 37:14</p>	<p>39:4</p> <p>Tuesday 3:6</p> <hr/> <p>U</p> <hr/> <p>ultimately 25:24</p> <p>uncomfortable 15:1</p> <p>understand 3:20 4:6 15:3</p> <p>understanding 6:13</p> <p>unduly 19:17</p> <p>universe 34:9</p> <p>unless 41:12 42:15</p> <p>upon 19:3</p> <hr/> <p>V</p> <hr/> <p>valid 19:14 24:3,7</p> <p>validity 7:3 8:5 10:2 15:17 18:11,19 19:6,7,8 20:4 21:4,11 22:8 25:4 26:21</p> <p>various 26:23</p> <p>verifying 3:25</p> <p>view 22:15</p> <hr/> <p>W</p> <hr/> <p>weeks 7:9</p> <p>Welcome 35:21,23</p> <p>we'll 4:18 8:17 14:8 23:15 41:20</p> <p>we're 3:8 4:15 6:4,21 16:18 19:22 28:2 33:24 35:13,18,24 39:8</p> <p>West 2:5,13,17 3:19</p> <p>we've 5:7 9:16,17 41:14</p> <p>whatever 14:25 15:1 36:19</p> <p>Whereupon 41:24</p> <p>whether 6:4 17:5,12 19:16</p>	<p>23:13 40:14</p> <p>whole 5:5</p> <p>who's 24:7</p> <p>wife 5:12</p> <p>William 2:7 3:15 16:15 26:9,10 36:25 37:6 39:17</p> <p>wit 3:6</p> <p>work 41:19</p> <p>world 35:22</p> <p>wrestle 14:3</p> <p>wrestling 13:25</p> <p>write 27:6</p> <p>wrong 4:10</p> <hr/> <p>Y</p> <hr/> <p>yet 6:15 11:4,7,12 13:16 15:7 28:16 33:5</p> <p>you've 20:2 23:3</p>	
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APPENDIX 15

00001

1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 PROBATE/GUARDIANSHIP DIVISION IY
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
200 West Atlantic Avenue, Courtroom 8
Delray Beach, Florida 33344

Friday, September 13, 2013
1:30 p.m. - 2:15 p.m.

Stenographically Reported By:
JESSICA THIBAULT

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1 APPEARANCES

2
3 On Behalf of the Petitioner:
4 ELIOT IVAN BERNSTEIN, PRO SE
5 2753 NW 34th Street
6 Boca Raton, Florida 33434

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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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PROCEEDINGS
THE COURT: All right, we're here on the Shirley Bernstein estate, 2011CP000653. Counsel, make your appearances.
MR. MANCERI: Good afternoon, your Honor, Mark Manceri. I'm here on behalf of Robert Spallina and Donald Tescher, named respondents.
MR. ELIOT BERNSTEIN: Good afternoon, your Honor, my name is Eliot Bernstein, and I'm representing myself pro se.
MR. THEODORE BERNSTEIN: Your Honor, Ted Bernstein, trustee of the estate, and I'm here representing myself today.
THE COURT: Okay, thanks.
Let me just get the case up on the computer, please.
All right, so I set oral argument based upon Mr. Bernstein's emergency motions, and I did so with the cautionary language in the notice of hearing that I assume both of you have, that indicates that I first want to hear what makes this matter emergency as defined by our law, so, because you're pro se, Mr. Bernstein, I want to make sure you're aware

No one is representing as the Personal Representative, Manceri is representing them as estate counsel, their other role. No Personal Rep because when Si died no one notified the Court and a successor PR or Trustee elected.

Ted is not "trustee" of the estate as their was no papers approved by court because they never closed estate while he was alive.

In Re_ The Estate of Shirley Bernstein.txt
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.

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.

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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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

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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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?

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.

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

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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.

In Re_ The Estate of Shirley Bernstein.txt

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THE COURT: From today?
MR. ELIOT BERNSTEIN: From the 28th.
THE COURT: The 28th of August?
MR. ELIOT BERNSTEIN: Correct, sir.
THE COURT: All right. So you don't know
if they've been paid or not. You still have
your electric on?
MR. ELIOT BERNSTEIN: Yes.
THE COURT: Are any services shut off?
MR. ELIOT BERNSTEIN: No.
MR. ROTHMAN: Maybe like things like lawn
and stuff, the lawn guys have been coming, said
we owe them money, which we've never heard that
from this guy knocking on the door.
THE COURT: All right. Is the lawn an
emergency situation?

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MR. ELIOT BERNSTEIN: No. You just asked
if any bills --
THE COURT: These are not emergencies
then.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: Remember, you filed a motion
that stopped the courthouse from working.
MR. ELIOT BERNSTEIN: I'm very sorry.
THE COURT: We thought you were ready to
die on the day you filed the motion.
MR. ELIOT BERNSTEIN: I'm very sorry.
THE COURT: Okay.
MR. ELIOT BERNSTEIN: I believed it was an
emergency. The minor children are in there.
THE COURT: Let me ask, how old are you?
MR. ELIOT BERNSTEIN: I'm 50.
THE COURT: Can you pay an electric bill?
MR. ELIOT BERNSTEIN: No.
THE COURT: Why not?
MR. ELIOT BERNSTEIN: I don't have any
employment.
THE COURT: Why not? If there's an
emergency and you're not eating and you have
children --
MR. ELIOT BERNSTEIN: It's very

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complicated, but --
THE COURT: Well, could you work to pay
your electric bill? If that made a difference?

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 --

In Re_ The Estate of Shirley Bernstein.txt
THE COURT: They don't even know that

25

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00020

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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00021

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 --

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.

♀

00022

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

♀

00024

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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00025

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.

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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00026

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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00027

In Re_ The Estate of Shirley Bernstein.txt
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

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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

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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?

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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

In Re_ The Estate of Shirley Bernstein.txt
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

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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.

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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.

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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

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alive.
MR. MANCERI: Understood, Judge.
THE COURT: Not alive. So, well -- we're
going to come back to the notary problem in a
second.
MR. MANCERI: Okay.
THE COURT: In the meantime, based upon
all that I discharge the estate, it's closed.
Here's what I don't understand on your
side, you're representing yourself, but the
rules still apply. You then file, Eliot
Bernstein, emergency petitions in this closed
estate, it's closed.
MR. ELIOT BERNSTEIN: You reopened it.
THE COURT: When did I reopen it?
MR. MANCERI: No, it hasn't been reopened,
your Honor.
THE COURT: There's an order that I
entered in May of 2013 denying an emergency
petition to freeze assets. You filed this one
in May. Do you remember doing that?
MR. ELIOT BERNSTEIN: I believe so.
THE COURT: And what you said was there's
an emergency in May, you want to freeze the
estate assets appointing you PR, investigate

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the fraud documents, and do a whole host of
other things, and the estate had been closed.
The reason why it was denied among other

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

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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

In Re_ The Estate of Shirley Bernstein.txt
she ran up a \$10,000 bill.

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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 misled 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.

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 --

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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,

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okay. So I'll let you answer it.
MR. MANCERI: If I can, your Honor.
THE COURT: Go ahead.
MR. MANCERI: The ten grandchildren shares
-- and I want to be clear on this, this
gentleman is only a tangible personal property
beneficiary. He and his own proper person.
And the mother. That's all he's entitled to.
No cash request, nothing directly to him,
because of his financial problems among other
issues.
THE COURT: Okay.
MR. MANCERI: He has been asked to

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establish accounts for the benefit of his
children and he refused to do it.
THE COURT: I'm not interested in that,
here's what I'm interested in.
MR. MANCERI: All right.
THE COURT: So before this latest realm of
pleadings were filed, both parents are
deceased?
MR. MANCERI: Yes.
THE COURT: They both have trusts?
MR. MANCERI: Right.
THE COURT: Simon's trusts are for the
benefit of the grandchildren?
MR. MANCERI: Correct.
THE COURT: And Shirley's trust is for the
benefit of who?
MR. MANCERI: The grandchildren now
because Simon died.
THE COURT: So children-level, Eliot, Ted
were skipped over as beneficiaries?
MR. MANCERI: That's correct, your Honor.
THE COURT: Now, tell me the best you can
the way Eliot described that there was some
deal that had been in effect with Shirley and
Simon while they were alive that kept on going

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after Shirley died to help support his
children.
MR. MANCERI: That I can't comment on
personally, your Honor, because I never met
either one of them.
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 Reality. 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

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

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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

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

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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.

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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

In Re_ The Estate of Shirley Bernstein.txt
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?

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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

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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.

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THE COURT: Total or each?
MR. SPALLINA: Each.
THE COURT: Three of Eliot's --
MR. SPALLINA: Are not open. And we've
asked multiple --
THE COURT: And he executed documents to
open \$240,000 immediately or very quickly go
into those accounts?
MR. SPALLINA: Yes, sir.
THE COURT: Go ahead.
MR. SPALLINA: Now, there was a question
from our client as trustee of his mother's
trust because he has apprehension as do the
other siblings as to whether or not
Mr. Bernstein is the proper trustee for that
trust.

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THE COURT: Okay, all right.
MR. SPALLINA: We had discussions about
possibly making emergency distributions to pay
the expenses, but not necessarily --
THE COURT: Not giving the money directly
to him.
MR. SPALLINA: Not necessarily put in all
\$80,000 in all three of those trusts.
THE COURT: Does the trust pay expenses
directly or give money to the parent who pays
the expenses? Do you pay the electric bill or
do you give money to Eliot to pay the electric
bill?
MR. SPALLINA: Today?
THE COURT: Now, how does that work with
the others kids?
MR. SPALLINA: They were just funded, but
normally the trustee of the trust would pay for
expenses on behalf of the beneficiary if
they're minor children. Some of the children
here are adults. So to the extent they're
adults they would make distribution.
THE COURT: So what's the resolution of
the notary problem? Has that been resolved?
MR. SPALLINA: I can speak to it.

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MR. MANCERI: Please, Robert, go ahead.
The Judge is addressing you, be my guest.
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

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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

In Re_ The Estate of Shirley Bernstein.txt
file, I have that.

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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.

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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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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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

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

In Re_ The Estate of Shirley Bernstein.txt
10 parents have. The children don't even know.
11 They're not even represented.

12 THE COURT: Well, the parents 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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1 think you need to reflect upon some of your
2 decisions.

3 MR. MANCERI: Your Honor --

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THE COURT: What?
MR. MANCERI: I'm not saying we're going to do this, Judge, but this sounds like this may need an ad litem for these kids.
THE COURT: Well, I don't know, let's not add fuel to the fire.
MR. MANCERI: Because I'm troubled by what he's saying.
THE COURT: All right, so --
MR. ELIOT BERNSTEIN: Here's why I have not taken that money.
THE COURT: Why?
MR. ELIOT BERNSTEIN: Because if you told me, your Honor, that you just murdered him, and here's \$20 from his pocket to feed your kids from the crime --
THE COURT: If they were starving I would take the \$20.
MR. ELIOT BERNSTEIN: On that advice, I'll take the money.
THE COURT: If they were starving --
MR. ELIOT BERNSTEIN: On that advice --

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THE COURT: Your kids are starving. I'm not giving you advice.
MR. ELIOT BERNSTEIN: On that advice, I will --
THE COURT: The \$20 didn't murder anybody, did it? Did the \$20-bill murder someone?
MR. ELIOT BERNSTEIN: It's stealing money from people.
THE COURT: They're not -- this isn't stolen money. This is your parents' money.
MR. ELIOT BERNSTEIN: If I take that money and put it in my kids' accounts, it's actually taking money from what we believe are the true and proper beneficiaries --
THE COURT: Which is you.
MR. ELIOT BERNSTEIN: No, through -- one of, through --
THE COURT: So meanwhile if your kids are starving and you don't take the money, all I could say to you, there's obviously -- if you look at the documents I mean you're not going to confess to killing Kennedy as part of receiving the money, but if they want to give 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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00068

1 you want to wait years --

2 MR. ELIOT BERNSTEIN: That's not why I
3 want to dispute it.

4 THE COURT: You think that there's some --

5 MR. ELIOT BERNSTEIN: I think that it's
6 part of a fraud that forged documents were used
7 to --

8 THE COURT: But it's still your parents
9 money --

10 MR. ELIOT BERNSTEIN: -- convert estate
11 assets to the wrong beneficiary.

12 THE COURT: But they want to now get it to
13 you.

14 MR. ELIOT BERNSTEIN: No, not me.

15 THE COURT: To your children.

16 MR. ELIOT BERNSTEIN: Listen, I'll take
17 the money without explanation on it. I agree.
18 Listen, the only reason I didn't want to take
19 the money was so I wouldn't be part of a fraud.

20 THE COURT: You're not, obviously no one
21 is accusing you of fraud. If they give you
22 money to care for --

23 MR. ELIOT BERNSTEIN: But then I could
24 accuse them of fraud if I'm participating.

25 THE COURT: I mean all you're doing is

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1 signing a receipt. You don't know where the
2 money came from. You're not signing off --
3 you're not saying that you make a declaration
4 that the money came from them, the other side
5 to you in only legal means. You're just
6 signing a receipt.

7 MR. MANCERI: But he is signing off on
8 that he's going to honor the terms of the
9 trust. If he is signing off to that --

10 THE COURT: If it comes to you as trustee
11 for your children, you are -- you have a duty
12 to only use it for the children, not yourself.
13 Not you. You still have to work for you. Now,
14 you don't have to work for your children,
15 maybe. You still have to support yourself.

16 MR. ELIOT BERNSTEIN: Yeah.

17 THE COURT: The money has to get spent on
18 your children if that's how you get it.

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.

♀

00071

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.

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THE COURT: Okay, clear it with him and see if you could actually get something that makes sense. It's really narrow.

MR. MANCERI: It's very narrow. We've got the transcript, Judge.

THE COURT: It's only really that there's no emergency here. Everything everyone raises on the 28th.

MR. MANCERI: Very good, Judge. Do you think we can do it in an hour, Judge?

THE COURT: We'll try.

MR. MANCERI: Okay.

MR. ELIOT BERNSTEIN: I'm sorry, your

♀

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.)

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00073

1 CERTIFICATE OF REPORTER

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3 STATE OF FLORIDA)

4 COUNTY OF PALM BEACH)

5

6 I, Jessica Thibault, a Court Reporter,

7 certify that I was authorized to and did
8 stenographically report the proceedings in the
9 above-styled cause before the Honorable Martin H.
10 Colin, pages 1 through 72; and that the transcript
11 is a true record of my stenographic notes.
12

13 I further certify that I am not a
14 relative, employee, attorney, or counsel of any of
15 the parties, nor am I a relative or employee of any
16 of the parties' attorneys or counsel connected with
17 the action, nor am I financially interested in the
18 action.
19

20 Dated this 17th day of September, 2013.
21

22 _____
23 Jessica Thibault
24 Court Reporter
25

♀

APPENDIX 16

Tescher & Spallina Production all 7202 Pages Bates Stamped Production Documents of Tescher and Spallina upon Resignation for admitted fraud on beneficiaries and fraud on court, all pages included in entirety by reference herein

@

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140602%20PRODUCTION%20OF%20DOCUMENTS%20SIMON%20ESTATE%20BY%20COURT%20ORDER%20TO%20BEN%20BROWN%20CURATOR%20DELIVERED%20BY%20TESCHER%20AND%20SPALLINA.pdf>

APPENDIX 17

LIMITED LIABILITY COMPANY

OPERATING AGREEMENT

of

BERNSTEIN FAMILY REALTY, LLC

a Florida limited liability company

**OPERATING AGREEMENT OF
BERNSTEIN FAMILY REALTY, LLC**

This Limited Liability Company Agreement (the "Agreement") is made and entered into as of the ____ day of June, 2008, by and among BERNSTEIN FAMILY REALTY, LLC, a Florida limited liability company (the "Company"); STANFORD TRUST COMPANY, Trustee of the DANIEL BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006, STANFORD TRUST COMPANY, Trustee of the JAKE BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006, and STANFORD TRUST COMPANY, Trustee of the JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006, and any subsequent transferee as the Members ("Members"). The Members are herein sometimes referred to individually as a "Member" and collectively as "Members.

WITNESSETH:

WHEREAS, Articles of Organization for **BERNSTEIN FAMILY REALTY, LLC** (the "Company") were filed with the Florida Department of State on June 2, 2008.

WHEREAS, the Members desire to reduce their agreements to writing, to set forth the rights and obligations of the Members and the Manager.

NOW, THEREFORE, the Members and the Company hereby agree as follows:

ARTICLE I

DEFINITIONS

The following terms used in this Agreement shall have the following meanings:

(a) "**Act**" shall mean the Florida Limited Liability Company Act at F.S § 608.401, *et seq* and all amendments to the Act.

(b) "**Articles of Organization**" shall mean the Articles of Organization of **BERNSTEIN FAMILY REALTY, LLC**, as filed with the Department of State of Florida on June 2, 2008, and as may be amended from time to time.

(c) "**Capital Contribution**" shall mean any contribution to the capital of the Company in cash or the fair market value of property by a Member whenever made, net of any liabilities secured by such contributed property.

(d) "**Capital Account**" as of any given date shall mean the Capital Contribution to the Company by a Member as adjusted up to such date pursuant to Article VIII.

(e) "**Code**" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(f) “**Company**” shall refer to **BERNSTEIN FAMILY REALTY, LLC**, a limited liability company formed under the laws of the State of Florida.

(g) “**Distributable Cash**” shall mean all cash, revenues and funds received by the Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred in the normal operation of the Company’s business; and (iii) such Reserves as the Managers deem reasonably necessary for the proper operation of the Company’s business.

(h) “**Entity**” shall mean any general partnership, limited liability partnership, limited partnership, limited liability limited partnerships, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization.

(i) “**Gifting Member**” shall mean any Member who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of its Membership Interest.

(j) “**Initial Capital Contribution**” shall mean the initial contribution to the capital of the Company pursuant to this Agreement.

(k) “**Interest**” shall mean “Percentage Interest” unless otherwise specifically agreed or in the case of special allocations.

(l) “**Majority Interest**” shall mean the Interests of Members, which in the aggregate exceed 50% of all Interests.

(m) “**Manager**” shall mean one or more managers designated as such pursuant to this Agreement or by subsequent vote of the Members. References to the Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be. Any Person may be named a Manager pursuant to this Agreement

(n) “**Member**” shall mean each of the parties who executes a counterpart of this Agreement as a Member and each of the parties who may hereafter become Members. To the extent a Manager has purchased a Membership Interest in the Company, he will have all the rights of a Member with respect to such Membership Interest, and the term “Member” as used herein shall include a Manager to the extent he has purchased such Membership Interest in the Company. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Transferee Interest, such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Membership Interest or Transferee Interest, as the case may be.

(o) “**Membership Interest**” shall mean a Member’s entire interest in the Company including such Member’s Transferee Interest and, the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Agreement and the Act.

(p) “*Net Income*” and “*Net Losses*” shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with sound accounting principles employed under the cash method of accounting at the close of each fiscal year on the Company’s tax return filed for federal income tax purposes.

(q) “*Operating Agreement*” (or “*Agreement*”) shall mean this Operating Agreement of **BERNSTEIN FAMILY REALTY, LLC**, as originally executed and as amended from time to time.

(r) “*Percentage Interest*” shall mean, for any Member, the percentage interest that the Capital Account of the Member bears to the total Capital Accounts of all of the Members of the Company, as set forth at Section 9.1 herein, and Exhibit A, as may be changed from time to time by the unanimous vote of the Members.

(s) “*Person*” shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such “Person” where the context so permits.

(t) “*Reserves*” shall mean funds set aside or amounts allocated to reserves which shall be maintained in amounts reasonably deemed sufficient by the Managers for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company’s business.

(u) “*Selling Member*” shall mean any Member or Transferee which sells, assigns, pledges, hypothecates or otherwise transfers for consideration all or any portion of its Membership Interest or Transferee Interest.

(v) “*Transferee*” shall be person who has not been admitted by the Company as a Member Partner, but, by virtue of a Transfer of an Interest in the Company to said person, said person is entitled to a pro rata share of one or more of the Company’s items of income, losses, credits, and distributions of the Company’s assets pursuant to this Agreement and the Act, but said person shall not have, and is not entitled to any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members or Manager.

(w) “*Transferring Member*” shall collectively mean a Selling Member and a Gifting Member.

(x) “*Treasury Regulations*” shall include proposed, temporary and final regulations promulgated under the Code.

ARTICLE II

FORMATION OF COMPANY

2.1 *Organization.*

BERNSTEIN FAMILY REALTY, LLC, has been organized as a Florida limited liability company by executing and delivering the Articles of Organization to the Florida Department of State in accordance with and pursuant to the Act.

2.2 Name.

The name of the Company is **BERNSTEIN FAMILY REALTY, LLC**, and all business of the Company shall be conducted under that name unless a majority of the Members agree to the filing and use of a fictitious name.

2.3 Principal Place of Business.

The initial principal place of business of the Company shall be 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, Florida 33431. The Company may locate its places of business and registered office at any other place or places as the Manager may deem advisable.

2.4 Registered Office and Registered Agent.

The Company's initial registered office shall be at the office of its registered agent in Florida, and the name of its initial registered agent shall be Donald R. Tescher, 2101 Corporate Blvd., Suite 107, Boca Raton, Florida, 33431. The registered office and registered agent may be changed by filing the address of the new registered office and/or the name of the new registered agent with the Florida Department of State pursuant to the Act.

2.5 Term.

The term of the Company has filed Articles of Organization with the Florida Department of State, and shall have perpetual existence, unless the Company is earlier dissolved in accordance with either the provisions of this Agreement or the Act.

ARTICLE III

BUSINESS OF COMPANY

The business of the Company shall be to engage in management of investments, and closely-held business or real estate ventures, and such lawful activities as are reasonably necessary or useful to the furtherance of the forgoing purpose (the "Business").

ARTICLE IV

NAMES AND ADDRESSES OF MEMBERS

The names and addresses of the Members are listed on Exhibit A attached hereto and incorporated herein, as amended from time to time.

ARTICLE V

RIGHTS AND DUTIES OF MANAGERS

5.1 Management.

5.1.1 General. The business and affairs of the Company shall be managed by its Managers. The Managers shall direct, manage, and control the business of the Company. Except for situations in which the approval of the Members is expressly required by this Agreement or by nonwaivable provisions of the Act, the Managers shall have exclusive, sole, full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business. At any time when there is more than one Manager, any one Manager may take any action permitted to be taken by the Managers, unless the approval of more than one of the Managers is expressly required pursuant to this Agreement or the Act. The Managers may create a Board of Directors, and may also appoint individuals with or without titles, including the titles of General Manager, Executive Director, President, Vice President, Treasurer, Secretary, and Assistant Secretary, to act on behalf of the Company with such power and authority as the Managers or Board of Directors may delegate to any such Person.

5.1.2 Initial Managers/Designation of Managers/Voting. The Members agree that the initial Manager of the Company is SIMON BERNSTEIN. Unless otherwise specifically agreed herein, business decisions of the Company shall be made by said Manager. The Members shall vote their Interests such that only the aforementioned person is Manager of the Company for so long as he is alive and not mentally disabled or incompetent. After proper notice, in the event of death or mental disability or incompetence of the Manager, the Members shall vote on and elect a new Manager.

5.2 Certain Powers of Managers.

Without limiting the generality of Section 5.01, the Manager (or, if more than one Manager, then the Managers) shall have power and authority, on behalf of the Company to do the following:

- (a) To acquire or lease property from any Person as the Managers may determine, whether or not such Person is directly or indirectly affiliated or connected with any Manager or Member;
- (b) To borrow money for the Company from banks, other lending institutions, the Managers, Members, or affiliates of the Managers or Members on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Managers, or to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Managers;
- (c) To purchase liability and other insurance to protect the Company's property and business;
- (d) To hold and own Company real and personal properties in the name of the Company;
- (e) To invest Company funds in time deposits, short-term governmental obligations, commercial paper or other investments;

(f) To sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan as long as such disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound;

(g) To execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments, bills of sale; leases; and any other instruments or documents necessary to the business of the Company;

(h) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company;

(i) To enter into any and all other agreements on behalf of the Company, in such forms as the Managers may approve; and

(j) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by this Agreement or by the Manager of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the previous sentence.

5.3 *Liability for Certain Acts.*

Each Manager shall perform his duties as Manager in good faith, in a manner he or she reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, unlawful acts, or a wrongful taking by the Manager.

5.4 *No Exclusive Duty to Company.*

A Member or Manager shall not be required to manage the Company as his or her sole and exclusive function and may have other business interests and engage in activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of a Manager or to the income or proceeds derived therefrom.

5.5 *Bank Accounts.*

The Manager may from time to time open bank accounts in, the name of the Company, and the Manager shall be the sole signatory thereon, unless Members owning a Majority Interest determine otherwise.

5.6 Indemnity of the Managers, Employees and Other Agents.

The Company shall, to the maximum extent permitted under the Act, indemnify and make advances for expenses to Managers, its employees, and other agents.

5.7 Resignation.

Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later date specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

5.8 Removal.

A Manager shall not be subject to removal by vote of the Members except, if at all, pursuant to the provisions of this Agreement, as it may be amended by agreement of all of the Members.

5.9 Vacancies.

To the extent not expressly provided for in Section 5.1.2 "Voting Agreement of Members," and only to said extent, if any: Any vacancy occurring for any reason in the number of Managers of the Company may be filled by the affirmative vote of Members holding a majority of the Percentage Interests present at an election at a meeting of Members called for that purpose or by the Members' unanimous written consent. A Manager elected to fill a vacancy shall be elected for the unexpired term of their predecessor in office and shall hold office until the expiration of such term and until their successor shall be elected and qualified or until the Manager's earlier death, resignation or removal. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until his successor shall be elected and qualified, or until his earlier death, resignation or removal.

5.10 Salaries.

Each Manager shall receive annual compensation (the "Management Fee") if such compensation is agreed to by a majority of the Percentage Interest of the Members in writing, and shall be entitled to reimbursement of reasonable and necessary expenses advanced on behalf of the Company.

ARTICLE VI

RIGHTS AND OBLIGATIONS OF MEMBERS

6.1 Limitation of Liability.

Each Member's liability to the Company shall be limited as set forth in this Agreement, the Act and other applicable law.

6.2 **Company Liability.** A Member will not be personally liable for any debts, obligations, liabilities or losses of the Company, whether arising in contract, tort, or otherwise, solely by reason of being a Member, beyond his respective Capital Contributions or any obligation of the Member under Sections 8.1 and 8.2 hereunder, except as provided in Section 6.7 or as otherwise required by law.

6.3 **List of Members.**

Upon the written request of any Member, the Managers shall provide a list showing all of the names, addresses and Membership Interests and Transferee Interests in the Company.

6.4 **Approval of Sale of All Assets.** The Managers shall have the right, to approve the sale, exchange or other disposition of all, or substantially all, of the Company's assets which is to occur as part of a single transaction or plan.

6.5 **Company Books.**

The Managers shall maintain and preserve, during the term of the Company, the accounts, books, and other relevant Company documents described in Section 9.9. Upon reasonable written request, each Member and Transferee shall have the right, at any time during ordinary business hours, as reasonably determined by the Manager, to inspect and copy, at the requesting Member's or Transferee's expense, the Company documents required to be maintained under Section 608.4101 of the Act, and such other documents which the Managers, in their reasonable discretion, deem appropriate.

6.6 **Priority and Return of Capital.**

Except as may be expressly provided in Article IX, no Member or Transferee shall have priority over any other Member or Transferee, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans which a Member has made to the Company.

6.7 **Liability of a Member to the Company.**

A Member who receives a distribution or return in whole or in part of its contribution is liable to the Company only to the extent provided by the Act.

ARTICLE VII

MEETINGS OF MANAGERS AND MEMBERS

7.1 **Meetings.**

Meetings of the Managers, for any purpose or purposes, may be called by any Manager. Meetings of the Members for any purpose or purposes, may be called by any Members holding at least 51% of the Percentage Interests of the Members.

7.2 **Place of Meetings.**

The Managers may designate any location within the U.S., either within or outside the State of Florida, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal place of business of the Company.

7.3 Notice of Meetings.

Except as provided in Section 7.04, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or Member or Members calling the meeting, to each Member or Manager entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, certified mail return receipt requested, addressed to the Member or to the Manager at its address as it appears on the books of the Company, with postage therein prepaid. Notice may also be given by telegram, teletype or facsimile, or other form of electronic communication. Managers and Members may participate in and hold meetings whereby all conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other. Participation by communications equipment shall constitute presence at the meeting, unless a Member or Manager is participating in the meeting for the express purpose of objecting to the transaction of any business on the ground the meeting is not lawfully called or convened.

7.4 Meeting of All Members and Meetings of All Managers. If all of the Members or all of the Managers shall meet at any time and place, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

7.5 Record Date.

For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declared such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

7.6 Quorum.

Members holding at least fifty percent (50%) of all Percentage Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members, and if there is more than one Manager then serving, then a majority of the number of the then-serving Managers shall constitute a quorum at a meeting of the Managers, who shall be represented in person, and shall constitute a quorum at any meeting.

7.7 Manner of Acting.

If a quorum is present, the affirmative vote of a majority of all of the Members represented at the meeting, who must hold a majority Percentage Interest in the Company, shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, or by this Agreement. Unless otherwise expressly provided herein or required under applicable law, only Members who have a Membership Interest may vote or consent upon any matter and their vote or consent, as the case may be, shall be counted in the determination of whether the matter was approved by the Members.

7.8 Proxies.

At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managers of the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Managers shall not be able to vote by Proxies.

7.9 Action by Members Without a Meeting.

Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Managers of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date.

7.10 Waiver of Notice.

When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

ARTICLE VIII

CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS

8.1 Members' Initial Capital Contributions.

Each Member shall contribute such amount as is set forth on the books and records of the Company. No interest shall accrue on any Capital Contribution and the Member shall not have the right to withdraw or be repaid any Capital Contribution except as provided in this Agreement.

8.2 Additional Contributions.

A Member may, but shall not be obligated to, make such additional Capital Contributions as shall be determined by the Managers. Such additional Capital Contributions shall be reflected in the Account of the Contributing Member and shall not be a part of any other Member's Capital Account absent written agreement of the Members. After the making of any such determination, the Managers

shall give written notice to each Member of the amount of required additional contribution, if any, and each Member may deliver to the Company its pro rata share thereof (in proportion to the *respective* Percentage Interest of the Member on the date such notice is given) no later than thirty (30) days following the date such notice is given. None of the terms, covenants, obligations or rights contained in this Section 8.2 is or shall be deemed to be for the benefit of any person or entity other than the Members and the Company, and no such third person shall under any circumstances have any right to compel any actions or payments by the Managers and/or the Members.

8.3 *Capital Accounts.*

(a) A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (1) the amount of money contributed by such Member to the Company; (2) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of Net Profits and Net Losses; and (4) allocations to such Member of income described in Code Section 705(a)(1)(B). Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the Company; (2) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of expenditures described in Code Section 705(a)(2)(B); and (4) allocations to the account of such Member of Company loss and deduction as set forth in such Regulations, taking into account adjustments to reflect book value.

(b) In the event of a permitted sale or exchange of a Membership Interest or a Transferee Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the Transferee to the extent it relates to the transferred Membership Interest or Transferee Interest in accordance with Section 1.704-1(b) (2) (iv) of the Treasury Regulations.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 8.3 is intended to comply with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder. If the Company determines that the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 8.3 should be modified in order to comply with Code Section 704(b) and the Treasury Regulations, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 8.3, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members as set forth in this Agreement.

(d) Except as otherwise required in the Act (and subject to Sections 8.1 and 8.2), no Member or Transferee shall have any liability to restore all or any portion of a deficit balance in such Member's or Transferee's Capital Account.

8.4 *Withdrawal or Reduction of Members' Contributions to Capital.*

(a) A Member or Transferee Interest Holder shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of the Company, except liabilities to

Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them.

(b) A Member or Transferee Interest Holder, irrespective of the nature of its Capital Contribution, has only the right to demand and receive cash in return for its Capital Contribution.

(c) Notwithstanding anything to the contrary in this Agreement, a Member may withdraw from the Company only at the time or upon the occurrence of an event specified in this Agreement or in the Articles of Organization. No such event is specified in either the Articles of Organization or in this Agreement at the date hereof. A Member which violates the withdrawal prohibition in this Section shall be liable for breach of this Agreement and shall become a Transferee. A withdrawing Member shall not have a right to receive the fair value of receive the withdrawing member's Interest in the Company as of the date of the resignation but rather, shall have only such rights as a Transferee would have to receive distributions as are made by the Company in the discretion of the Managers.

ARTICLE IX

ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS

9.1 *Allocations of Income and Losses from Operations.*

The Net Income and Net Losses of the Company for each fiscal year, and each Member or Transferee's share of Cash Flow, will be allocated in accordance with the Percentage Interests schedule set forth in Exhibit A attached hereto, and, except as provided therein, the Percentage Interests of Members shall be proportionate to the amount of their Capital Accounts as determined hereinabove.

9.2 *Special Tax Provisions As to Extraordinary Allocations, if Any, to Capital*

Allocations of Net Income and Net Losses other than those set forth above shall be made based upon the determinations of the tax accountants and attorneys employed by the Company, giving regard to the intention expressed hereinabove and otherwise herein, with respect to special or priority allocations if any, and with regard to federal partnership tax and capital accounting principles described in Section 8.3 hereinabove.

9.3 *Distributions.*

Within the discretion of the Managers as to amounts, if any, and as to timing, the Managers may distribute Cash Flow to the Members, in accordance with their Percentage Interests .

9.4 *Limitation upon Distributions.*

(a) No distributions or return of contributions shall be made and paid if, after the distribution or return of distribution is made either

- (1) the Company would be insolvent; or

(2) the net assets of the Company would be less than zero.

(b) The Managers may base a determination that a distribution or return of contribution may be made under Section 9.4(a) in good faith reliance upon a balance sheet and profit and loss statement of the Company represented to be correct by the person having charge of its books of account or certified by an independent public or certified public accountant or firm of accountants to fairly reflect the financial condition of the Company.

9.5 Tax Accounting Principles.

The income and losses of the Company shall be determined in accordance with sound tax accounting principles applied on a consistent basis using generally accepted tax accounting principles as applied consistent with the Code.

9.6 Interest on and Return of Capital Contributions.

No Member shall be entitled to interest on its Capital Contribution or to a return of its Capital Contribution, except as otherwise provided in this Agreement.

9.7 Loans to Company.

Nothing in this Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company, provided that such loans are arms-length transactions, containing terms customary in the lending industry at the time such loans were made.

9.8 Accounting Period.

The Company's accounting period shall be the calendar year ("Fiscal Year").

9.9 Records, Audits and Reports.

At the expense of the Company, the Managers shall maintain records and accounts of the operations and expenditures of the Company. At a minimum, the Company shall keep at its principal place of business the following records:

(a) A current list of the full name and last known address of each Member and Transferee setting forth the amount of cash each Member and Transferee has contributed, a description and statement of the agreed value of the other property or services, each Member and Transferee has contributed or has agreed to contribute in the future, and the date on which each became a Member or Transferee, and their respective Percentage Interest in the Company;

(b) A copy of the Articles of Organization of the Company and all amendments thereto together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(c) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(d) Copies of the Company's currently effective written Agreement, all amendments thereto, and copies of any financial statements of the Company for the three most recent years;

(e) Notices of and minutes of every Member and Managers meeting,

(f) Any written consents obtained from Members for actions taken by Members without a meeting; and

(g) Unless contained in the Articles of Organization or the Agreement, a writing prepared by the Managers setting out the following:

(1) The times at which or events on the happening of which any additional contributions agreed to be made by each Member and Transferee are to be made.

(2) Any right of a Member or Transferee to receive distributions of include a return on all or any part of the Member or Transferee's contributions.

(3) Any power of a Member or Transferee to grant the right to become an assignee of any part of the Member's or Transferee's interest, and the terms and condition of the power.

9.10 *Returns and Other Elections.*

The Managers shall cause the preparation and timely filing of tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, and pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year upon the Members' written request. All elections permitted to be made by the Company under federal or state laws shall be made by the Managers in their sole discretion. It is the intention of the Members that the Company shall be taxed as a "Partnership" for federal, state, and local income tax purposes.

9.11 *Tax Matters Partner.*

SIMON BERNSTEIN is designated the "Tax Matters Partner" (as defined in Code Section 6231), and is authorized and required to represent the Company (at the Company's expense), either directly, or through accounting or tax representatives, in connection with all examinations for the Company's affairs by tax authorities, including, without limitation administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings.

ARTICLE X

TRANSFERABILITY

10.1 *General.*

10.1.1. **Transferees Not Members, Generally.** Except as otherwise set forth in Section 10.1.2, or with the consent of all of the Members, neither a Member nor a Transferee shall have the right, as to all or any part of its Membership Interest or Transferee Interest to:

- (a) sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration (collectively, “sell” or, as context requires “selling”); or
- (b) gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) (collectively, “gift”).

Absent the written consent of all Members to the contrary or otherwise provided by law, the Interest of the Transferee shall be a Non-Voting Interest.

10.1.2 **Transferees Who are Lineal Descendants of a Member.** Any Transferees who are lineal descendants of both SHIRLEY BERNSTEIN and SIMON BERNSTEIN, either directly, or indirectly, as beneficiaries of a Trust, or other entity beneficially owned solely for or by that Member (including, but not limited to a revocable trust established by a Member for the sole lifetime benefit of the Member or the Member’s descendants) shall be Members upon their written agreement to be bound by the terms of this Agreement and shall be subject to the voting agreements described in Article V, hereinabove.

10.2 **Right of First Refusal.**

(a) If a Selling Member desires to sell all or any portion of its Membership Interest in the Company to a third party purchaser, the Selling Member shall obtain from such third party purchaser a bona fide written offer to purchase such Interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered; provided, however, the offer shall include a “tag along” or “take along” provision, pursuant to which, all Members have the right to sell a pro-rata portion (determined in accordance with the Percentage Interests of all of the Members) of their Interests to the third party. The Selling Member or Transferee shall give written notification to the remaining Members, by certified mail or personal delivery, of its intention to so transfer such Interest, furnishing to the remaining Members a copy of the written offer to purchase such Interest.

(b) Each of the remaining Members, on a basis pro rata to their Percentage Interests or on a basis pro rata to the Percentage Interests of those remaining Members exercising their rights of first refusal, shall have the right to exercise a right of first refusal to purchase all (but not less than all) of the Interest proposed to be purchased by the third party and sold by the Selling Member and the “tag along Members” upon the same terms and conditions as stated in the aforesaid written offer to purchase by giving written notification to the Selling Member and the “tag along Members”, by certified mail or personal delivery, of the intention to do so within thirty (30) days after receiving written notice from the Selling Member. Subject to the following paragraph, the failure of the remaining Members to so notify the Selling Member and the “tag along Members” of their desire to exercise this right of first refusal within said thirty (30) day period shall result in the termination of the right of the first refusal and the Selling Member and the “tag along Members” shall be entitled to consummate the sale of its Interest in the Company to such third party purchaser, provided that the sale shall be consummated within sixty (60) days following the expiration of the aforesaid thirty (30) day period. In the event the remaining

Members (or any one or more of the remaining Members) give written notice to the Selling Member and the “tag along Members” of their desire to exercise this right of first refusal and to purchase all of the Interests of the Selling Member and the “tag along Members” offered upon the same terms and conditions as are stated in the aforesaid written offer to purchase, the remaining Members shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within sixty (60) days after written notification to the Selling Member of the remaining Member or Members’ election to exercise their right of the first refusal. In the event that two (2) or more Members give written notice of their desire to exercise their right of first refusal, absent an agreement between all the Members so exercising such right, each such Member exercising their right of first refusal shall be entitled to purchase that percentage of the selling Member’s share according to the proportion that their Percentage Interests bears to the total Percentage Interests exercising such right of first refusal. The Members shall communicate with each other during the pendency of any offer made in accordance with the terms of this Section 10.2 in order to effectuate the intent of this Section.

(c) As a condition to the Company recognizing the effectiveness of either the sale or gift of an Interest in the Company (including, in both cases, a Transferee Interest), the remaining Members may require the Selling Member, Gifting Member and/or the proposed purchaser, donee or successor-in-interest, as the case may be, to execute, acknowledge and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the remaining Members’ may deem necessary or desirable to:

(1) verify the purchase, gift or transfer, as the case may be;

(2) confirm that the person desiring, to acquire an Interest in the Company, or to be admitted as a Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of the Agreement (whether such Person is to be admitted as a new Member or as a Transferee);

(3) maintain the status of the Company as a partnership for federal tax purposes; and

(4) assure compliance with any applicable state and federal laws including securities laws and regulations.

(d) Any sale or gift of a Membership Interest or Transferee Interest in compliance with this Article X shall be deemed effective upon the last day of the calendar month in which all the terms and conditions hereof relating thereto have been satisfied. The admission of a Member in compliance with this Article X shall be deemed effective as of the last day of the calendar month in which the remaining Members’ consent thereto was given. The Selling Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article X.

10.3 *Permitted Transfer to Descendants & Spouse/Mandatory Offer at Death.*

10.3.1 *No Mandatory Offer At Death.* If a Member's Interest is Transferred to a lineal descendant of the Member or Member's spouse, to a Trust or other entity beneficially owned solely for or by that Member, that Member's spouse, or the lineal descendant of that Member or Member's spouse, the Transferee shall not be required to sell or offer to sell his or her Interest, shall be eligible to become a Member pursuant to Sections 10.1.1 and 10.1.2 above, and shall be subject to the voting agreements described in Article V, above. If Members of the Company are trusts for the lifetime benefit of the lineal descendants of a Member either directly or indirectly, then the successors in interest to the Interests in the Company pursuant to the terms of such trusts shall be considered as Members hereof (regardless of indirect ownership as trust beneficiaries) as long as the beneficial interests are owned by the lineal descendants of the Member or their spouses, and said persons shall be subject to the voting agreements described in Article V, above.

10.3.2 *Mandatory Offer At Death.* Except with transfers described in 10.3.1., above, the death of any Member or Transferee who owns an Interest shall constitute an offer by the Member's Estate, Trust, or other legal successor in interest, to sell all of the Member's Interest to the Company (the "Offer") at its fair market value (determined as of the date of death). The Company shall have one hundred eighty (180) days in which to accept the Offer at an agreed price, which acceptance shall be made by delivery of written notice thereof to the legal representative of the estate of the Member or Transferee, by certified mail or personal delivery, within said one hundred eighty (180) day period. If the Company does not elect to purchase the Interest within said one hundred eighty (180) day period, the remaining Members shall have the right, but are not required to, purchase the remaining part, or all, as the case may be, of the Interest at its fair market value (as determined herein) determined as of the date of death, in proportion to their existing Interests. Such right to purchase shall be exercised by delivery of written notice thereof, by certified mail or personal delivery, during the thirty (30) days immediately after the one hundred eighty (180) day period (the "30 Day Period"). If any such Member does not desire to purchase his/her or its full proportionate part of the Interest offered for sale, but the remaining Members desire to purchase all of the Interest offered for sale, said Members shall then have the right to purchase said Interest proportionally in accordance with their respective Interests and the Members shall communicate with each other during the 30 Day Period in order to effectuate the intent of this Section 10.3. Except as provided in Section 10.1.2 and 10.1.3, to the extent that any part, or all, of an Interest is not purchased under the provisions of this Section 10.3, the deceased's Member's Interest shall become a Transferee's Interest, if not owned beneficially or directly by another Member hereof. The purchase price shall be as agreed by the parties, and, unless otherwise agreed, shall be paid in cash at the closing, which shall occur no later than thirty (30) days after the end of the 30 Day Period. For purposes of this Agreement, the "fair market value" of an Interest is equal to its Percentage Interest multiplied by the value of the Company (as agreed by the parties). If the value of the Company is not agreed to by the parties, then for purposes of this Agreement "fair market value" of a Member's Interest shall be determined without reduction for minority, lack of marketability or other entity/Company level discounts, based upon a reasonable appraisal procedure to determine the fair market value of the Company's assets. The appraisal procedure shall be agreed upon by the Member and Company. If the parties cannot agree to an appraisal procedure, then an MAI appraiser shall be selected by the Personal Representative of the deceased Member's estate, and if the Company does not agree as to that appraiser, then the Company shall select its own appraiser and each MAI appraiser then shall select a third MAI appraiser and the average of all three (3) appraisals shall be the fair market value of the Interest. As set

forth hereinabove, fair market value” of a Member’s Interest shall be determined without reduction for minority, lack of marketability or other entity/Company level discounts.

10.4 *Transferee Not Member in Absence of Unanimous Consent.*

(a) Except as provided in Section 10.1.2 and 10.1.3, if all of the remaining Members do not approve by unanimous written consent of the proposed, sale or gift of the Transferring Member’s Membership Interest to a transferee or donee which is not a Member immediately prior to the sale or gift, then the proposed transferee or donee shall have no right to participate in the management of the business and affairs of the Company or to become a Member. The transferee or donee shall be merely a Transferee entitled solely to economic rights to profits, losses and distributions and shall have no voting rights under this Agreement or in matters relating to the Company and its business; provided, however, any sale of a Transferee’s interest in the Company should be subject to Section 10.2. No transfer of a Member’s Interest in the Company (including any transfer of the Transferee Interest or any other transfer which has not been approved by unanimous written consent of the Members) shall be effective unless and until written notice (including the name and address of the proposed transferee or donee and the date of such transfer) has been provided to the Company and the nontransferring Member(s).

(b) Upon and contemporaneously with any sale or gift of a Transferring Member’s Interest in the Company which does not at the same time transfer the balance of the rights associated with the Transferee Interest transferred by the Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the business and affairs of the Company), all remaining rights and interest which were owned by the Transferring Member immediately prior to such sale or gift or which were associated with the transferred Interest shall immediately lapse until the remaining Members, by unanimous written consent, reinstate such rights to the Transferee who did not previously obtain the unanimous written consent, reinstating such rights to a successor or transferee of such Transferee.

ARTICLE XI

ADDITIONAL MEMBERS

From the date of the formation of the Company, any Person or Entity acceptable to the Members by their unanimous vote thereof may become a Member in this Company for such consideration as the Members by their unanimous votes shall determine, subject to the terms and conditions of this Agreement. No new Members shall be entitled to any retroactive allocation of profits losses, income or expense deductions incurred by the Company. The Manager(s) may, at their option, at the time a Member is admitted, close the Company books (as though the Company’s tax year has ended) or make pro rata allocations of income, loss, and expense deductions to a new Member for that portion of the Company’s tax year in which a Member was admitted in accordance with the provisions of Code Section 706(d) and the Treasury Regulations promulgated thereunder.

ARTICLE XII

DISSOLUTION AND TERMINATION

12.1 *Dissolution.*

(a) The Company shall be dissolved upon the occurrence of any of the following events:

- (i) by the unanimous written consent of all Members; or
- (ii) the sale, transfer or assignment of substantially all of the assets of the Company; or
- (iii) as otherwise required by law.

12.2 *Winding Up, Liquidation and Distribution of Assets.*

(a) Upon dissolution, an accounting shall be made by the Company's independent accountant of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Managers shall immediately proceed to wind up the affairs of the Company.

(b) If the Company is dissolved and its affairs are to be wound up, the Managers shall:

- (1) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Managers may determine to distribute any assets to the Members in kind),
- (2) Allocate any profit or loss resulting from such sales to the Member's and Transferees' Capital Accounts in accordance with Article IX hereof.
- (3) Discharge all liabilities of the Company, including liabilities to Members and Transferees who are creditors, to the extent other-wise permitted by law, other than liabilities to Members and Transferees for Distributions, and establish such Reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members and Transferees, the amounts of such Reserves shall be deemed to be an expense of the Company),
- (4) Distribute the remaining assets in the following order:
 - (i) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of all of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and

the Capital Accounts of the Members and Transferees shall be adjusted pursuant to the provisions of Article IX and Section 8.3 of this Agreement to reflect such deemed sale.

(ii) To the Members and Transferees, pro rata, in accordance with the positive balance (if any) of each Member's and Transferee's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's taxable year during, which the liquidation occurs) shall be distributed to the Members and Transferee either in cash or in kind, as determined by the Managers, with any assets distributed in kind being valued for: this purpose at their fair market value as determined pursuant to Section 12.2(b)(i).

(iii) Thereafter, to the Members and Transferee's pro rata, in accordance with their respective Percentage Interests.

(c) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

(d) Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

(e) The Manager(s) shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

12.3 *Articles of Dissolution.*

When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets of the Company have been distributed among its members in accordance with their respective rights and interests, a Articles of Dissolution of the Company shall be filed with the Florida Department of State.

12.4 *Effect of Filing Articles of Dissolution.*

Upon the filing of Articles of Dissolution with the Florida Department of State, and upon issuance of the Certificate of Dissolution by the Department of the State, the existence of the Company shall cease, except for the purpose of suits, of the proceedings and appropriate action as provided in the Act. The Managers shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

12.5 *Return of Contribution Nonrecourse to Other Members.*

Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member and Transferee shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members or Transferees, such Member(s) or Transferee(s) shall have no recourse against any other Member or Transferee, except as otherwise provided by law.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 *Notices.*

Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally or by express mail or courier service (with receipt acknowledged) to the party or to an executive officer of the party to whom the same is directed, if telecopied (with receipt acknowledged) to the party or an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Agreement. Except as otherwise provided herein any such notice shall be deemed to be given two (2) business days after the date on which the same was deposited in the United States mail, addressed and sent as aforesaid, if sent by mail or upon confirmation of receipt if delivered by telecopier, personal delivery or courier service.

13.2 *Books of Account and Records.*

Proper and complete records and books of account shall be kept or shall be caused to be kept by the Managers in which shall be entered fully and accurately all transactions relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained as provided in Section 9.9. The books and records shall at all times be maintained at the principal place of business of the Company. Additionally, the Managers shall promptly distribute to all Members, copies of the Company's financial statements on an annual basis.

13.3 *Application of Florida Law.*

This Agreement and its interpretation shall be governed exclusively by its terms and by the laws of the State of Florida, and specifically the Act.

13.4 *Waiver of Action for Partition.*

Each Member and Transferee irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

13.5 *Amendments.*

This Agreement may not be amended except in writing by the affirmative vote of a majority of the Members of the Company which vote must include the affirmative vote of the Manager. Any amendment changing either the Percentage Interests of the Members or any provision within Article V requires the unanimous vote of the Members.

13.6 *Execution of Additional Instruments.*

Each Member hereby agrees to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with an laws, rules or regulations.

13.7 *Construction.*

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

13.8 *Headings.*

The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision thereof

13.9 *Waivers.*

The failure of any party to seek redress for default of or to insist upon the strict performance of any covenant of condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default, from having the effect of an original default.

13.10 *Rights and Remedies Cumulative.*

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any other remedy. Said rights and remedies are given in addition to any other legal rights that parties may have.

13.11 *Severability.*

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

13.12 *Heirs, Successors and Assigns.*

Each and all of the covenants, terms, provisions and agreement herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

13.13 *Creditors.*

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

13.14 *Counterparts.*

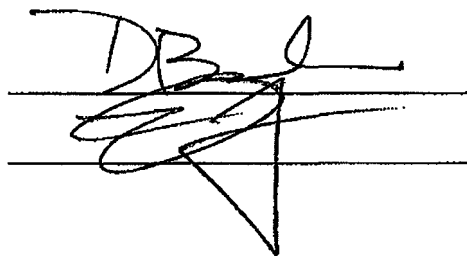
This Agreement may be executed in counterparts, each of shall be deemed an original but all of which shall constitute one and the same instrument.


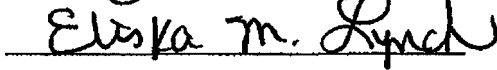
13.15 *Conflict of Interest Waiver.* The Members and the Company acknowledge that the law firm of TESCHER & SPALLINA, P.A. has represented the Company in connection with the drafting of this Agreement and the formation and structuring of the Company, and that said law firm also represents one or more of the Managers and Trustees. The Company and its Members acknowledge that they have been advised that there are material income tax consequences and economic ramifications from being a Member in the Company, that they fully understand the tax consequences and economic ramifications of a Member's investment in the Company, and that they have been encouraged to consult with separate and independent counsel to advise them on Company and Member issues including this Agreement and the formation of the Company. The Company and the Members hereby waive any conflicts of interest with respect to the foregoing law firm's representation of the Company and the afore described Members and owners of interests in entity Members, in connection with the services set forth in this Section.

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IN WITNESS WHEREOF, the parties hereto have caused their signatures to be set forth below on the day and year first above written.

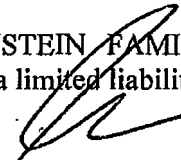
Witnesses:




Ravea Bass

Eliska M. Lynch

COMPANY:

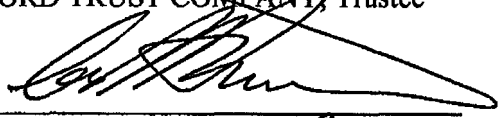
BERNSTEIN FAMILY REALTY, LLC, a Florida limited liability company

By: 
SIMON BERNSTEIN, Manager

MEMBERS:

DANIEL BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006


STANFORD TRUST COMPANY, Trustee

By: 
LOUIS B. FOURNIER, PRESIDENT
Name Title

JAKE BERNSTEIN IRREVOCABLE TRUST
dated September 7, 2006

STANFORD TRUST COMPANY, Trustee

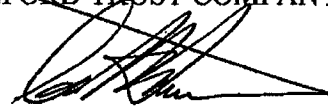
Raven Bass
Eliska M. Lynch

By: 
LOUIS B. FOURNIER, PRESIDENT
Name Title

JOSHUA Z. BERNSTEIN IRREVOCABLE
TRUST dated September 7, 2006

STANFORD TRUST COMPANY, Trustee

Raven Bass
Eliska M. Lynch

By: 
LOUIS B. FOURNIER, PRESIDENT
Name Title

BERNSTEIN FAMILY REALTY, LLC
OPERATING AGREEMENT

EXHIBIT A

<u>Member(s)</u>	<u>Percentage Interest*</u>	<u>Capital Contributions</u>
DANIEL BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006	33.34%	\$33.34
JAKE BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006	33.33%	\$33.33
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006	33.33%	\$33.33

The addresses of all of the Members is 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, Florida 33487.

*proportionate to capital accounts of Members

**AGREEMENT OF LIMITED PARTNERSHIP OF
BERNSTEIN FAMILY INVESTMENTS, LLLP**

**AGREEMENT OF LIMITED PARTNERSHIP OF
BERNSTEIN FAMILY INVESTMENTS, LLLP**

This is an Agreement of Limited Partnership ("Agreement") dated this 20 day of May, 2008, by and between BERNSTEIN HOLDINGS, LLC, a Florida limited liability company (the "General Partner"); and SIMON L. BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008 and SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, together with any individual, partnership, corporation, trust, estate or other entity subsequently admitted as Limited Partners, referred to as the "Limited Partners," and individually as a "Limited Partner". The General Partner and the Limited Partners are herein sometimes referred to individually as a "Partner" and collectively as "Partners."

The parties agree as follows:

1. Formation. BERNSTEIN FAMILY INVESTMENTS, LLLP, a limited partnership under the Revised Uniform Limited Partnership Act of Florida ("Act"), became effective on February 15, 2008, the date of filing of the Certificate of Limited Partnership with the Florida Secretary of State by the General Partner. Except as otherwise provided in this Agreement, the Act shall govern the rights and liabilities of the Partners. The limited partnership has elected to be a Florida limited liability limited partnership.

2. Name. The name of the Partnership is BERNSTEIN FAMILY INVESTMENTS, LLLP. The General Partner may, in its discretion, change the name of the Partnership and adopt such trade or fictitious names as it may deem appropriate.

3. Definitions. In this Agreement, the following terms have the following meanings unless the context otherwise requires:

3.1 "Act" means the Revised Uniform Limited Partnership Act of Florida, as amended from time to time.

3.2 "Adjusted Capital Account Deficit" means, with respect to any Partner, the deficit balance, if any, in such Partner's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

3.2.1 Credit to such Capital Account any amounts which such Partner is obligated to restore (pursuant to the terms of such Partner's promissory note or otherwise) or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

3.2.2 Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

3.3 "Aggregate Capital Contribution" means the net fair market value of all contributions made to the capital of the Partnership by a Partner pursuant to Section 7.

3.4 "Agreement" means this Agreement of Limited Partnership, as it may be amended from time to time.

3.5 "Capital Account" means, with respect to any Partner, the Capital Account maintained for such Partner in accordance with the following provisions:

3.5.1 To each Partner's Capital Account there shall be credited such Partner's Capital Contributions, such Partner's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 9.3 or Section 9.4 hereof, and the amount of any Partnership liabilities assumed by such Partner or which are secured by any Partnership Property distributed to such Partner.

3.5.2 To each Partner's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Partnership Property distributed to such Partner pursuant to any provision of this Agreement, such Partner's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 9.3 or Section 9.4 hereof, and the amount of any liabilities of such Partner assumed by the Partnership or which are secured by any property contributed by such Partner to the Partnership.

3.5.3 In the event all or a portion of an Interest in the Partnership is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

3.5.4 In determining the amount of any liability for purposes of Sections 3.5.1, and 3.5.2 hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the General Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Partnership, the General Partner, or Partners), are computed in order to comply with such Regulations, the General Partner may make such modification, provided that it is not likely to have a material effect on the amounts distributable to a Partner pursuant to Section 10.3 hereof upon the dissolution of the Partnership. The General Partner also

shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events (for example, the acquisition by the Partnership of oil or gas properties) might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

3.6 "Capital Contributions" means, with respect to a Partner, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Partnership with respect to the Partnership Interest held by such Partner. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Partnership by the maker of the note (or a person related to the maker of the note within the meaning of Regulations Section 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any Partner until the Partnership makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2).

3.7 "Certificate" means the certificate of limited partnership required by the Act to be filed with the Department of State of Florida, as it may be amended from time to time.

3.8 "Code" means the Internal Revenue Code of 1986, as amended, or subsequent revenue laws.

3.9 "Depreciation" means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the General Partner.

3.10 "Event of Withdrawal" means an event described as such in Fla.Stats. §620.1603, or successor provision thereto.

3.11 "Fiscal Year" means (i) the period commencing on the effective date of this Agreement and ending on the last day of the Partnership's taxable year, (ii) any subsequent twelve (12) month period commencing on day after the last day of the partnership's taxable year and ending on the last day of the partnership's taxable year, or (iii) any portion of the period described in clause (ii) for which the Partnership is required to allocate Profits, Losses, and other items of Partnership income, gain, loss, or deduction pursuant to Section 9 hereof.

3.12 "General Partner" means BERNSTEIN HOLDINGS, LLC, and its successors as provided herein.

3.13 "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

3.13.1 The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset, as determined by the contributing Partner and the General Partner, provided that, if the contributing Partner is a General Partner, the determination of the fair market value of a contributed asset shall be determined by appraisal;

3.13.2 The Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the General Partner, as of the following times: (a) the acquisition of an additional Interest in the Partnership by any new or existing Partner in exchange for more than a *de minimis* Capital Contribution; (b) the distribution by the Partnership to a General Partner or Partner of more than a *de minimis* amount of Partnership Property as consideration for an Interest in the Partnership; and (c) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g): provided, however, that the adjustments pursuant to clauses (a) and (b) above shall be made only if the General Partner reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the General Partner and Partners in the Partnership;

3.13.3 The Gross Asset Value of any Partnership asset distributed to a Partner shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the General Partner, provided that, if the distributee is a General Partner, the determination of the fair market value of the distributed asset shall be determined by appraisal; and

3.13.4 The Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and Sections 3.26.6 and 9.3.7 hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this Section 3.13.4 to the extent the General Partner determines that an adjustment pursuant to Section 3.13.2 hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 3.13.4.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to Section 3.13.1, Section 3.13.2, or Section 3.13.4 hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

3.14 "Involuntary Transfer" means any involuntary sale, transfer, encumbrance or other disposition, by or in which any Partner or assignee of a Partnership Interest shall be deprived or divested of any right, title or interest in or to any Partnership Interest, or portion thereof, to any Person or governmental entity other than a Partner, including, without limitation, (i) any sale in connection with the execution of a judgment pursuant to court order, (ii) a transfer or sale in connection with a bankruptcy or a transfer or sale by a receiver, (iii) any transfer to a judgment creditor pursuant to court

order, (iv) any transfer in connection with a reorganization, insolvency or similar proceeding, (v) any transfer to a public officer or agency pursuant to any abandoned property or escheat law, or (vi) any transfer to the spouse or former spouse of a Partner or assignee of a Partnership Interest as the result of or incident to any dissolution of marriage, marital separation, or similar event (notwithstanding such transfer is pursuant to a marital or property settlement agreement).

3.15 "Limited Partners" means those Persons identified on the Signature Pages of this Agreement as limited partners and all other Persons who shall be admitted to the Partnership as Substitute Limited Partners as provided in this Agreement and no other Person.

3.16 "Net Cash From Operations" means the gross cash proceeds from Partnership operations (including sales and dispositions in the ordinary course of business) less the portion thereof used to pay or establish reserves for all Partnership expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the General Partner. "Net Cash From Operations" shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to the first sentence of this Section 3.16 and Section 3.17 hereof. Net Cash from Operations shall include income-type items derived from Partnership investment assets (e.g., dividends, interest, and partnership operating distributions).

3.17 "Net Cash From Sales or Refinancings" means the net cash proceeds from all sales and other dispositions (other than in the ordinary course of business) and all refinancings of Property, from any insurance payments or damage recoveries, other than under policies commonly referred to as a rent insurance paid to the Partnership in respect of its capital assets, and from any exercise by a governmental authority of any right of eminent domain, condemnation or similar right or power with respect to the capital assets of the Partnership, less any portion thereof used to establish reserves, all as determined by the General Partner. "Net Cash From Sales or Refinancings" shall include all principal and interest payments with respect to any note or other obligation received by the Partnership in connection with sales and other dispositions (other than in the ordinary course of business) of Partnership Property.

3.18 "Partner Nonrecourse Debt" has the meaning set forth in Section 1.704-2(b)(4) of the Regulations.

3.19 "Partner Nonrecourse Debt Minimum Gain" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

3.20 "Partner Nonrecourse Deductions" has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

3.21 "Partners" means collectively the General Partner and all Limited Partners.

3.22 "Partnership" means BERNSTEIN FAMILY INVESTMENTS, LLLP.

3.23 "Partnership Interest" means a Partner's percentage interest in the profits, losses, and property of the Partnership, which percentage is to be determined in accordance with the relative contributions to the capital of the Partnership as made by the Partner and the other Partners from time to time.

3.24 "Partnership Minimum Gain" has the meaning set forth in Sections 1.704-2(b)(2) and 1.704-2(d).

3.25 "Person" means an individual, corporation, partnership, association, trust, estate or any other entity.

3.26 "Profits" and "Losses" means, for each Fiscal Year, an amount equal to the Partnership's taxable income or loss for such year or period, determined in accordance with Code Section 703(a)(for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

3.26.1 Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this Section 3.26 shall be added to such taxable income or loss;

3.26.2 Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this Section 3.26 shall be subtracted from such taxable income or loss;

3.26.3 In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 3.13.2 or Section 3.13.3 hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

3.26.4 Gain or loss resulting from any disposition of Partnership Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

3.26.5 In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with Section 3.9 hereof;

3.26.6 To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Partner's Interest in the Partnership, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss

(if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses;

3.26.7 Notwithstanding any other provision of this Section 3.26, any items which are specially allocated pursuant to Section 9.3 or Section 9.4 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Partnership income, gain, loss, or deduction available to be specially allocated pursuant to Sections 9.3 or Section 9.4 hereof shall be determined by applying rules analogous to those set forth in Sections 3.26.1 through 3.26.6 above.

3.27 "Property" means the property described in Exhibit "A", and such other property as the Partners shall agree to submit to Partnership ownership.

3.28 "Regulatory Allocations" has the meaning set forth in Section 9.4 hereof.

3.29 "Special Limited Partners" has the meaning set forth in Section 16.5.2.

3.30 "Substitute Limited Partners" means Persons who have acquired Partnership Interests from Limited Partners and who have been substituted for such Limited Partners as provided in this Agreement. Solely for purposes of determining those Persons who are entitled to distributions and allocations under Sections 9 and 10, "Substitute Limited Partners" means Persons who have acquired Partnership Interests from Limited Partners and Special Limited Partners and their assignees, whether or not such Persons have been substituted as provided herein.

3.31 "Transfer" means the mortgage, pledge, hypothecation, transfer, gift, bequest, sale, assignment or other disposition of any part or all or any Partnership Interest including a general partnership interest in the Partnership, whether voluntarily, by operation of law or otherwise.

4. Principal Place of Business and Recordkeeping Office and Agent for Service of Process. The principal place of business and recordkeeping of the Partnership is at BERNSTEIN FAMILY INVESTMENTS, LLLP, 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487, or at such other location as the General Partner, in its discretion, may determine. DONALD R. TESCHER shall act as agent for service of process on the Partnership.

5. Term. The Partnership shall continue until December 31, 2058, unless sooner terminated as provided in Section 18.

6. Business and Purposes. The purpose and business of the Partnership shall be the ownership, investment, management and control of the Property and other investment properties (including, without limitation, investments in real property, loans, business enterprises, marketable securities, either directly or through interests in corporations, limited partnerships, limited liability companies, and other entities), to provide a means for the BERNSTEIN family to own investment property and preserve its assets, and

to conduct such other activities as may be necessary or appropriate to promote such business and purposes, it being agreed that each of the foregoing is an ordinary part of the Partnership's business. In addition to the foregoing, or as part thereof, the Partnership shall accomplish among other things the following: (a) maintain control over BERNSTEIN family assets contributed to it, (b) consolidate fractional interests in BERNSTEIN family assets, (c) seek to increase BERNSTEIN family wealth, (d) establish a method by which gifts can be made without fractionalizing BERNSTEIN family assets, (e) provide protection to BERNSTEIN family assets from future claims against members of the families, (f) facilitate the administration and reduce the costs associated with the disability or probate of the estate of members of the BERNSTEIN family, (g) provide a mechanism to resolve BERNSTEIN family disputes, and (h) if applicable, hold restricted securities until such securities become unrestricted and free of underwriting limitations of the Securities and Exchange Commission. The Partnership shall not engage in any other business without the prior consent of Limited Partners owning (in the aggregate) at least eighty (80%) percent of the limited partnership Interests owned by the Limited Partners.

7. Capital Contributions and Capital Accounts.

7.1 Contribution of General Partners. The General Partner shall, as soon as practicable after the execution of this Agreement, contribute to the Partnership the cash and property set forth on Schedule "A" attached hereto and made a part hereof. The value of said capital contribution shall be allocated to the capital account of the General Partner. In addition, the General Partner shall contribute its efforts as managing partner.

7.2 Contribution of Limited Partners. The Limited Partners shall contribute to the Partnership the cash and property set forth on Schedule "A" attached hereto and made a part hereof. The value of each such contribution shall be allocated to the respective capital accounts of the Limited Partners as reflected on Schedule "A."

7.3 Withdrawal of Capital. Except as specifically provided in this Agreement, no Partner shall be entitled to withdraw any part of his capital account or to receive any distribution from the Partnership, and no Partner shall be required to make any additional capital contribution to the Partnership.

7.4 Partner's Loans. Loans by any Partner to the Partnership shall not be considered contributions to the capital of the Partnership and shall not increase the capital account of the lending Partner.

7.5 Interest on Capital Contribution. No interest shall be paid on any capital contributed to the Partnership.

8. Compensation and Expenses of General Partner.

8.1 Compensation and Reimbursement. The Partnership shall pay to the General Partner or its affiliates reasonable fees as compensation for services and reimbursement for sums advanced. The Partnership is authorized to enter into business agreements, contracts, and other transactions with the

General Partner or its affiliates and is authorized to pay fees, commissions or other consideration to the General Partner, or its affiliates on an arms length basis, including without limitation, real estate brokerage commissions, development fees, insurance premiums, rent, property management fees, leasing commissions and mortgage brokerage fees.

8.2 Expenses. The General Partner may charge the Partnership for any reasonable expenses actually incurred by it in connection with the Partnership's business and all allocable portions of expenses incurred in connection with both Partnership and other activities, such allocation to be determined on any equitable basis selected by the General Partner consistent with generally accepted accounting principles. Such expenses shall include, but are not limited to, payment of fees and expenses to attorneys, accountants, property managers and property management companies and other consultants.

9. Allocations of Profit and Loss, Cash Distributions.

9.1 Allocations of Profits. After giving effect to the special allocations set forth in Sections 9.3 and 9.4 hereof, Profits for any Fiscal Year shall be allocated in the following order and priority:

9.1.1 First, to the Partners in an amount equal and in proportion to the excess, if any, of the cumulative Losses allocated to the Partners pursuant to Section 9.2.2 hereof for the current and all prior Fiscal Years, reduced by the cumulative Profits allocated to the Partners pursuant to this Section 9.1.1 hereof for the current and all prior Fiscal Years;

9.1.2 The balance, if any, pro-rata to the Partners or in proportion to their Partnership Interests.

9.2 Allocation of Losses. After giving effect to the special allocations set forth in Sections 9.3 and 9.4, Losses for any Fiscal Year shall be allocated as set forth in Section 9.2.1 below, subject to the limitations in Section 9.2.2 below.

9.2.1 To the Partners in proportion to their Partnership Interests.

9.2.2 The Losses allocated pursuant to Section 9.2.1 hereof shall not exceed the maximum amount of Losses that can be so allocated without causing any Partner who is not a General Partner to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Partners who are not General Partners would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 9.2.1, the limitation set forth in this Section 9.2.2 shall be applied on a Partner by Partner basis so as to allocate the maximum permissible Losses to each Partner who is not a General Partner under Section 1.704-1(b)(2)(ii)(d) of the Regulations. All Losses in excess of the limitation previously set forth in this Section 9.2.2 shall be allocated to the General Partner.

9.3 Special Allocations. The following special allocations shall be made in the following order:

9.3.1 Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Section 9, if there is a net decrease in Partnership Minimum Gain during any Partnership Fiscal Year, each Partner shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 9.3.1 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

9.3.2 Partner Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Section 9, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Partnership Fiscal Year, each Partner who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Partner's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 9.3.2 is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

9.3.3 Qualified Income Offset. In the event any Partner who is not a General Partner unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), Regulations Section 1.7041(b)(2)(ii)(d)(5), or Regulations Section 1.704-1(b)(2)(ii)(d)(6), items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Partner as quickly as possible, provided that an allocation pursuant to this Section 9.3.3 shall be made if and only to the extent that such Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 9 have been tentatively made as if this Section 9.3.3 were not in the Agreement.

9.3.4 Gross Income Allocation. In the event any Partner who is not a General Partner has a deficit Capital Account at the end of any Partnership Fiscal Year which is in excess of the sum of (i) the amount such Partner is obligated to restore (pursuant to the terms of such Partner's promissory note or otherwise), and (ii) the amount such Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 9.3.4 shall be made if and only to the extent

that such Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section 9 have been tentatively made as if this Section 9.3.4 and Section 9.3.3 hereof were not in the Agreement.

9.3.5 Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Limited Partners.

9.3.6 Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the General Partner or Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

9.3.7 Section 754 Adjustment. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a General Partner or Partner in complete liquidation of his Interest in the Partnership, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the General Partner and the Partners in accordance with their Interests in the Partnership in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Partners to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

9.3.8 Allocations Relating to Taxable Issuance of Partnership Interests. Any income, gain, loss, or deduction realized as a direct or indirect result of the issuance of an Interest in the Partnership by the Partnership to a Partner (the "Issuance Items") shall be allocated among the Partners so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Partner, shall be equal to the net amount that would have been allocated to each such Partner if the Issuance Items had not been realized.

9.4 Curative Allocations. The allocations set forth in Sections 9.2.2, 9.3.1, 9.3.2, 9.3.3, 9.3.4, 9.3.5, 9.3.6 and 9.3.7 hereof (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 9.4. Therefore, notwithstanding any other provision of this Section 9 (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such General Partner or Partner would have had if the Regulatory Allocations were not part of the Agreement and all Partnership items were allocated pursuant to Sections 9.1, 9.2.1, 9.3.8, and 9.5. In exercising its discretion under this Section 9.4, the General Partner shall take into account future Regulatory Allocations under Sections 9.3.1 and 9.3.2 that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 9.3.5 and 9.3.6.

9.5 Other Allocation Rules.

9.5.1 Generally, unless otherwise explicitly provided, all Profits and Losses allocated to the Partners shall be allocated among them in proportion to the Partnership Interest held by each. In the event additional Limited Partners are admitted to the Partnership on different dates during any Fiscal Year, the Profits (or Losses) allocated to the Partners for each such Fiscal Year shall be allocated among the Partners in proportion to the Partnership Interest each holds from time to time during such Fiscal Year in accordance with Code Section 706, using any convention permitted by law and selected by the General Partner.

9.5.2 The Partners are aware of the income tax consequences of the allocations made by this Section 9 and hereby agree to be bound by the provisions of this Section 9 in reporting their shares of Partnership income and loss for income tax purposes.

9.5.3 Solely for purposes of determining a General Partner's or Partner's proportionate share of the "excess nonrecourse liabilities" of the Partnership within the meaning of Regulations Section 1.752-3(a)(3), the Partner's Interests in Partnership profits are as follows: Limited Partners one hundred percent (100%) (in proportion to their Partnership Interests).

9.5.4 To the extent permitted by Sections 1.704-2(h)(3) of the Regulations, the General Partner shall endeavor to treat distributions of Net Cash From Operations or Net Cash From Sales or Refinancings as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Partner who is not a General Partner.

9.6 Tax Allocations: Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the General Partner and Partners so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial Gross Asset Value (computed in accordance with Section 3.13.1 hereof). In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 3.13.2 hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 9.6 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Partner's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

10. Distributions.

10.1 Net Cash From Operations. Except as otherwise provided in Section 10.3 hereof, Net Cash From Operations not needed in the General Partner's determination for the reasonable needs of the Partnership business, shall be distributed to the Partners in proportion to their respective Partnership Interests.

To the extent such cash is comprised in whole or in part of nonrental income-type items derived from Partnership passive investment assets (*e.g.*, dividends, interest, and partnership operating distributions), reinvestments of such proceeds in other investment assets shall constitute expenditures for the reasonable needs of the business in the determination of the General Partner.

10.2 Net Cash From Sales or Refinancings. Except as otherwise provided in Section 10.3 hereof, Net Cash From Sales or Refinancings not needed in the General Partner's determination for the reasonable needs of the Partnership business, shall be distributed in the following order and priority:

10.2.1 First, proportionally to the Partners until their aggregate Capital Account balances are reduced to zero; and

10.2.2 thereafter, to the Partners in proportion to their Partnership Interests.

To the extent such cash is comprised in whole or in part of cash from the sale of Partnership non-real property passive investment assets (*e.g.*, marketable securities), reinvestments of such proceeds in other investment assets shall constitute expenditures for the reasonable needs of the business in the determination of the General Partner.

10.3 Liquidating Distributions. Notwithstanding the distribution provisions, liquidating distributions of the partnership, including all distributions made pursuant to a liquidation described in Regulations Section 1.704-1(b)(2)(ii)(g), shall be distributed as follows:

10.3.1 First, to the payment and discharge of all of the Partnership's debts and liabilities to creditors other than the General Partners;

10.3.2 Second, to the payment and discharge of all of the Partnership's debts and liabilities to General Partners; and

10.3.3 The balance, if any, proportionally to the Partners until their aggregate Capital Account balances are reduced to zero; and

10.3.4 thereafter, to the Partners in proportion to their Partnership Interests.

The foregoing liquidating distributions are intended to be made in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2) and subsequent to a revaluation of Partnership property and corresponding adjustment of Capital Accounts under Treas.Reg. §1.704-1(b)(2)(iv)(f). If any General Partner's Capital Account has a deficit balance (after giving effect to all contributions, distributions, and allocations for all Fiscal Years, including the Fiscal Year during which such liquidation occurs), such General Partner

shall contribute to the capital of the Partnership the amount necessary to restore such deficit balance to zero in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(3). If any Limited Partner who is not a General Partner has a deficit balance in his Capital Account (after giving effect to all contributions, distributions, and allocations for all Fiscal Years, including the Fiscal Year during which such liquidation occurs), such Limited Partner shall have no obligation to make any contribution to the capital of the Partnership with respect to such deficit, and such deficit shall not be considered a debt owed to the Partnership or to any other Person for any purpose whatsoever. In the discretion of the General Partner, a pro rata portion of the distributions that would otherwise be made to the General Partner and Limited Partners pursuant to this subsection may be (a) distributed to a trust established for the benefit of the General Partner and Limited Partners for the purposes of liquidating Partnership assets, collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership or of the General Partner arising out of or in connection with the Partnership. The assets of any such trust shall be distributed to the General Partner and Limited Partners from time to time, in the reasonable discretion of the General Partner, in the same proportions as the amount distributed to such trust by the Partnership would otherwise have been distributed to the General Partner and Limited Partners pursuant to this Subsection 10.3; or (b) withheld to provide a reasonable reserve for Partnership liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Partnership, provided that such withheld amounts shall be distributed to the Partners as soon as practicable.

10.4 Division Among Partners. Except as otherwise provided above, all distributions to the Partners pursuant to this Section 10 shall be divided among them in proportion to the Partnership Interest held by each.

10.5 Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution, or allocation to the Partnership, the General Partner, or the Partners shall be treated as amounts distributed to the General Partner and the Partners pursuant to this Section 10 for all purposes under this Agreement. The General Partner is authorized to withhold from distributions, or with respect to allocations, to the General Partner and Partners and to pay over to any federal, state, or local government any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state, or local law and shall allocate such amounts to the General Partner and Partners with respect to which such amount was withheld.

10.6 Special Tax Elections. At the written request of any Partner the Partnership shall make an election pursuant to Section 754 of the Code upon a distribution of property described in Code Section 734 or a transfer described in Code Section 743 of a Partnership Interest in accordance with this Agreement. Each Partner shall, upon request, supply the General Partner with the information necessary to make such election.

10.7 General Elections and Limitations. The General Partner is authorized, in its sole discretion, to make any other elections required or permitted with respect to Federal or state taxes in any Partnership tax return; provided, however, no election shall be made by either the Partnership or the Partners to be excluded from the application of the provisions of Subchapter K, Chapter I of Subtitle A of the Code or from any similar provisions of any state tax laws.

10.8 Distribution in Kind. If any assets of the Partnership are distributed in kind, such assets shall be distributed to the Partners entitled to participate in the distribution as tenants-in-common in the same proportions as such Partners would have been entitled to cash distributions.

10.9 Rights of Partners to Property. No Partner shall have the right to withdraw or reduce his capital contribution to the Partnership except as a result of the dissolution of the Partnership or as otherwise provided by law. No Partner shall be entitled to demand and receive property other than cash in return for his capital contribution to the Partnership, and, to the maximum extent permissible under applicable law, each Partner hereby waives all right to partition the Partnership Property.

10.10 Priorities of Limited Partners. No Limited Partner shall have any priority over any other Limited Partner as to the return of his contribution to the capital of the Partnership or as to compensation by way of income.

10.11 Minimum Interest of General Partner. Notwithstanding the allocations contained in these Sections 9 and 10, it is the intent of this Agreement that in no event shall the General Partner be allocated less than 1% of Profits, Losses, Net Cash from Operations or Net Cash From Sales or Refinancings allocated to the Partners.

11. Rights, Duties and Powers of the General Partner and Limited Partners.

11.1 Management. The General Partner shall be solely responsible for the management of and shall use its best efforts to manage and control the Partnership business with all rights and powers generally conferred by law or necessary, advisable or consistent with such responsibility.

11.2 Rights. In addition to any other rights and powers which it may possess, the General Partner shall have all specific rights and powers required or appropriate to the management of the Partnership business which, by way of illustration, but not by way of limitation, shall include the right and power:

11.2.1 To evaluate, select, negotiate for, acquire, purchase, operate, hold, trade, sell, exchange, convey or lease the Partnership Property, and any real property which is or may become a part of the Partnership property, as well as personal or other property connected with it, and except as may be limited by this Agreement to acquire or grant options for the purchase or sale of or sell the Partnership property from or to any Person, including, without limitation, the General Partner for such price, cash or otherwise, and upon such terms as the General Partner in its sole discretion deems to be in the best interests of the Partnership.

11.2.2 To manage, develop, improve, maintain and service Partnership properties; to form corporations or acquire shares of stock in corporations to carry out any of the purposes of the Partnership and to acquire title to property in the name of such corporations and to guarantee or otherwise secure the obligations of such corporations in furtherance of Partnership purposes.

11.2.3 To borrow and lend money and, if security is required for a borrowing, to mortgage or subject to any other security device any portion of the property of the Partnership, to execute replacements of any mortgage or other security device, and to prepay, in whole or in part, refinance, increase, modify and consolidate such indebtedness as determined in their discretion to be in the best interest of the Partnership.

11.2.4 To place of record, title to, or the right to use, Partnership assets in the name or names of a nominee or nominees, including, but not limited to, the General Partner, or a land trustee, for any purpose convenient or beneficial to the Partnership.

11.2.5 To acquire and to enter into any contract of liability and other insurance which the General Partner deems necessary and proper for the protection of the Partners and Partnership, for the conservation of its assets or for any purpose convenient or beneficial to the Partnership.

11.2.6 To employ from time to time persons, firms or corporations for the operation and management of the Partnership business, including, but not limited to, attorneys, accountants, advisors, administrators, property managers and personnel, managing and supervising agents, construction, maintenance and repair contractors, independent contractors furnishing full service components, architects, land planners, financial consultants, engineers, insurance brokers, real estate brokers and loan brokers on such terms and for such compensation as the General Partner may determine. The General Partner is hereby specifically authorized in its sole discretion to employ the General Partner as provided in, and subject to, the provisions of this Agreement. Compensation connected with any such employment shall be an expense of the Partnership.

11.2.7 To make elections under the tax laws of the United States or any state as to the treatment of Partnership income, gain, loss, deduction and credit, and as to all other relevant matters.

11.2.8 To determine the Profits, Losses, Net Cash from Operations and Net Cash From Sales or Refinancings of the Partnership for any period and from any transaction.

11.2.9 To transfer all or part of the real or personal property belonging to the Partnership to one or more general or limited partnerships or corporations in exchange for partnership interests or shares of stock which the Partnership may hold or distribute among the Partners in accordance with their respective Interests in the Partnership.

11.2.10 To perform any and all other acts or activities customary or incidental to the Partnership purposes and businesses.

11.2.11 Adjust Partner Capital Account balances to reflect a revaluation of Partnership property on the books of the Partnership in accordance with and as permitted by the provisions of Treas.Reg. §1.704-1(b)(2)(iv)(f).

11.3 Certain Limitations. The General Partner shall have all of the rights and powers and be subject to all of the restrictions and liabilities of a partner in a partnership without limited partners,

except that without the written consent of all of the Limited Partners as provided in this Agreement, or as otherwise provided by law, the General Partner shall not have authority to do any of the following:

11.3.1 Any act in contravention of the Certificate or this Agreement.

11.3.2 Confess a judgment against the Partnership.

11.3.3 Possess Partnership property, or assign the rights of the Partnership in specific Partnership property, for other than a Partnership purpose.

11.3.4 Admit a Person as a General Partner, except as otherwise provided in this Agreement.

11.3.5 Admit a Person as a Limited Partner, except as otherwise provided in this Agreement.

11.3.6 Require any Limited Partner to make any contribution to the capital of the Partnership not provided in Section 7.

11.4 Other Interests. Any of the Partners and any affiliates of the Partners, or any shareholder or any other Person holding a legal or beneficial interest in an entity which is a Partner or an affiliate of the General Partner, may engage in or possess an interest in other business ventures which may be competitive with the business of, or which may transact business with, the Partnership. Neither the Partnership nor the Partners shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived from them.

11.5 Agreement Beyond the Partnership Term. Agreements entered into by the Partnership, including, but not limited to, security agreements, mortgages and leases, may extend for terms in excess of the term of the Partnership.

11.6 General Partner as Limited Partner. The General Partner or its affiliates may acquire and own Interests as Limited Partners, in addition to its Interest as General Partner. In addition, the General Partner may become a Limited Partner in accordance with the provisions of Section 16.5.2.

11.7 Time Devoted to Partnership Business. The General Partner shall devote only such time to the business of the Partnership as it, in its sole discretion, shall deem to be necessary to manage and supervise the Partnership business.

11.8 General Partner's Liability. The General Partner shall not be liable for the return of any portion of the Aggregate Capital Contributions of the Limited Partners.

11.9 Exculpation and Indemnification of General Partner. No General Partner shall be liable, responsible or accountable in damages or otherwise to the Partnership or any other Partner for

any act performed or failure to act by it unless such act or failure to act is attributable to willful misconduct or gross negligence. The Partnership shall indemnify and hold harmless the General Partner from and against any and all loss, damage, liability, cost or expense, including reasonable attorneys' fees, arising out of any act or failure to act by the General Partner if such act or failure to act is in good faith within the scope of this Agreement and is not attributable to willful misconduct or gross negligence. The General Partner shall indemnify and hold harmless the Partnership and the Partners for any loss, damage, liability, cost or expense (including reasonable attorneys' fees) arising out of any act or failure to act by the General Partner, where such act or failure to act is attributable to willful misconduct or gross negligence.

11.10 Tax Matters Partner. BERNSTEIN HOLDINGS, LLC, shall be the Tax Matters Partner; provided, however, if it is no longer General Partner then it shall be a successor appointed by Limited Partners owning in the aggregate 51% of the Limited Partnership Interests. The Tax Matters Partner shall notify all Partners as to the beginning of any administrative proceedings at the Partnership level with respect to Partnership items and shall further notify the Partners as to any final Partnership administrative adjustment resulting from any such proceeding. The Tax Matters Partner shall be entitled to reimbursement for all costs and expenses incurred in connection with its services to the Partnership as Tax Matters Partner, and shall be indemnified and held harmless by the Partners with respect to such services, except with respect to willful misconduct or gross negligence.

11.11 Powers of Limited Partners. The Limited Partners shall take no part in or interfere in any manner with the conduct or control of the Partnership business and shall have no right or authority to act for or to bind the Partnership. The Partnership may engage Limited Partners or persons associated with them for specific purposes and may otherwise deal with such Limited Partners on terms and for compensation to be agreed upon by any such Limited Partner and the Partnership. The exercise of any of the rights and powers of the Limited Partners pursuant to the terms of this Agreement shall not be deemed taking part in the day-to-day affairs of the Partnership or the exercise of control over Partnership affairs.

11.12 Liability of Limited Partners. A Limited Partner shall not be bound by, or personally liable for, any of the debts, contracts, liabilities, or other obligations of the Partnership or the General Partner, or for any losses of the Partnership in excess of their required capital contribution, and the liability of each Limited Partner shall be limited solely to the amount of his contribution to the capital of the Partnership required by the provisions of Section 7. Notwithstanding any of the foregoing to the contrary, and only to the extent otherwise required by applicable law, a Partner receiving a distribution in part or full return of his aggregate Capital Contribution shall be liable to the Partnership for any sum, not in excess of such amount returned plus interest, necessary to discharge the liabilities of the Partnership to creditors who extended credit or whose claims arose before such distribution, excluding liabilities of the Partnership represented by debt, the repayment of which is secured solely by the Partnership Property.

12. Loans to the Partnership. From time to time any Partner, including the General Partner, upon the request of the General Partner, may make optional loans to the Partnership or advance money on its

behalf. Such loans and advances may be in the form of direct loans, payment of sums payable by the Partnership, payments of guarantees of Partnership indebtedness or otherwise. Loans and advances under this Section shall be accounted for as loans and not as capital contributions to the Partnership. All sums loaned or advanced, together with interest on such sums, shall be deemed an obligation of indebtedness from the Partnership to the lending Partner, and such loan or advance shall bear interest at a reasonable rate agreed to by the Partnership and the lending Partner.

13. Books, Records, Reports, Bank Accounts and Tax Elections.

13.1 Books of Account. At all times during the existence of the Partnership, the General Partner shall keep, or cause to be kept, full and true books of account of the Partnership in accordance with generally accepted accounting principles. The books shall be maintained on such method of accounting, accrual or cash, as the General Partner determines in its discretion to be in the best interests of the Partnership. The books of the Partnership, together with a certified copy of the Certificate, shall be maintained at the principal place of business of the Partnership. During reasonable business hours the Limited Partners and their authorized representatives may inspect and copy the Partnership's books of account.

13.2 Financial Statements. At least annually, unaudited financial statements and an annual report of the business of the Partnership shall be prepared at the direction of the General Partner. If a Partner wishes to obtain an audited financial statement, he may cause it to be prepared, but he shall pay all fees and expenses for its preparation.

13.3 Tax Returns. In addition to the financial statement and annual report, the General Partner shall cause income tax returns for the Partnership to be prepared and filed with the appropriate authorities and the General Partner shall also cause such reports as may be required by regulatory agencies to be prepared, filed and distributed as required.

13.4 Dissemination. The General Partner shall distribute annual reports of the business of the Partnership, financial statements and income tax information to the Limited Partners as soon as is practicable after the close of each fiscal year of the Partnership.

13.5 Fiscal Year. The Partnership tax year shall be the calendar year, unless a General Partner elects another fiscal year and obtains the approval of the Internal Revenue Service to such year.

13.6 Bank Accounts. All funds of the Partnership shall be deposited in the Partnership name in such bank account or accounts as may be designated by the General Partner. Withdrawals from any such bank account or accounts shall be made upon such signature or signatures as the General Partner may designate.

14. Transfer of Limited Partnership Interest.

14.1 Method of Transfer. No Transfer of all or part of a Limited Partner's Interest may be effected except as permitted in this Section 14, and then only if a counterpart of the instrument of Transfer, executed and acknowledged by the parties to the Transfer is delivered to the Partnership. A permitted Transfer shall be effective as of the date specified in the instruments of Transfer. This Partnership is formed by those who know and trust one another, who have surrendered certain management rights (in exchange for limited liability in the case of a Limited Partner), or who have assumed management responsibility and risk (in the case of a General Partner) based upon their relationship and trust. Capital is material to the business and investment objectives of the Partnership and its federal tax status. An unauthorized Transfer of a Limited Partner's Interest could create a substantial hardship to the Partnership, jeopardize its capital base, and adversely affect its tax structure. The restrictions on Transfers set forth in this Section are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Partnership's capital and its financial ability to continue.

14.2 Transfers by Limited Partners. Except as expressly provided herein, no Limited Partner may Transfer any part or all of his Interest. Notwithstanding the foregoing and without being subject to the right of first refusal provisions of Section 14.3, a Partner may Transfer all or any part of his Interest to (i) another Partner, (ii) a lineal descendant of both SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, (iii) a trust of which a majority in interest of the beneficiaries are Partners and/or lineal descendants of both SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN; or (iv) to another partnership or corporation provided that a majority of the voting stock of the corporation or the general partnership interest in the case of a limited partnership or the interest in capital in a general partnership are owned and controlled by SIMON L. BERNSTEIN and/or lineal descendants of SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN.

14.3 Right of First Refusal. Notwithstanding the above restrictions on Transfer of Interest, a Limited Partner may Transfer all or any part of his Interest, other than by gift or devise, pursuant to a Bona Fide offer as defined in Section 14.3.2, and in such instance the Partnership shall have a right of first refusal to purchase any Interest which any Limited Partner may wish to Transfer, on the terms and subject to the conditions set forth in Section 14.3.1 through 14.3.3:

14.3.1 In the event that any Limited Partner receives a Bona Fide Offer, as herein defined, from a third party (the "Proposed Assignee") to purchase all or any portion of his Interest and he is willing to accept such Bona Fide offer, that Limited Partner (the "Offeror-Limited Partner") shall promptly send written notice (the "Notice") to the General Partner, offering to sell his Interest to the Partnership at the same price and upon the same terms and conditions that are contained in the Bona Fide Offer. The Notice shall contain a true and complete copy of the Bona Fide Offer, the price, the portion of the Interest to be sold, and all terms and conditions and the name and addresses, both home and office, and businesses or other occupations of the Proposed Assignee.

14.3.2 As used in this Agreement, "Bona Fide Offer" means an offer in writing, signed by the Proposed Assignee, who must be a Person financially capable of carrying out the terms of the Bona Fide Offer, in a form legally enforceable against the Proposed Assignee.

14.3.3 Whenever an Offeror-Limited Partner gives the Partnership notice of a Bona Fide Offer to purchase his Interest, the following procedure shall be complied with:

14.3.3.1 For a period of ten days from its receipt of the Notice, the Partnership shall have the option to notify the Offeror-Limited Partner that it intends to purchase the Interest.

14.3.3.2 If the Partnership does not give the Offeror-Limited Partner notice within the prescribed time period that it will purchase the Interest covered by the Bona Fide Offer, the Offeror-Limited Partner shall have the right to accept the Bona Fide Offer and sell the Interest subject to the provisions and restrictions of this Agreement, but only in strict accordance with all of the terms of the Bona Fide Offer and only if the sale is fully consummated within 45 days after the mailing of the Notice. If the Interest is not sold to the Proposed Assignee pursuant to the Bona Fide Offer within that 45 day period, then, before disposing of the Interest the Offeror-Limited Partner shall again be obligated to reoffer the Interest to the Partnership pursuant to the terms of this Section.

14.3.3.3 If the Partnership exercises its option to purchase the Interest a closing shall be held within 15 days after the Partnership gives notice of its election to exercise the option to purchase. The closing shall be on the basis of the terms and other provisions of the Bona Fide Offer.

14.4 Rights of Transferees. No transferee of the Interest of any Limited Partner, including transferees described in Sections 14.2 or 14.3, shall have the right to become a Substitute Limited Partner, unless:

14.4.1 His transferor has stated such intention in the instrument of assignment.

14.4.2 The transferee has executed an instrument reasonably satisfactory to the General Partner accepting and adopting the terms and provisions of this Agreement.

14.4.3 The transferor or transferee pays to the Partnership any reasonable expenses in connection with the admission of the transferee as a Limited Partner.

14.4.4 The transferor and transferee furnish the Partnership with the transferee's tax identification number, sufficient information to determine the transferee's initial tax basis in the Interest transferred, and any other information reasonably necessary to permit the Partnership to file all required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the foregoing, the Partnership shall not be required to make any distribution otherwise provided for in this Agreement with respect to any transferred Partnership Interest (without regard to whether the transferee is admitted as a Substitute Limited Partner) until it has received such information.

14.4.5 In the case of an assignee or transferee who is not otherwise a Partner, the General Partner, in its sole, absolute and unfettered discretion, consents to such person becoming a

Substitute Limited Partner, including assignees of Partnership Interests whose interest arises by reason of the death of a Partner.

The assignor of a Limited Partnership Interest shall not act for or on behalf of the assignee of the Limited Partnership Interest who does not become a Substitute Limited Partner, and until an assignee of a Limited Partnership Interest is admitted as a Substitute Limited Partner, both the Partnership and the Partners shall be entitled, but not required, to treat the transferor of the Partnership Interest as the absolute owner thereof in all respects. An assignee of a Limited Partnership Interest who does not become a Substitute Limited Partner, unless otherwise a Partner, does not become a Partner and is not entitled to exercise the rights of a Partner.

14.5 General Partner's Acquisition of Limited Partner Interest. If a General Partner should acquire any Limited Partner Interest, that General Partner with respect to that Interest shall become a Limited Partner and enjoy all of the rights and be subject to all of the obligations and duties of a Limited Partner to the extent of such Interest.

14.6 Income/Loss Allocations Upon Transfer. Unless otherwise agreed between the transferor and the transferee, upon the Transfer of an Interest the Profits and Losses attributable to the Interest transferred shall be allocated between the transferor and the transferee as of the date set forth in the instrument of Transfer, and such allocation shall be based upon the number of days during the applicable fiscal year of the Partnership that the Interest transferred was held by each of them, without regard to the results of Partnership activities during the period in which each was the holder. All distributions with respect to such Interest shall be made only to the holder of record of the Interest on the date of distribution.

15. Death, Incompetency, Bankruptcy or Dissolution of a Limited Partner.

15.1 Individual Limited Partner. Upon the death, adjudication of bankruptcy, insolvency or legal incompetency of an individual Limited Partner, his personal representative shall have all the rights of a Limited Partner for the purposes of settling or managing his estate and such power as the decedent, bankrupt or incompetent possessed to constitute a successor as an assignee of his Interest in the Partnership and to join with such assignee in making application to the General Partner to have such assignee become a Substitute Limited Partner.

15.2 Other Limited Partners. Upon the adjudication of bankruptcy, insolvency, dissolution or other cessation to exist as a legal entity of a Limited Partner not an individual, the authorized representative of such entity shall have all of the rights of a Limited Partner for the purpose of effecting the orderly winding up and dissolution of the business of such entity and such power as such entity possessed to constitute a successor as an assignee of its Interest in the Partnership and to join with such assignee in making application to the General Partner to have such assignee become a Substitute Limited Partner.

16. Resignation, Removal and Election of a General Partner; Assignment; Transfer.

16.1 Substitution for a General Partner. The General Partner may not admit any Person as a substitute General Partner.

16.2 Resignation of a General Partner. A General Partner may resign as such by delivering thirty (30) days advance written notice of its resignation to all Partners.

16.3 Removal of a General Partner. A General Partner shall be removed and cease to be a General Partner of the Partnership:

16.3.1 If (a) the General Partner being removed is in default of a material provision of this Agreement and (b) has not cured such default within 30 days after written notice of such fact is given to the General Partner sought to be removed and to all other Partners by Limited Partners owning at least 75% of the Interests owned by the Limited Partners. Written notice pursuant to this section shall set forth the day upon which the removal is to become effective if the default is not cured. However, the removal of a General Partner shall not take effect unless and until that General Partner is released from all liability by all lenders who have made loans to the Partnership, including loans made to the General Partner, on behalf of the Partnership. Such release shall be evidenced by written instruments executed by the lenders and any releases of liability shall extend to such General Partner in his capacity as such and individually. The removal of a General Partner shall be effective on the later of the date set forth in the notice or the date of delivery of the releases to the General Partner.

16.3.2 The occurrence of an Event of Withdrawal.

16.4 Liability of General Partner After Resignation or Removal. If a General Partner resigns or is removed in accordance with the provisions of this Agreement, his liability as a General Partner shall cease upon resignation or removal as provided in the Act, and the Partnership shall promptly take all actions reasonably necessary under the Act to cause such cessation of liability. The Partnership shall indemnify the General Partner with respect to any such liability. However, claims, demands, liabilities, costs and damages held against or incurred by the General Partner in violation of the terms of this Agreement shall be held as an offset against the General Partner's Interest.

16.5 Interest of a General Partner After Resignation or Removal.

16.5.1 The resignation or removal of a General Partner shall not affect its rights as the owner of any Limited Partnership Interest.

16.5.2 Subject to the provisions of Section 16.5.3, upon the resignation or removal of a General Partner, the Interest which he had as a General Partner in Profits and Losses and distributions of Net Cash from Operations and Net Cash From Sales or Refinancings shall be retained by him and be converted into a "Special Limited Partner's" Interest and the Partnership shall take all actions necessary to admit such General Partner as a Special Limited Partner with respect to such converted Interest. Such conversion shall not, however, result in the General Partner becoming a Substituted Limited Partner with respect to such Interest. As a Special Limited Partner, the former General Partner shall be sent copies

of all notices, reports and other information furnished to Limited Partners by the General Partner or the Partnership.

16.5.3 Upon the resignation or removal of:

16.5.3.1 A General Partner leaving the Partnership with one or more General Partners whose total Interest in the Profits and Losses of the Partnership would be less than 1%, the Interest of the resigned or removed General Partner in such portion of the Partnership's Profits and Losses which is necessary to bring the total Interest of the remaining General Partners in the Profits and Losses of the Partnership up to 1% shall be automatically transferred to the remaining General Partner without any payment.

16.5.3.2 One or more General Partners leaving the Partnership without a General Partner and the election of a successor General Partner pursuant to Section 16.6, the rights and interest in 1% of the Partnership's Profits and Losses of the last General Partner who has resigned or been removed, shall be sold to and purchased by his successor as of the date of such resignation or removal at such price as shall be agreed upon between them; provided, however, that if no such agreement is reached within 30 days of the election of a successor then such price shall be determined by arbitration in the State of Florida under the rules of the American Arbitration Association. Within 60 days after the determination of such price it shall be paid in cash together with interest at the then prevailing short-term applicable federal rate under Internal Revenue Code Section 1274. The cost of arbitration shall be paid equally by the successor and the departing General Partner. If any sums payable under this Section to the resigned or removed General Partner are not paid to him when due, then such sums shall be paid to him by the Partnership.

16.6 Election of a Substitute General Partner. If there is only one General Partner and he resigns, or is removed in accordance with this Agreement, and if, pursuant to Section 18.1.2, the Limited Partners unanimously elect to continue the business of the Partnership, then a substitute General Partner shall be elected by an Eighty (80%) percent vote of the Limited Partners, and he shall take all actions necessary to continue the business of the Partnership. Notwithstanding the foregoing, if in the written opinion of counsel for the Partnership it is more likely than not that all Limited Partners must agree on a substitute General Partner to avoid a dissolution under the Act, then in lieu of the foregoing Eighty (80%) percent vote, all Limited Partners shall agree to the election of each substitute General Partner. Such election shall be accomplished in the following manner: Any one or more of the Limited Partners shall, promptly after the election to continue, nominate a person or entity for election as the substitute General Partner. Such nominee shall not become the General Partner unless elected by a vote of Eighty (80%) percent (or, One Hundred (100%) percent, as provided above) of the Interests owned by the Limited Partners. In the event that such nominee is not elected, then any one or more of the Limited Partners shall as soon as practicable nominate another substitute General Partner and such procedure shall continue until a substitute General Partner is elected or the Partnership is dissolved pursuant to Section 18.1.

16.7 Transfer of Interest of a General Partner. No General Partner may transfer, assign, encumber or otherwise dispose of his Interest as a General Partner in the Partnership except as provided for in this Section 16. All General Partners' Interests in the Partnership pursuant to Section 9 transferred pursuant to Section 16, including for this purpose, but not limited to, conversions to a Special Limited Partner's Interest, are included in the allocations to and distributive shares of the Partners in Section 9 as a Partner's Interest and shall be allocated and distributed to the transferees of such Interest.

17. Involuntary Transfers of Partnership Interests. In the event of any Involuntary Transfer, which for this purpose shall include a charging order, by any Partner or assignee of any Partnership Interest, the following procedures shall apply:

17.1 The Partner or assignee deprived or divested of any Partnership Interest by the Involuntary Transfer (the "Transferor") promptly shall give written notice of such Involuntary Transfer in reasonable detail to the Partnership and all Partners other than the Transferor, and the Person(s) who take or propose to take any interest in such Partnership Interest (for purposes of this Section 17, such Person(s) are referred to hereinafter as the "Transferee" and such Partnership Interest referred to hereinafter as the "Subject Partnership Interest") as a result of such Involuntary Transfer shall hold such interest subject to the rights of the Partnership as set forth in this Section 17.

17.2 Upon receipt of the notice referred to in the preceding subparagraph or upon discovery by the General Partner of such Involuntary Transfer by the General Partner, the Partnership shall have the irrevocable option, exercisable at the sole discretion of the General Partner, but not the obligation, for a period of sixty (60) days following receipt of such notice or such discovery, to purchase all or any part of the Subject Partnership Interest, pursuant to the terms set forth in this Section 17. All exercises of such option shall be in writing, shall specify the portion of the Subject Partnership Interest to be purchased, and shall be effective upon receipt thereof by the Transferee.

17.3 The closing for any such sale of the Subject Partnership Interest to the Partnership shall be held at the offices of the Partnership no later than forty-five (45) days after the receipt by the Transferee of the notice exercising the Partnership's irrevocable option to purchase such Subject Partnership Interest. The purchase price of any Subject Partnership Interest purchased pursuant to this Section 17 shall be the fair market value of the Subject Partnership Interest, taking into account all potential discounts for lack of control, lack of marketability and other relevant valuation factors that would be applicable to a sale of the Subject Partnership Interest to a party unrelated and unaffiliated with any existing Partner or assignee, as determined by a reasonably qualified appraiser selected by the Partnership.

17.4 The valuation date for the determination of the purchase price shall be the first day of the month following the month in which notice is given pursuant to Section 17.2 above.

17.5 The purchase price shall be paid by the Partnership by making and delivering to the Transferor or the Transferee, as the case may be, of an unsecured ten (10) year nonrecourse promissory note. Interest on such note shall be payable at the long-term applicable federal rate under Internal

Revenue Code Section 1274. The first installment will be due and payable on the first day of the calendar year following the closing, and subsequent annual installments, with accrued interest, will be due and payable on the first day of each succeeding calendar year until the entire amount of the obligation is paid. The Partnership shall have the right to prepay all or any part of the note at any time without penalty.

17.6 If the Partnership does not exercise its option to purchase all or part of the Subject Partnership Interest under this Section 17, the remaining Partners within the same sixty day exercise period shall have the right but not the obligation to purchase as set forth in this Section 17 in proportion to their Partnership Interests in the manner so set forth. However, to the extent that one or more of the Partners declines to exercise such Partner's right, the remaining Partners shall be offered the right but not the obligation, on a pro-rata basis, to purchase the remaining portion of the Subject Partnership Interest. Such Partners may provide written notice of exercise prior to the expiration of the period notwithstanding that the Partnership may still exercise its option, and such notice may provide that the portion sought to be purchased is the maximum portion available to be purchased by such Partner, with such notice to be effective only if and to the extent that the Partnership does not preempt such Partner by exercising its option.

17.7 In the event the Partnership and the Partners do not purchase all of the Subject Partnership Interest involved in an Involuntary Transfer, the Transferee shall become an assignee of the Subject Partnership Interest, except as admitted as a Substitute Limited Partner in accordance with the terms of this Agreement, provided, however, if a third party obtains a charging order, its rights shall be limited accordingly.

17.8 For purposes of this Section 17, the term "Partner or Assignee" shall include the beneficiaries of a trust that is a Partner or assignee of a Partnership Interest, and the term "Partnership Interest" shall include the beneficial interests of the beneficiaries of a trust that is a Partner or assignee of a Partnership Interest.

17.9 Neither the Transferee of an Involuntary Transfer nor the Transferor will have the right to vote on Partnership matters during the period when the option to purchase granted under this Section 17 may be exercised nor during the period subsequent to exercise and prior to the closing thereunder, and in regard to such voting and any particular voting threshold percentages described in this Agreement such Partnership Interest shall be deemed not to exist.

18. Dissolution and Winding up of Partnership.

18.1 Dissolution of Partnership. The Partnership shall be dissolved upon the first to occur of any of the following events:

18.1.1 December 31, 2058.

18.1.2 The happening of an Event of Withdrawal of a General Partner authorized hereunder to carry on the business of the Partnership, unless

18.1.2.1 at the time there is at least one other General Partner authorized hereunder to carry on the business of the Partnership and such General Partner does carry on the business of the Partnership; or

18.1.2.2 within ninety (90) days of the Event of Withdrawal, (a) all of the then Partners agree in writing to continue the business of the Partnership and to elect one or more additional General Partners under the procedures of Section 16.6, and (b) one or more additional General Partners are elected under the procedures of Section 16.6.

18.1.3 The Partnership becoming insolvent or bankrupt.

18.1.4 The unanimous vote to dissolve of all Partners.

18.2 Winding Up of Partnership. Upon the dissolution of the Partnership pursuant to Section 18.1, the General Partner, or if there is no General Partner, a substitute General Partner elected by vote of 51% of the Interests owned by the Limited Partners, shall take full account of the Partnership's assets and liabilities and the assets shall be liquidated as promptly as is consistent with obtaining their fair value, and the proceeds of such liquidation therefor shall be applied and distributed as provided in Section 10.3.

18.3 Survival of Obligations. Except as otherwise provided in this Agreement, no dissolution of the Partnership shall relieve, release or discharge any Partner or any of his successors, assigns, heirs or legal representatives, from any previous breach or default of, or any obligation previously incurred or accrued under, any provision of this Agreement, and any and all such liabilities, claims, demands or causes of action arising from any such breaches, defaults and obligations shall survive such dissolution and termination.

18.4 Termination. Upon compliance with Section 18.2, the General Partner shall file or cause to be filed a certificate of cancellation of the Certificate and the Partnership shall then be terminated.

19. Amendment of the Certificate and Agreement.

19.1 When Required. This Agreement and the Certificate shall be amended by the General Partner without any additional consent of the Limited Partners when required by law whenever:

19.1.1 There is a change in the name of the Partnership or the amount or character of the contribution of any Partner including, but not limited to, withdrawal or reduction, pursuant to this Agreement.

19.1.2 A person ceases to be, is substituted as, or becomes a General or Limited Partner.

19.1.3 There is a false or erroneous statement in the Certificate, provided the amendment does not adversely affect the interest of the Limited Partners and the General Partner has obtained an opinion of its counsel to that effect.

19.1.4 In the opinion of counsel for the Partnership, it is necessary or appropriate to satisfy a requirement of the Code with respect to partnerships, provided such amendments do not adversely affect the interests of the Limited Partners, and the General Partner has obtained an opinion of its counsel to that effect, and any amendment in this regard shall have retroactive effect to the date of this Agreement.

19.2 Limitation. Except as provided in Section 19.1, amendments shall only be made with the approval of Limited Partners as provided in Section 19.3. No amendment shall be made under Section 19 which would adversely affect the federal income tax treatment to be afforded Partners or adversely affect the liabilities of the Limited Partners or change the method of the allocation of Profits and Losses or preferences or distributive shares without full disclosure to the Partners and unless all of the Partners consent to such amendment.

19.3 Consent of Limited Partners. The General Partner shall obtain the written consent or approval or vote of Limited Partners owning in the aggregate at least Eighty (80%) percent of the Limited Partnership Interests with respect to any amendment other than an amendment allowed or permitted by Sections 19.1 and 19.2.

20. Conflict of Interest Waiver. The Partners and the Partnership acknowledge that the law firm of Tescher & Spallina, P.A. has represented the Partnership in connection with the drafting of this Agreement and the formation and structuring of the Partnership, and that said law firm also represents one or more of the Partners and owners of interests in entity Partners both in context of this Partnership and other matters (namely, SIMON L. BERNSTEIN, SHIRLEY BERNSTEIN, SHIRLEY BERNSTEIN FAMILY FOUNDATION, INC., and BERNSTEIN HOLDINGS, LLC). The Partnership and the Partners acknowledge that they have been advised that there are material income tax consequences and economic ramifications from being a Partner in the Partnership, that they fully understand the tax consequences and economic ramifications of a Partner's investment in the Partnership, and that they have been encouraged to consult with separate and independent counsel to advise them on Partnership and Partner issues including this Agreement and the formation of the Partnership. The Partnership and the Partners hereby waive any conflicts of interest with respect to the foregoing law firm's representation of the Partnership and the afore described Partners and owners of interests in entity Partners, in connection with the services set forth in this Section.

21. Miscellaneous.

21.1 Notices. Any notices, payments, demand, offer or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been delivered and given for all purposes (a) if the same is delivered personally, or (b) whether or not the same is actually received, if sent by registered or certified mail, postage and charges prepaid, addressed as follows:

21.1.1 If to a General Partner, at BERNSTEIN HOLDINGS, LLC, 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487, or such other address as the General Partner may from time to time specify by written notice to the other Partners.

21.1.2 If to a Limited Partner, at BERNSTEIN FAMILY INVESTMENTS, LLLP, 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487, or to such other address as such Partner may from time to time specify by written notice to the General Partner, which other address shall be noted by the General Partner on the records of the Partnership.

21.1.3 If to any other Person, at the address of such person as shown by the Partnership's records.

21.2 Captions. Captions contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.

21.3 Severability. Every provision of this Agreement is severable. If any term or provision is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the validity of the remainder of this Agreement or any other provision.

21.4 Right to Rely Upon the Authority of the General Partner. No person dealing with a General Partner shall be required to determine his authority to make any commitment or undertaking on behalf of the Partnership, nor to determine any fact or circumstance bearing upon the existence of his authority. In addition, no purchaser of any asset owned by the Partnership shall be required to determine the sole and exclusive authority of the General Partner to sign and deliver on behalf of the Partnership any such instrument of transfer, or to see to the application or distribution of revenues or proceeds paid or credited to the Partnership, unless such purchasers shall have received written notice from the Partnership affecting the same.

21.5 Litigation. The General Partner shall prosecute, defend and settle such actions at law or in equity as they may deem in their sole and absolute discretion to be necessary to enforce or protect the interest of the Partnership. The Partnership and the General Partner shall respond to any final decree, judgment or decision of a court of competent jurisdiction or board or authority having jurisdiction in the matter.

21.6 Applicable Law. The laws of the State of Florida shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties.

21.7 Counterpart Execution. This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document. All counterparts shall be construed together and shall constitute but one Agreement.

21.8 Binding Effect. Each and every covenant, term, provision and agreement contained in this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.

21.9 Right to Rely Upon Authority of Person Signing Agreement. In the event that a Limited Partner is an estate, a trust with or without disclosed beneficiaries, partnership, limited partnership, joint venture, corporation, or any entity other than a natural person, the Partnership and the General Partner shall (a) not be required to determine the authority of the Person signing this Agreement or any amendment to make any commitment or undertaking on behalf of such entity, nor to determine any fact or circumstance bearing upon the existence of his authority; (b) not be required to see to the application or distribution of revenues or proceeds paid or credited to the Person signing the Agreement or any amendment on behalf of such entity; (c) be entitled to rely upon the authority of the Person signing this Agreement or any amendment with respect to voting of the Partnership Interests of such entity and with respect to the giving of consent on behalf of such entity or any other Person in connection with any matter for which consent is permissible or required under this Agreement; and (d) be entitled to rely upon the authority of any general partner, joint venturer, co-or successor trustee or president, vice president, or other officer, as the case may be of any such entity the same as though such Person were the Person originally executing this Agreement or any amendment on behalf of such entity.

21.10 Rights of Nonrecourse Creditors. A creditor who makes a nonrecourse loan to the Partnership shall not have or acquire, at any time as a result of making any loan or advance, any direct or indirect interest in the profits, capital, or property of the Partnership other than, if applicable, as a secured creditor.



21.11 Number and Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.



21.12 Entire Agreement. This Agreement constitutes the entire Agreement of the parties with respect to matters set forth in this Agreement and supersedes any prior understanding or agreement, oral or written, with respect thereto.

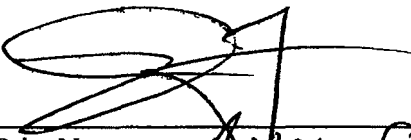
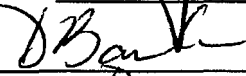
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IN WITNESS WHEREOF, this Agreement of Limited Partnership has been executed as of the date set forth in the preamble.

Witnessed by (as to all):


Print Name: Robert Spelling

Print Name: Diana Banks


Print Name: Robert Spelling

Print Name: Diana Banks


Print Name: Robert Spelling

Print Name: Diana Banks

GENERAL PARTNER:

BERNSTEIN HOLDINGS, LLC, a Florida limited liability company


By: 
SIMON L. BERNSTEIN, Manager

LIMITED PARTNERS:

SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008

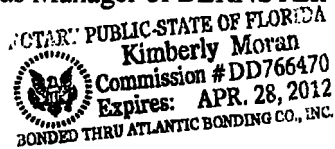
By: 
SIMON L. BERNSTEIN, Trustee

SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008

By: 
SHIRLEY BERNSTEIN, Trustee

STATE OF FLORIDA :
 : SS.
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SIMON L. BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008, and as Manager of BERNSTEIN HOLDINGS, LLC.



Kimberly Moran
Signature - Notary Public

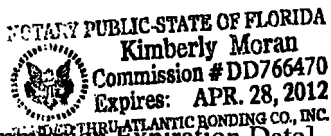
[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known or Produced Identification _____
Type of Identification Produced _____

STATE OF FLORIDA :
 : SS.
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008.



Kimberly Moran
Signature - Notary Public

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known or Produced Identification _____
Type of Identification Produced _____

F:\WPDATA\dr\Bernstein, Shirley & Simon\Bernstein Family Investments, LLLP\Bernstein Investments, LLLP Partnership Agreement.wpd

SCHEDULE "A"

<u>Name:</u>	<u>% Interest</u>	<u>Cash</u>
<u>General Partner:</u>		
BERNSTEIN HOLDINGS, LLC	<u>1 %</u>	<u>\$10.00</u>
<u>Limited Partners:</u>		
SIMON L BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008	<u>49.5 %</u>	<u>\$495.00</u>
SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008	<u>49.5 %</u>	<u>\$495.00</u>

NOTE: The foregoing valuations and percentage interests are subject to adjustment based on variations in value of contributed property from the values scheduled here and the actual fair market value of such contributed property on the date of transfer to the Partnership.

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL
IN RE: ESTATE OF PROBATE DIVISION
SHIRLEY BERNSTEIN File No. 502011CP000653XXXX 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 ESTATES	\$ <u>25,000.00</u>

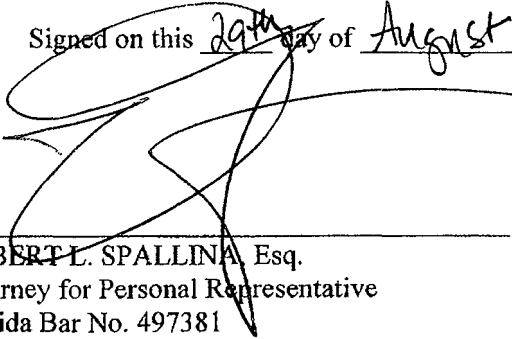
All real estate located outside the State of Florida owned by the decedent of which the personal representative is aware, if any, is described on a schedule attached hereto. [If none, so indicate]

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 29th 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



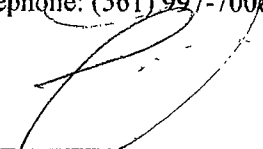
CERTIFICATE OF SERVICE

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



LIMITED LIABILITY COMPANY

OPERATING AGREEMENT

of

BERNSTEIN HOLDINGS, LLC

a Florida limited liability company

**OPERATING AGREEMENT OF
BERNSTEIN HOLDINGS, LLC**

This Limited Liability Company Agreement (the "Agreement") is made and entered into as of the 20 day of May, 2008, by and among BERNSTEIN HOLDINGS, LLC (the "Company"); and SIMON L. BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008, SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees and ROBERT L. SPALLINA, Independent Trustee of the ELIOT BERNSTEIN FAMILY TRUST dated May 20, 2008, SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees, and ROBERT L. SPALLINA, Independent Trustee of the JILL IANTONI FAMILY TRUST dated May 20, 2008, and SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees, and ROBERT L. SPALLINA, Independent Trustee of the LISA S. FRIEDSTEIN FAMILY TRUST dated May 20, 2008, and any subsequent transferee as the Members ("Members"). The Members are herein sometimes referred to individually as a "Member" and collectively as "Members."

WITNESSETH:

WHEREAS, Articles of Organization for **BERNSTEIN HOLDINGS, LLC** were filed with the Florida Department of State on February 6, 2008.

WHEREAS, the Members desire to reduce their agreements to writing, to set forth the rights and obligations of the Members and the Manager.

NOW, THEREFORE, the Members and the Company hereby agree as follows:

ARTICLE I

DEFINITIONS

The following terms used in this Agreement shall have the following meanings:

(a) "**Act**" shall mean the Florida Limited Liability Company Act at F.S § 608.401, *et seq* and all amendments to the Act.

(b) "**Articles of Organization**" shall mean the Articles of Organization of **BERNSTEIN HOLDINGS, LLC**, as filed with the Department of State of Florida on February 6, 2008, and as may be amended from time to time.

(c) "**Capital Contribution**" shall mean any contribution to the capital of the Company in cash or the fair market value of property by a Member whenever made, net of any liabilities secured by such contributed property.

(d) “**Capital Account**” as of any given date shall mean the Capital Contribution to the Company by a Member as adjusted up to such date pursuant to Article VIII.

(e) “**Code**” shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(f) “**Company**” shall refer to **BERNSTEIN HOLDINGS, LLC**, a limited liability company formed under the laws of the State of Florida.

(g) “**Distributable Cash**” shall mean all cash, revenues and funds received by the Company from Company operations, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred in the normal operation of the Company’s business; and (iii) such Reserves as the Managers deem reasonably necessary for the proper operation of the Company’s business.

(h) “**Entity**” shall mean any general partnership, limited liability partnership, limited partnership, limited liability limited partnerships, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization.

(i) “**Gifted Member**” shall mean any Member who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of its Membership Interest.

(j) “**Initial Capital Contribution**” shall mean the initial contribution to the capital of the Company pursuant to this Agreement.

(k) “**Interest**” shall mean “Percentage Interest” unless otherwise specifically agreed or in the case of special allocations.

(l) “**Majority Interest**” shall mean the Interests of Members, which in the aggregate exceed 50% of all Interests.

(m) “**Manager**” shall mean one or more managers designated as such pursuant to this Agreement or by subsequent vote of the Members. References to the Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be. Any Person may be named a Manager pursuant to this Agreement

(n) “**Member**” shall mean each of the parties who executes a counterpart of this Agreement as a Member and each of the parties who may hereafter become Members. To the extent a Manager has purchased a Membership Interest in the Company, he will have all the rights of a Member with respect to such Membership Interest, and the term “Member” as used herein shall include a Manager to the extent he has purchased such Membership Interest in the Company. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Transferee Interest, such Person shall

have all the rights of a Member with respect to such purchased or otherwise acquired Membership Interest or Transferee Interest, as the case may be.

(o) “**Membership Interest**” shall mean a Member’s entire interest in the Company including such Member’s Transferee Interest and, the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Agreement and the Act.

(p) “**Net Income**” and “**Net Losses**” shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with sound accounting principles employed under the cash method of accounting at the close of each fiscal year on the Company’s tax return filed for federal income tax purposes.

(q) “**Operating Agreement**” (or “**Agreement**”) shall mean this Operating Agreement of **BERNSTEIN HOLDINGS, LLC**, as originally executed and as amended from time to time.

(r) “**Percentage Interest**” shall mean, for any Member, the percentage interest that the Capital Account of the Member bears to the total Capital Accounts of all of the Members of the Company, as set forth at Section 9.1 herein, and Exhibit A, as may be changed from time to time by the unanimous vote of the Members.

(s) “**Person**” shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such “Person” where the context so permits.

(t) “**Reserves**” shall mean funds set aside or amounts allocated to reserves which shall be maintained in amounts reasonably deemed sufficient by the Managers for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company’s business.

(u) “**Selling Member**” shall mean any Member or Transferee which sells, assigns, pledges, hypothecates or otherwise transfers for consideration all or any portion of its Membership Interest or Transferee Interest.

(v) “**Transferee**” shall be person who has not been admitted by the Company as a Member Partner, but, by virtue of a Transfer of an Interest in the Company to said person, said person is entitled to a pro rata share of one or more of the Company’s items of income, losses, credits, and distributions of the Company’s assets pursuant to this Agreement and the Act, but said person shall not have, and is not entitled to any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members or Manager.

(w) “**Transferring Member**” shall collectively mean a Selling Member and a Gifting Member.

(x) “**Treasury Regulations**” shall include proposed, temporary and final regulations promulgated under the Code.

ARTICLE II
FORMATION OF COMPANY

2.1 *Organization.*

BERNSTEIN HOLDINGS, LLC, has been organized as a Florida limited liability company by executing and delivering the Articles of Organization to the Florida Department of State in accordance with and pursuant to the Act.

2.2 *Name.*

The name of the Company is *BERNSTEIN HOLDINGS, LLC*, and all business of the Company shall be conducted under that name unless a majority of the Members agree to the filing and use of a fictitious name.

2.3 *Principal Place of Business.*

The initial principal place of business of the Company shall be 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487. The Company may locate its places of business and registered office at any other place or places as the Manager may deem advisable.

2.4 *Registered Office and Registered Agent.*

The Company's initial registered office shall be at the office of its registered agent in Florida, and the name of its initial registered agent shall be Donald R. Tescher, Esq. 2101 Corporate Blvd., Suite 107, Boca Raton, Florida, 33431. The registered office and registered agent may be changed by filing the address of the new registered office and/or the name of the new registered agent with the Florida Department of State pursuant to the Act.

2.5 *Term.*

The term of the Company has filed Articles of Organization with the Florida Department of State, and shall have perpetual existence, unless the Company is earlier dissolved in accordance with either the provisions of this Agreement or the Act.

ARTICLE III
BUSINESS OF COMPANY

The business of the Company shall be to engage in management of investments, and closely-held business or real estate ventures, and such lawful activities as are reasonably necessary or useful to the furtherance of the forgoing purpose (the "Business").

ARTICLE IV
NAMES AND ADDRESSES OF MEMBERS

The names of the Members are listed on Exhibit A attached hereto and incorporated herein, and the addresses of the members are 950 Peninsula Corporate Circle, Suite 310, Boca Raton, Florida 33487, as amended from time to time.

ARTICLE V

RIGHTS AND DUTIES OF MANAGERS

5.1 *Management.*

5.1.1 *General.* The business and affairs of the Company shall be managed by its Managers. The Managers shall direct, manage, and control the business of the Company. Except for situations in which the approval of the Members is expressly required by this Agreement or by nonwaivable provisions of the Act, the Managers shall have exclusive, sole, full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business. At any time when there is more than one Manager, any one Manager may take any action permitted to be taken by the Managers, unless the approval of more than one of the Managers is expressly required pursuant to this Agreement or the Act. The Managers may create a Board of Directors, and may also appoint individuals with or without titles, including the titles of General Manager, Executive Director, President, Vice President, Treasurer, Secretary, and Assistant Secretary, to act on behalf of the Company with such power and authority as the Managers or Board of Directors may delegate to any such Person.

5.1.2 *Initial Managers/Designation of Managers/Voting.* The Members agree that the initial Manager of the Company is SIMON L. BERNSTEIN. Unless otherwise specifically agreed herein, business decisions of the Company shall be made by said Manager. The Members shall vote their Interests such that only the aforementioned person is Manager of the Company. In all events, an individual shall be a Manager only while she or he is a Member who owns voting Interests (and is not a mere Transferee), either directly or indirectly. After proper notice, in the event of death or mental disability or incompetence of the Manager, the Members shall vote on and elect a new Manager.

5.2 *Certain Powers of Managers.*

Without limiting the generality of Section 5.01, the Manager (or, if more than one Manager, then the Managers) shall have power and authority, on behalf of the Company to do the following:

(a) To acquire or lease property from any Person as the Managers may determine, whether or not such Person is directly or indirectly affiliated or connected with any Manager or Member;

(b) To borrow money for the Company from banks, other lending institutions, the Managers, Members, or affiliates of the Managers or Members on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Managers, or to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Managers;

- (c) To purchase liability and other insurance to protect the Company's property and business;
- (d) To hold and own Company real and personal properties in the name of the Company;
- (e) To invest Company funds in time deposits, short-term governmental obligations, commercial paper or other investments;
- (f) To sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan as long as such disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound;
- (g) To execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments, bills of sale; leases; and any other instruments or documents necessary to the business of the Company;
- (h) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company;
- (i) To enter into any and all other agreements on behalf of the Company, in such forms as the Managers may approve; and
- (j) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by this Agreement or by the Manager of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the previous sentence.

5.3 *Liability for Certain Acts.*

Each Manager shall perform his duties as Manager in good faith, in a manner he or she reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, unlawful acts, or a wrongful taking by the Manager.

5.4 *No Exclusive Duty to Company.*

A Member or Manager shall not be required to manage the Company as his or her sole and exclusive function and may have other business interests and engage in activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this

Agreement, to share or participate in such other investments or activities of a Manager or to the income or proceeds derived therefrom.

5.5 Bank Accounts.

The Manager may from time to time open bank accounts in, the name of the Company, and the Manager shall be the sole signatory thereon, unless Members owning a Majority Interest determine otherwise.

5.6 Indemnity of the Managers, Employees and Other Agents.

The Company shall, to the maximum extent permitted under the Act, indemnify and make advances for expenses to Managers, its employees, and other agents.

5.7 Resignation.

Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later date specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

5.8 Removal.

A Manager shall not be subject to removal by vote of the Members except, if at all, pursuant to the provisions of this Agreement, as it may be amended by agreement of all of the Members.

5.9 Vacancies.

To the extent not expressly provided for in Section 5.1.2 "Voting Agreement of Members," and only to said extent, if any: Any vacancy occurring for any reason in the number of Managers of the Company may be filled by the affirmative vote of Members holding a majority of the Percentage Interests present at an election at a meeting of Members called for that purpose or by the Members' unanimous written consent. A Manager elected to fill a vacancy shall be elected for the unexpired term of their predecessor in office and shall hold office until the expiration of such term and until their successor shall be elected and qualified or until the Manager's earlier death, resignation or removal. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until his successor shall be elected and qualified, or until his earlier death, resignation or removal.

5.10 Salaries.

Each Manager shall receive annual compensation (the "Management Fee") if such compensation is agreed to by a majority of the Percentage Interest of the Members in writing, and shall be entitled to reimbursement of reasonable and necessary expenses advanced on behalf of the Company.

ARTICLE VI

RIGHTS AND OBLIGATIONS OF MEMBERS

6.1 *Limitation of Liability.*

Each Member's liability to the Company shall be limited as set forth in this Agreement, the Act and other applicable law.

6.2 *Company Liability.* A Member will not be personally liable for any debts, obligations, liabilities or losses of the Company, whether arising in contract, tort, or otherwise, solely by reason of being a Member, beyond his respective Capital Contributions or any obligation of the Member under Sections 8.1 and 8.2 hereunder, except as provided in Section 6.7 or as otherwise required by law.

6.3 *List of Members.*

Upon the written request of any Member, the Managers shall provide a list showing all of the names, addresses and Membership Interests and Transferee Interests in the Company.

6.4 *Approval of Sale of All Assets.* The Managers shall have the right, to approve the sale, exchange or other disposition of all, or substantially all, of the Company's assets which is to occur as part of a single transaction or plan.

6.5 *Company Books.*

The Managers shall maintain and preserve, during the term of the Company, the accounts, books, and other relevant Company documents described in Section 9.9. Upon reasonable written request, each Member and Transferee shall have the right, at any time during ordinary business hours, as reasonably determined by the Manager, to inspect and copy, at the requesting Member's or Transferee's expense, the Company documents required to be maintained under Section 608.4101 of the Act, and such other documents which the Managers, in their reasonable discretion, deem appropriate.

6.6 *Priority and Return of Capital.*

Except as may be expressly provided in Article IX, no Member or Transferee shall have priority over any other Member or Transferee, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans which a Member has made to the Company.

6.7 *Liability of a Member to the Company.*

A Member who receives a distribution or return in whole or in part of its contribution is liable to the Company only to the extent provided by the Act.

ARTICLE VII

MEETINGS OF MANAGERS AND MEMBERS

7.1 *Meetings.*

Meetings of the Managers, for any purpose or purposes, may be called by any Manager. Meetings of the Members for any purpose or purposes, may be called by any Members holding at least 51% of the Percentage Interests of the Members.

7.2 *Place of Meetings.*

The Managers may designate any location within the U.S., either within or outside the State of Florida, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal place of business of the Company.

7.3 *Notice of Meetings.*

Except as provided in Section 7.04, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or Member or Members calling the meeting, to each Member or Manager entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, certified mail return receipt requested, addressed to the Member or to the Manager at its address as it appears on the books of the Company, with postage therein prepaid. Notice may also be given by telegram, teletype or facsimile, or other form of electronic communication. Managers and Members may participate in and hold meetings whereby all conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other. Participation by communications equipment shall constitute presence as the meeting, unless a Member or Manager is participating in the meeting for the express purpose of objecting to the transaction of any business on the ground the meeting is not lawfully called or convened.

7.4 *Meeting of All Members and Meetings of All Managers.* If all of the Members or all of the Managers shall meet at any time and place, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

7.5 *Record Date.*

For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declared such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

7.6 *Quorum.*

Members holding at least fifty percent (50%) of all Percentage Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members, and if there is more than one Manager then serving, then a majority of the number of the then-serving Managers shall constitute a

quorum at a meeting of the Managers, who shall be represented in person, and shall constitute a quorum at any meeting.

7.7 *Manner of Acting.*

If a quorum is present, the affirmative vote of a majority of all of the Members represented at the meeting, who must hold a majority Percentage Interest in the Company, shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, or by this Agreement. Unless otherwise expressly provided herein or required under applicable law, only Members who have a Membership Interest may vote or consent upon any matter and their vote or consent, as the case may be, shall be counted in the determination of whether the matter was approved by the Members.

7.8 *Proxies.*

At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managers of the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Managers shall not be able to vote by Proxies.

7.9 *Action by Members Without a Meeting.*

Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Managers of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date.

7.10 *Waiver of Notice.*

When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

ARTICLE VIII

CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS

8.1 *Members' Initial Capital Contributions.*

Each Member shall contribute such amount as is set forth on the books and records of the Company. No interest shall accrue on any Capital Contribution and the Member shall not have the right to withdraw or be repaid any Capital Contribution except as provided in this Agreement.

8.2 *Additional Contributions.*

A Member may, but shall not be obligated to, make such additional Capital Contributions as shall be determined by the Managers. Such additional Capital Contributions shall be reflected in the Account of the Contributing Member and shall not be a part of any other Member's Capital Account absent written agreement of the Members. After the making of any such determination, the Managers shall give written notice to each Member of the amount of required additional contribution, if any, and each Member may deliver to the Company its pro rata share thereof (in proportion to the *respective* Percentage Interest of the Member on the date such notice is given) no later than thirty (30) days following the date such notice is given. None of the terms, covenants, obligations or rights contained in this Section 8.2 is or shall be deemed to be for the benefit of any person or entity other than the Members and the Company, and no such third person shall under any circumstances have any right to compel any actions or payments by the Managers and/or the Members.

8.3 *Capital Accounts.*

(a) A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (1) the amount of money contributed by such Member to the Company; (2) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of Net Profits and Net Losses; and (4) allocations to such Member of income described in Code Section 705(a)(1)(B). Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the Company; (2) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752); (3) allocations to such Member of expenditures described in Code Section 705(a)(2)(B); and (4) allocations to the account of such Member of Company loss and deduction as set forth in such Regulations, taking into account adjustments to reflect book value.

(b) In the event of a permitted sale or exchange of a Membership Interest or a Transferee Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the Transferee to the extent it relates to the transferred Membership Interest or Transferee Interest in accordance with Section 1.704-1(b) (2) (iv) of the Treasury Regulations.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 8.3 is intended to comply with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder. If the Company determines that the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 8.3 should be modified in order to comply with Code Section 704(b) and the Treasury Regulations, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 8.3, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members as set forth in this Agreement.

(d) Except as otherwise required in the Act (and subject to Sections 8.1 and 8.2), no Member or Transferee shall have any liability to restore all or any portion of a deficit balance in such Member's or Transferee's Capital Account.

8.4 *Withdrawal or Reduction of Members' Contributions to Capital.*

(a) A Member or Transferee Interest Holder shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of the Company, except liabilities to Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them.

(b) A Member or Transferee Interest Holder, irrespective of the nature of its Capital Contribution, has only the right to demand and receive cash in return for its Capital Contribution.

(c) Notwithstanding anything to the contrary in this Agreement, a Member may withdraw from the Company only at the time or upon the occurrence of an event specified in this Agreement or in the Articles of Organization. No such event is specified in either the Articles of Organization or in this Agreement at the date hereof. A Member which violates the withdrawal prohibition in this Section shall be liable for breach of this Agreement and shall become a Transferee. A withdrawing Member shall not have a right to receive the fair value of receive the withdrawing member's Interest in the Company as of the date of the resignation but rather, shall have only such rights as a Transferee would have to receive distributions as are made by the Company in the discretion of the Managers.

ARTICLE IX

**ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS
AND REPORTS**

9.1 *Allocations of Income and Losses from Operations.*

The Net Income and Net Losses of the Company for each fiscal year, and each Member or Transferee's share of Cash Flow, will be allocated in accordance with the Percentage Interests schedule set forth in Exhibit A attached hereto, and, except as provided therein, the Percentage Interests of Members shall be proportionate to the amount of their Capital Accounts as determined hereinabove.

9.2 *Special Tax Provisions As to Extraordinary Allocations, if Any, to Capital*

Allocations of Net Income and Net Losses other than those set forth above shall be made based upon the determinations of the tax accountants and attorneys employed by the Company, giving regard to the intention expressed hereinabove and otherwise herein, with respect to special or priority allocations if any, and with regard to federal partnership tax and capital accounting principles described in Section 8.3 hereinabove.

9.3 *Distributions.*

Within the discretion of the Managers as to amounts, if any, and as to timing, the Managers may distribute Cash Flow to the Members, in accordance with their Percentage Interests .

9.4 ***Limitation upon Distributions.***

(a) No distributions or return of contributions shall be made and paid if, after the distribution or return of distribution is made either

- (1) the Company would be insolvent; or
- (2) the net assets of the Company would be less than zero.

(b) The Managers may base a determination that a distribution or return of contribution may be made under Section 9.4(a) in good faith reliance upon a balance sheet and profit and loss statement of the Company represented to be correct by the person having charge of its books of account or certified by an independent public or certified public accountant or firm of accountants to fairly reflect the financial condition of the Company.

9.5 ***Tax Accounting Principles.***

The income and losses of the Company shall be determined in accordance with sound tax accounting principles applied on a consistent basis using generally accepted tax accounting principles as applied consistent with the Code.

9.6 ***Interest on and Return of Capital Contributions.***

No Member shall be entitled to interest on its Capital Contribution or to a return of its Capital Contribution, except as otherwise provided in this Agreement.

9.7 ***Loans to Company.***

Nothing in this Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company, provided that such loans are arms-length transactions, containing terms customary in the lending industry at the time such loans were made.

9.8 ***Accounting Period.***

The Company's accounting period shall be the calendar year ("Fiscal Year").

9.9 ***Records, Audits and Reports.***

At the expense of the Company, the Managers shall maintain records and accounts of the operations and expenditures of the Company. At a minimum, the Company shall keep at its principal place of business the following records:

(a) A current list of the full name and last known address of each Member and Transferee setting forth the amount of cash each Member and Transferee has contributed, a description and statement of the agreed value of the other property or services, each Member and Transferee has contributed or has agreed to contribute in the future, and the date on which each became a Member or Transferee, and their respective Percentage Interest in the Company;

(b) A copy of the Articles of Organization of the Company and all amendments thereto together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(c) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(d) Copies of the Company's currently effective written Agreement, all amendments thereto, and copies of any financial statements of the Company for the three most recent years;

(e) Notices of and minutes of every Member and Managers meeting,

(f) Any written consents obtained from Members for actions taken by Members without a meeting; and

(g) Unless contained in the Articles of Organization or the Agreement, a writing prepared by the Managers setting out the following:

(1) The times at which or events on the happening of which any additional contributions agreed to be made by each Member and Transferee are to be made.

(2) Any right of a Member or Transferee to receive distributions of include a return on all or any part of the Member or Transferee's contributions.

(3) Any power of a Member or Transferee to grant the right to become an assignee of any part of the Member's or Transferee's interest, and the terms and condition of the power.

9.10 *Returns and Other Elections.*

The Managers shall cause the preparation and timely filing of tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, and pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year upon the Members' written request. All elections permitted to be made by the Company under federal or state laws shall be made by the Managers in their sole discretion. It is the intention of the Members that the Company shall be taxed as a "Partnership" for federal, state, and local income tax purposes.

9.11 *Tax Matters Partner.*

SIMON L. BERNSTEIN is designated the "Tax Matters Partner" (as defined in Code Section 6231), and is authorized and required to represent the Company (at the Company's expense), either directly, or through accounting or tax representatives, in connection with all examinations for the Company's affairs by tax authorities, including, without limitation administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The

Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings.

ARTICLE X

TRANSFERABILITY

10.1 *General.*

10.1.1. *Transferees Not Members, Generally.* Except as otherwise set forth in Section 10.1.2, or with the consent of all of the Members, neither a Member nor a Transferee shall have the right, as to all or any part of its Membership Interest or Transferee Interest to:

(a) sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration (collectively, “sell” or, as context requires “selling”); or

(b) gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) (collectively, “gift”).

Absent the written consent of all Members to the contrary or otherwise provided by law, the Interest of the Transferee shall be a Non-Voting Interest.

10.1.2 *Transferees Who are Lineal Descendants of a Member.* Any Transferees who are lineal descendants of both SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, either directly, or indirectly, as beneficiaries of a Trust, or other entity beneficially owned solely for or by that Member (including, but not limited to a revocable trust established by a Member for the sole lifetime benefit of the Member or the Member’s descendants) shall be Members upon their written agreement to be bound by the terms of this Agreement and shall be subject to the voting agreements described in Article V, hereinabove.

10.2 *Right of First Refusal.*

(a) If a Selling Member desires to sell all or any portion of its Membership Interest in the Company to a third party purchaser, the Selling Member shall obtain from such third party purchaser a bona fide written offer to purchase such Interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered; provided, however, the offer shall include a “tag along” or “take along” provision, pursuant to which, all Members have the right to sell a pro-rata portion (determined in accordance with the Percentage Interests of all of the Members) of their Interests to the third party. The Selling Member or Transferee shall give written notification to the remaining Members, by certified mail or personal delivery, of its intention to so transfer such Interest, furnishing to the remaining Members a copy of the written offer to purchase such Interest.

(b) Each of the remaining Members, on a basis pro rata to their Percentage Interests or on a basis pro rata to the Percentage Interests of those remaining Members exercising their rights of first refusal, shall have the right to exercise a right of first refusal to purchase all (but not less than all) of the Interest proposed to be purchased by the third party and sold by the Selling Member and the “tag along Members” upon the same terms and conditions as stated in the aforesaid written offer to purchase

by giving written notification to the Selling Member and the “tag along Members”, by certified mail or personal delivery, of the intention to do so within thirty (30) days after receiving written notice from the Selling Member. Subject to the following paragraph, the failure of the remaining Members to so notify the Selling Member and the “tag along Members” of their desire to exercise this right of first refusal within said thirty (30) day period shall result in the termination of the right of the first refusal and the Selling Member and the “tag along Members” shall be entitled to consummate the sale of its Interest in the Company to such third party purchaser, provided that the sale shall be consummated within sixty (60) days following the expiration of the aforesaid thirty (30) day period. In the event the remaining Members (or any one or more of the remaining Members) give written notice to the Selling Member and the “tag along Members” of their desire to exercise this right of first refusal and to purchase all of the Interests of the Selling Member and the “tag along Members” offered upon the same terms and conditions as are stated in the aforesaid written offer to purchase, the remaining Members shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within sixty (60) days after written notification to the Selling Member of the remaining Member or Members’ election to exercise their right of the first refusal. In the event that two (2) or more Members give written notice of their desire to exercise their right of first refusal, absent an agreement between all the Members so exercising such right, each such Member exercising their right of first refusal shall be entitled to purchase that percentage of the selling Member’s share according to the proportion that their Percentage Interests bears to the total Percentage Interests exercising such right of first refusal. The Members shall communicate with each other during the pendency of any offer made in accordance with the terms of this Section 10.2 in order to effectuate the intent of this Section.

(c) As a condition to the Company recognizing the effectiveness of either the sale or gift of an Interest in the Company (including, in both cases, a Transferee Interest), the remaining Members may require the Selling Member, Gifting Member and/or the proposed purchaser, donee or successor-in-interest, as the case may be, to execute, acknowledge and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the remaining Members’ may deem necessary or desirable to:

- (1) verify the purchase, gift or transfer, as the case may be;
- (2) confirm that the person desiring, to acquire an Interest in the Company, or to be admitted as a Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of the Agreement (whether such Person is to be admitted as a new Member or as a Transferee);
- (3) maintain the status of the Company as a partnership for federal tax purposes; and
- (4) assure compliance with any applicable state and federal laws including securities laws and regulations.

(d) Any sale or gift of a Membership Interest or Transferee Interest in compliance with this Article X shall be deemed effective upon the last day of the calendar month in which all the terms and conditions hereof relating thereto have been satisfied. The admission of a Member in compliance with this Article X shall be deemed effective as of the last day of the calendar month in

which the remaining Members' consent thereto was given. The Selling Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article X.

10.3 *Permitted Transfer to Descendants/Mandatory Offer at Death.*

10.3.1 *No Mandatory Offer At Death.* If a Member's Interest is Transferred to a lineal descendant of the Member, to a Trust or other entity beneficially owned solely for or by that Member or the lineal descendant of that Member, the Transferee shall not be required to sell or offer to sell his or her Interest, shall be eligible to become a Member pursuant to Sections 10.1.1 and 10.1.2 above, and shall be subject to the voting agreements described in Article V, above. If Members of the Company are trusts for the lifetime benefit of the lineal descendants of a Member either directly or indirectly, then the successors in interest to the Interests in the Company pursuant to the terms of such trusts shall be considered as Members hereof (regardless of indirect ownership as trust beneficiaries) as long as the beneficial interests are owned by the lineal descendants of the Member, and said persons shall be subject to the voting agreements described in Article V, above.

10.3.2 *Mandatory Offer At Death.* Except with transfers described in 10.3.1., above, the death of any Member or Transferee who owns an Interest shall constitute an offer by the Member's Estate, Trust, or other legal successor in interest, to sell all of the Member's Interest to the Company (the "Offer") at its fair market value (determined as of the date of death). The Company shall have one hundred eighty (180) days in which to accept the Offer at an agreed price, which acceptance shall be made by delivery of written notice thereof to the legal representative of the estate of the Member or Transferee, by certified mail or personal delivery, within said one hundred eighty (180) day period. If the Company does not elect to purchase the Interest within said one hundred eighty (180) day period, the remaining Members shall have the right, but are not required to, purchase the remaining part, or all, as the case may be, of the Interest at its fair market value (as determined herein) determined as of the date of death, in proportion to their existing Interests. Such right to purchase shall be exercised by delivery of written notice thereof, by certified mail or personal delivery, during the thirty (30) days immediately after the one hundred eighty (180) day period (the "30 Day Period"). If any such Member does not desire to purchase his/her or its full proportionate part of the Interest offered for sale, but the remaining Members desire to purchase all of the Interest offered for sale, said Members shall then have the right to purchase said Interest proportionally in accordance with their respective Interests and the Members shall communicate with each other during the 30 Day Period in order to effectuate the intent of this Section 10.3. Except as provided in Section 10.1.2 and 10.1.3, to the extent that any part, or all, of an Interest is not purchased under the provisions of this Section 10.3, the deceased's Member's Interest shall become a Transferee's Interest, if not owned beneficially or directly by another Member hereof. The purchase price shall be as agreed by the parties, and, unless otherwise agreed, shall be paid in cash at the closing, which shall occur no later than thirty (30) days after the end of the 30 Day Period. For purposes of this Agreement, the "fair market value" of an Interest is equal to its Percentage Interest multiplied by the value of the Company (as agreed by the parties). If the value of the Company is not agreed to by the parties, then for purposes of this Agreement "fair market value" of a Member's Interest shall be determined without reduction for minority, lack of marketability or other entity/Company level discounts, based upon a reasonable appraisal procedure to determine the fair market value of the Company's assets. The appraisal procedure shall be agreed upon by the Member and Company. If the

parties cannot agree to an appraisal procedure, then an MAI appraiser shall be selected by the Personal Representative of the deceased Member's estate, and if the Company does not agree as to that appraiser, then the Company shall select its own appraiser and each MAI appraiser then shall select a third MAI appraiser and the average of all three (3) appraisals shall be the fair market value of the Interest. As set forth hereinabove, fair market value" of a Member's Interest shall be determined without reduction for minority, lack of marketability or other entity/Company level discounts.

10.4 *Transferee Not Member in Absence of Unanimous Consent.*

(a) Except as provided in Section 10.1.2 and 10.1.3, if all of the remaining Members do not approve by unanimous written consent of the proposed, sale or gift of the Transferring Member's Membership Interest to a transferee or donee which is not a Member immediately prior to the sale or gift, then the proposed transferee or donee shall have no right to participate in the management of the business and affairs of the Company or to become a Member. The transferee or donee shall be merely a Transferee entitled solely to economic rights to profits, losses and distributions and shall have no voting rights under this Agreement or in matters relating to the Company and its business; provided, however, any sale of a Transferee's interest in the Company should be subject to Section 10.2. No transfer of a Member's Interest in the Company (including any transfer of the Transferee Interest or any other transfer which has not been approved by unanimous written consent of the Members) shall be effective unless and until written notice (including the name and address of the proposed transferee or donee and the date of such transfer) has been provided to the Company and the nontransferring Member(s).

(b) Upon and contemporaneously with any sale or gift of a Transferring Member's Interest in the Company which does not at the same time transfer the balance of the rights associated with the Transferee Interest transferred by the Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the business and affairs of the Company), all remaining rights and interest which were owned by the Transferring Member immediately prior to such sale or gift or which were associated with the transferred Interest shall immediately lapse until the remaining Members, by unanimous written consent, reinstate such rights to the Transferee who did not previously obtain the unanimous written consent, reinstating such rights to a successor or transferee of such Transferee.

ARTICLE XI

ADDITIONAL MEMBERS

From the date of the formation of the Company, any Person or Entity acceptable to the Members by their unanimous vote thereof may become a Member in this Company for such consideration as the Members by their unanimous votes shall determine, subject to the terms and conditions of this Agreement. No new Members shall be entitled to any retroactive allocation of profits losses, income or expense deductions incurred by the Company. The Manager(s) may, at their option, at the time a Member is admitted, close the Company books (as though the Company's tax year has ended) or make pro rata allocations of income, loss, and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Code Section 706(d) and the Treasury Regulations promulgated thereunder.

ARTICLE XII

DISSOLUTION AND TERMINATION

12.1 *Dissolution.*

(a) The Company shall be dissolved upon the occurrence of any of the following events:

- (i) by the unanimous written consent of all Members; or
- (ii) the sale, transfer or assignment of substantially all of the assets of the Company; or
- (iii) as otherwise required by law.

12.2 *Winding Up, Liquidation and Distribution of Assets.*

(a) Upon dissolution, an accounting shall be made by the Company's independent accountant of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Managers shall immediately proceed to wind up the affairs of the Company.

(b) If the Company is dissolved and its affairs are to be wound up, the Managers shall:

(1) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Managers may determine to distribute any assets to the Members in kind),

(2) Allocate any profit or loss resulting from such sales to the Member's and Transferees' Capital Accounts in accordance with Article IX hereof.

(3) Discharge all liabilities of the Company, including liabilities to Members and Transferees who are creditors, to the extent other-wise permitted by law, other than liabilities to Members and Transferees for Distributions, and establish such Reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members and Transferees, the amounts of such Reserves shall be deemed to be an expense of the Company),

(4) Distribute the remaining assets in the following order:

(i) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of all of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and

the Capital Accounts of the Members and Transferees shall be adjusted pursuant to the provisions of Article IX and Section 8.3 of this Agreement to reflect such deemed sale.

(ii) To the Members and Transferees, pro rata, in accordance with the positive balance (if any) of each Member's and Transferee's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's taxable year during, which the liquidation occurs) shall be distributed to the Members and Transferee either in cash or in kind, as determined by the Managers, with any assets distributed in kind being valued for: this purpose at their fair market value as determined pursuant to Section 12.2(b)(i).

(iii) Thereafter, to the Members and Transferee's pro rata, in accordance with their respective Percentage Interests.

(c) Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

(d) Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

(e) The Manager(s) shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

12.3 *Articles of Dissolution.*

When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets of the Company have been distributed among its members in accordance with their respective rights and interests, a Articles of Dissolution of the Company shall be filed with the Florida Department of State.

12.4 *Effect of Filing Articles of Dissolution.*

Upon the filing of Articles of Dissolution with the Florida Department of State, and upon issuance of the Certificate of Dissolution by the Department of the State, the existence of the Company shall cease, except for the purpose of suits, of the proceedings and appropriate action as provided in the Act. The Managers shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

12.5 *Return of Contribution Nonrecourse to Other Members.*

Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member and Transferee shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members or Transferees, such Member(s) or Transferee(s) shall have no recourse against any other Member or Transferee, except as otherwise provided by law.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 *Notices.*

Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally or by express mail or courier service (with receipt acknowledged) to the party or to an executive officer of the party to whom the same is directed, if telecopied (with receipt acknowledged) to the party or an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Agreement. Except as otherwise provided herein any such notice shall be deemed to be given two (2) business days after the date on which the same was deposited in the United States mail, addressed and sent as aforesaid, if sent by mail or upon confirmation of receipt if delivered by telecopier, personal delivery or courier service.

13.2 *Books of Account and Records.*

Proper and complete records and books of account shall be kept or shall be caused to be kept by the Managers in which shall be entered fully and accurately all transactions relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained as provided in Section 9.9. The books and records shall at all times be maintained at the principal place of business of the Company. Additionally, the Managers shall promptly distribute to all Members, copies of the Company's financial statements on an annual basis.

13.3 *Application of Florida Law.*

This Agreement and its interpretation shall be governed exclusively by its terms and by the laws of the State of Florida, and specifically the Act.

13.4 *Waiver of Action for Partition.*

Each Member and Transferee irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

13.5 *Amendments.*

This Agreement may not be amended except in writing by the affirmative vote of a majority of the Members of the Company which vote must include the affirmative vote of the Manager. Any amendment changing either the Percentage Interests of the Members or any provision within Article V requires the unanimous vote of the Members.

13.6 *Execution of Additional Instruments.*

Each Member hereby agrees to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with an laws, rules or regulations.

13.7 *Construction.*

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

13.8 *Headings.*

The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision thereof

13.9 *Waivers.*

The failure of any party to seek redress for default of or to insist upon the strict performance of any covenant of condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default, from having the effect of an original default.

13.10 *Rights and Remedies Cumulative.*

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any other remedy. Said rights and remedies are given in addition to any other legal rights that parties may have.

13.11 *Severability.*

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

13.12 *Heirs, Successors and Assigns.*

Each and all of the covenants, terms, provisions and agreement herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

13.13 *Creditors.*

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

13.14 **Counterparts.**

This Agreement may be executed in counterparts, each of shall be deemed an original but all of which shall constitute one and the same instrument.


13.15 **Conflict of Interest Waiver.** The Members and the Company acknowledge that the law firm of Tescher & Spallina, P.A. has represented the Company in connection with the drafting of this Agreement and the formation and structuring of the Company, and that said law firm also represents one or more of the Members (namely, SIMON L. BERNSTEIN, SHIRLEY BERNSTEIN, SHIRLEY BERNSTEIN FAMILY FOUNDATION, INC., and BERNSTEIN FAMILY INVESTMENTS, LLLP). The Company and its Members acknowledge that they have been advised that there are material income tax consequences and economic ramifications from being a Member in the Company, that they fully understand the tax consequences and economic ramifications of a Member's investment in the Company, and that they have been encouraged to consult with separate and independent counsel to advise them on Company and Member issues including this Agreement and the formation of the Company. The Company and the Members hereby waive any conflicts of interest with respect to the foregoing law firm's representation of the Company and the afore described Members and owners of interests in entity Members, in connection with the services set forth in this Section.

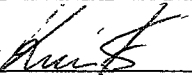
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IN WITNESS WHEREOF, the parties hereto have caused their signatures, or the signatures of their duly authorized representatives, to be set forth below on the day and year first above written.

Witnesses:

MEMBERS:




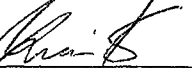


SIMON L. BERNSTEIN TRUST
AGREEMENT dated May 20, 2008


By: 

SIMON L. BERNSTEIN, Trustee





SHIRLEY BERNSTEIN TRUST
AGREEMENT dated May 20, 2008

By: 

SHIRLEY BERNSTEIN, Trustee

ELIOT BERNSTEIN FAMILY TRUST dated
May 20, 2008

DPaul
Kit
DPaul
Kit
DPaul
Kit

By: [Signature]
SIMON L. BERNSTEIN, Co-Trustee

By: [Signature]
SHIRLEY BERNSTEIN, Co-Trustee

By: [Signature]
ROBERT L. SPALLINA, Independent Trustee

JILL IANTONI FAMILY TRUST dated May
20, 2008

DPaul
Kit
DPaul
Kit
DPaul
Kit

By: [Signature]
SIMON L. BERNSTEIN, Co-Trustee

By: [Signature]
SHIRLEY BERNSTEIN, Co-Trustee

By: [Signature]
ROBERT L. SPALLINA, Independent Trustee

LISA S. FRIEDSTEIN FAMILY TRUST dated
May 20, 2008


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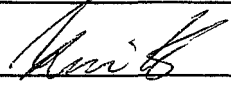
By: [Signature]
SIMON L. BERNSTEIN, Co-Trustee

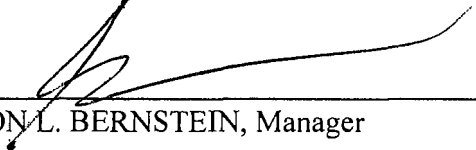
By: [Signature]
SHIRLEY BERNSTEIN, Co-Trustee

By: [Signature]
ROBERT L. SPALLINA, Independent Trustee

COMPANY:
BERNSTEIN HOLDINGS, LLC, a Florida
limited liability company





By: 

SIMON L. BERNSTEIN, Manager

F:\WPDATA\drt\Bernstein, Shirley & Simon\Bernstein Family Investments, LLLP\Bernstein Holdings, LLC\Bernstein Holdings, LLC Operating Agreement wpd

**BERNSTEIN HOLDINGS, LLC
LIMITED LIABILITY COMPANY
OPERATING AGREEMENT**

EXHIBIT A

<u>Member(s)</u>	<u>Percentage Interest*</u>	<u>Capital Contributions</u>
SIMON L. BERNSTEIN, Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT u/t/d May 20, 2008	48.5%	\$48.50
SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT u/t/d May 20, 2008	48.5%	\$48.50
SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees ROBERT L. SPALLINA, Independent Trustee of the ELIOT BERNSTEIN Family Trust dated May 20, 2008	1%	\$1.00
SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees ROBERT L. SPALLINA, Independent Trustee of the JILL IANTONI Family Trust dated May 20, 2008	1%	\$1.00
SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN, Co-Trustees ROBERT L. SPALLINA, Independent Trustee of the LISA S. FRIEDSTEIN Family Trust dated May 20, 2008	1%	\$1.00

*proportionate to capital accounts of Members