

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

CASE NO. 502012CP004391XXXXNB-IH
Probate – Judge John L. Phillips

IN RE:

ESTATE OF SIMON L. BERNSTEIN,
_____ /

**TRUSTEE'S MOTION TO APPROVE RETENTION OF COUNSEL AND, TO APPOINT
TED S. BERNSTEIN AS ADMINISTRATOR *AD LITEM* TO DEFEND CLAIM
AGAINST ESTATE BY WILLIAM STANSBURY**

Ted S. Bernstein, Successor Trustee of the Simon Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon's Trustee"), moves the Court to approve the retention of the law firm Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. ("Mrachek-Law") as counsel to defend the Estate in an independent action brought by William Stansbury, and to appoint Ted Bernstein as Administrator Ad Litem to defend the claim against the estate by William Stansbury and states:

1. Claimant, William Stansbury, has sued the Estate of Simon Bernstein for more than \$2.5 million, a claim which vastly exceeds the value of all of the current assets and potential recoveries by the Estate in third party litigation. The Estate attempted to resolve Stansbury's claim in good faith at mediation, but was unable to reach agreement with Stansbury during the mediation and does not believe it is likely that the claim can be settled. In light of that, the Estate must vigorously defend the claim.

2. Stansbury's claim relates to his business relationship with the decedent, Simon Bernstein, through an entity known as Life Insurance Concepts, Inc. ("LIC"). That entity was a closely-held corporation owned primarily by Simon Bernstein and Ted Bernstein, with Stansbury

at one time owning 10% of non-voting stock. LIC was operated and managed by Simon Bernstein and Ted Bernstein, who had sole voting rights, and served on the Board of Directors.

3. Stansbury's claim arises from his employment by and ownership interest in LIC. Before Simon died, Stansbury sued Simon Bernstein, Ted Bernstein, LIC, and various subsidiaries of LIC, asserting a variety of claims. The Complaint was filed on July 30, 2012. Simon Bernstein died 45 days after the Complaint was filed, before any responsive pleading or motion to dismiss was filed. A suggestion of death was filed.

4. LIC actively defended and litigated against Stansbury's claim, and pursued a counterclaim against Stansbury, under the direction of Ted Bernstein. During this litigation, Ted Bernstein was the primary client contact for the defense of the claim for approximately two years before Stansbury settled his differences with LIC. Along the way, Stansbury also asserted a claim against The Shirley Bernstein Trust, which Ted Bernstein as Trustee defended.

5. LIC and the other defendants initially hired Greenberg Traurig. In April, 2013, LIC and Ted Bernstein retained Mrachek-Law, which formally appeared on April 12, 2013. Shortly thereafter, Stansbury served summonses on the co-PRs of Simon's Estate, and the Estate retained Mark Manceri as its counsel.

6. Alan Rose of Mrachek-Law served as lead counsel for LIC, Ted Bernstein, and The Shirley Bernstein Trust, and coordinated the defense work with the co-PRs and Mr. Manceri, taking the lead role in the discovery, depositions, and court hearings. Specifically, for more than a year until the claims against LIC, Ted Bernstein, and Shirley Bernstein Trust were settled, Mrachek-Law handled the production of substantial business records; interviewed witnesses; coordinated the defense strategy with Ted Bernstein and counsel for the Estate; and worked with LIC's accountants

and professionals in preparing the defense of the claims. As a result of that work, Mrachek-Law is familiar with the facts, circumstances, and events, and is prepared to represent this Estate if hired.

7. As a result of his involvement as a founder and a shareholder of LIC, and his participation in this litigation for approximately two years, Ted Bernstein is fully familiar with the issues in the case, the nature of the claims, the relevant documents, and has firsthand knowledge of certain of the facts. As Successor Trustee of the Simon Bernstein Trust, Ted Bernstein has a substantial and direct interest in seeing that the claim of Stansbury is properly defended and ultimately defeated. He has conferred with the beneficiaries of The Simon Bernstein Trust, including the Guardian *Ad Litem*, and all are in favor of Ted Bernstein directing the defense of the claim through the Mrachek-Law firm.

8. In contrast, and through no fault of his own, Brian O'Connell, successor PR of the estate has more limited knowledge of the factual and legal underpinnings of Stansbury's claim and LIC. Neither Mr. O'Connell nor his law firm has ever done work for Simon Bernstein (while alive) or LIC; they never worked for, at or with LIC; they never met Simon Bernstein; and they have no firsthand personal knowledge of any facts relevant to the case.

9. Accordingly, and having conferred with the Trustee and the beneficiaries of the Trust, Mr. O'Connell has agreed to have Mrachek-Law retained to represent the Estate in the Stansbury litigation so long as the Court appoints Ted Bernstein as Administrator *Ad Litem* to stand as the Estate's representative in defending and protecting the estate's interests in the Stansbury litigation. Although the estate will be responsible for the reasonable costs and attorneys' fees incurred by Mrachek-Law in defending the claim (as it would regardless of which law firm was retained), Ted Bernstein has agreed to serve as Administrator *Ad Litem* for no additional fee. In other words, there

will be no fee for the time Ted Bernstein expends working on the defense of the independent action by Stansbury against the estate, whereas there might be some additional expense incurred were Brian O'Connell forced to assume that role. The reasonable fees and costs relating to the defense of Simon's claim, and the eventual pursuit of attorneys' fees awards against Stansbury, will be paid by the Estate.

10. Thus, this plan will result in some significant savings to the Estate due to (a) Mrachek-Law's prior knowledge and involvement; and (b) Ted Bernstein's prior knowledge and involvement, and his willingness to serve for no additional fee.

11. For the foregoing reasons, Ted Bernstein believes it is in the best interests of the estate to retain the Mrachek-Law firm, rather than some other law firm which has no prior knowledge or involvement in this matter. The Trustee believes the granting of this motion will result in an overall reduced cost to defend the claim; will employ attorneys skilled in commercial litigation who happen to be very familiar already with the facts, circumstances, events, and documents relating to Stansbury's claim. As indicated above, the Trustee has conferred with not only Mr. O'Connell, but each of the beneficiaries of the Trust, which is the sole beneficiary of the estate, and all are in agreement.

WHEREFORE, Ted S. Bernstein respectfully requests that this Court enter an order approving the retention of Mrachek-Law to defend the Stansbury independent action and appointing Ted S. Bernstein as Administration *Ad Litem* to oversee the estate's defense.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: Facsimile **and** U.S. Mail; U.S. Mail; E-mail Electronic Transmission; FedEx; Hand Delivery this 5th day of August, 2016.

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